

**SEMINAR ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF SWEDEN IN
COOPERATION WITH ACA-EUROPE**

Stockholm, 9-10 October 2023

Questionnaire

***"Preliminary rulings of the Court of Justice of the European Union – from CILFIT to
Consortio"***

I Introduction

During the Finnish presidency of the ACA-Europe, 2023-2025, a number of seminars will be arranged relating to the vertical dialogue between the supreme administrative courts and the European Courts – both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights. The Finnish presidency will be a joint effort in close co-operation with Sweden and the first seminar will be held in Stockholm on the 9–10th of October 2023.

The topic for the October seminar is *Preliminary rulings of the Court of Justice of the European Union – from CILFIT to Consortio*.

In *CILFIT* ([CURIA - List of results \(europa.eu\)](#)) the CJEU provides three situations in which national courts or tribunals of last instance are not subject to the obligation to make a reference for a preliminary ruling, namely when

- (i) the question is irrelevant for the resolution of the dispute;
- (ii) the provision of EU law in question has already been interpreted by the Court (*acte éclairé*);
- (iii) the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (*acte clair*).

Later, in *Consortio* ([CURIA - List of results \(europa.eu\)](#)) the CILFIT criteria were confirmed and complemented. Among other things the CJEU clarifies in *Consortio* that the national courts must give developed reasons for deciding not to refer a question for a preliminary ruling.

The seminar will focus on issues such as the procedure in the national courts when considering to request a preliminary ruling from the CJEU, the obligation to refer vs. "margin of appreciation" and the use of the CILFIT criteria by the courts. With regard to the procedure *after* the CJEU's decision topics such as the national follow-up of the judgments, the quality and unambiguity of the judgments and whether national courts call into question or distinguish the judgments of the CJEU will be discussed. Attention will also be given to the role of inferior courts, the impact of requirements of leave to appeal or other "filters" in the national legal system and questions relating to the development of the preliminary ruling system in cooperation with the CJEU.

The purpose of this questionnaire and the ensuing seminar is to exchange experiences relating to the procedure when our courts consider requesting a preliminary ruling from the CJEU and also how we proceed after having received a judgment from the CJEU. Hopefully this



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questionnaire will provide useful information for comparative purposes and identify aspects for further workshop discussions. The ultimate aim is that fruitful discussions will provide an increased and enhanced awareness of aspects concerning the preliminary ruling system.

II Background and statistics

1. What is the formal title of your court (also provide the title in English)?

Najvyšší správny súd Slovenskej republiky, The Supreme Administrative Court of the Slovak republic.

2. Which principal branches of law are addressed at your court?

Tax, social security, financial aid to individuals, asylum, administrative sanctions and various other administrative decisions which have been contested. The Supreme Administrative Court of the Slovak republic also acts as a disciplinary court for general court judges, prosecutors and other statutory professions.

3. Which court or courts in your legal system falls under the obligation to refer questions to CJEU for a preliminary ruling (article 267.3 TFEU)?

The Supreme Administrative Court and the Supreme Court (criminal and civil law)

4. On average, how many incoming cases are registered at your court per year?

Slightly less than 2000. Supreme administrative court of the Slovak republic was formally established on 1st January 2021, but started operating on 1st August 2021. 774 cases were registered at our court in first 5 months. 2789 cases were registered in 2022. 487 cases were registered in first three months of 2023.

5. How many preliminary rulings has your court requested from the CJEU during the period 2012 to 2022?

The Supreme Administrative Court has requested 2 preliminary rulings from CJEU. Administrative division of Supreme Court has requested 10 preliminary rulings (before the Supreme Administrative Court of the Slovak Republic was established)

6. Do any branches of law stand out such that preliminary rulings are requested more frequently in respect of that branch?

Yes



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- No

If "yes", state the branch or branches of law and whether there is any reason why the number of preliminary rulings within that branch or branches stands out.

Most cases were related to value added tax (4 cases) and environment (2 cases).

7. Estimate the number of referred cases from your court during the period 2012 to 2022 that have related to the *validity* of an EU act itself.

No case have related to the validity of an EU act itself.

8. Has your court requested an "expedited preliminary ruling procedure" (art. 105–106 Rules of Procedures of the Court of Justice) in any of the cases referred?

- Yes
- No**

If "yes", did the CJEU grant the request or requests?

- Yes
- No

Please provide an example of a case that has been dealt with according to this special procedure or a case where your court's request has been rejected.

9. Has your court requested an "urgent preliminary ruling procedure" (art. 107–114 Rules of Procedures of the Court of Justice) in any of the cases referred?

- Yes
- No**

If "yes", did the CJEU grant the request or requests?

- Yes
- No

Please provide an example of a case that has been dealt with according to this special procedure or a case where your court's request has been rejected.



III The procedure in national courts concerning requests for a preliminary ruling

10. Does your national legislation contain any provisions concerning the procedure relating to requests for a preliminary ruling from the CJEU?

- Yes**
- No**

If "yes", state the rule and briefly describe the contents.

Provisions are found in procedural codes for every type of proceeding. Provisions regulate obligation of court to suspend proceeding when it has decided to request the CJEU for a preliminary ruling.

11. Does your court have any routine documents, guidelines, etc., for the procedure concerning requesting a preliminary ruling?

- Yes**
- No**

If "yes", briefly state the contents of these documents (for example, whether they regard the procedural handling and/or the substantive assessment in order to ensure compliance with the case law of the CJEU).

12. What possibilities are available to a party in the case in your court to claim that the court shall request a preliminary ruling from the CJEU?

The parties have the possibility to, in their cassation complaint to the court – and later during the proceedings – propose that the court shall request a preliminary ruling from the CJEU. The parties do not have a legal claim and requesting a CJEU for preliminary ruling is a matter for the court's discretion. However, the court must deal with the reason for not making the request in the grounds of its decision.

13. Estimate how common it is that your court make a request for a preliminary ruling after the question has been raised by a party relative to when the question is raised *ex officio* by the court.

- Most commonly, the question is raised by a claim brought by a party**
- Most commonly, the question is raised *ex officio* by the court
- Both are equally common



14. Briefly describe what the procedure looks like when your court consider requesting a preliminary ruling from the CJEU.

For example, if there are any time frames for handling a claim from the parties regarding a preliminary ruling, if and how the parties in the case are involved, if a rejection of a request for a preliminary ruling is examined in a separate decision or in conjunction with the final ruling in the case, the number of judges involved in the decision, etc.

The motion of the request is decided by the regular panel, the panel that decides the case. The panel consists of three judges. If a party motions for a preliminary ruling, the motion generally goes to all the parties so they can express their opinion of the matter. The court suspends proceeding when it has decided to request the CJEU for a preliminary ruling. If the court does it on its own initiative, it wont inform the parties. There is no formal procedure for requesting a preliminary ruling from the CJEU.

15. Briefly describe which considerations (in substance) that are made when your court examines the question whether to request a preliminary ruling or not from the CJEU?

For example, how the court proceeds to determine whether the provision in question has already been interpreted by the CJEU or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (*acte éclairé/acte clair*), if it is common for your court to specifically investigate how other countries have interpreted the provision, how such an investigation then is carried out, if other language versions are consulted, etc.

*In order to determine whether there is a need to make a request for a preliminary ruling, the court principally makes an analysis of the relevant provision. We examine whether the provision or similar issue has been interpreted by the CJEU as well as whether there are any pending cases regarding preliminary rulings from other countries. Usually it is not necessary to specifically examine how other countries interpret the provision in order to be able to assess whether the issue is *acte éclairé/acte clair*, but it happened that we posted a question on the ACA-Europe Forum.*

16. Is the government or other branches of the executive power ever involved *before* your court requests a preliminary ruling?

- Yes
- No**

If "yes", describe which contacts that may occur.



17. Are there ever any contacts between your court and the government or other branches of the executive power to inform about a preliminary ruling *after* it has been requested by your court?

- Yes**
- No

If "yes", describe which contacts that may occur.

The resolution on the suspension of proceedings when the court has decided to request the CJEU for a preliminary ruling has to be immediately delivered to the Ministry of Justice.

18. How does your court state the reasons for rejecting a claim for a preliminary ruling (*cf.* question 29 below regarding cases where leave to appeal or other "filters" are prescribed)?

For example, is the reasoning, as a rule, based on the criteria established in the case law of the CJEU, (*inter alia* **CILFIT**) or does your court refer to additional criteria which do not follow directly from the Court's case law.

When the court rejects a party's claim to request a preliminary ruling, the court must state the reasons therefor. These reasons are set out in the decision on the merits.

The reasoning is based on the criteria established in the case law of the CJEU. The Supreme Administrative Court of the Slovak republic refers to CILFIT for example in case 1Sfk/50/2021.

The Supreme Administrative Court of the Slovak republic do not refer to additional criteria which do not follow directly from the CJEU case law.

19. Following the ruling of the CJEU in *Conorzio* and of the European Court of Human Rights in *Sanofi Pasteur v. France* and *Rutar and Rutar Marketing d.o.o. v. Slovenia*, does your court give more extensive reasons for rejecting a party's claim to request a preliminary ruling?

- Yes
- No**

Our court has not yet referred to these decisions in its practice.



20. Is it possible to appeal a decision of your court to make a request for/not make a request for a preliminary ruling?

- Yes
- No**

If "yes", to what extent can such an appeal be granted?

If the court agrees with a party's motion to make a request for preliminary ruling, it shall suspend the proceedings. The resolution on the suspension of proceedings when the court has decided to request the CJEU for a preliminary ruling cannot be challenged by cassation complaint. If the court does not agree with a party's motion to make a request for preliminary ruling, it will normally state the reasons for its disagreement in the decision on the merits. Administrative courts are not obligated to refer questions to CJEU for a preliminary ruling (article 267.3 TFEU). Only the Supreme Administrative Court of the Slovak republic falls under the obligation to refer questions to CJEU for a preliminary ruling (article 267.3 TFEU).

21. Can a lower court's decision to make a request/not make a request for a preliminary ruling be appealed to a higher court?

- Yes**
- No

If "yes", can such an appeal be granted?

The resolution on the suspension of proceedings when the court has decided to request the CJEU for a preliminary ruling cannot be challenged by cassation complaint. Administrative courts are not obligated to refer questions to CJEU for a preliminary ruling (article 267.3 TFEU). If the court does not agree with a party's motion to make a request for preliminary ruling, it will normally state the reasons for its disagreement in the decision on the merits. Party can claim in the cassation complaint that the Supreme Administrative Court of the Slovak republic shall file a request for a preliminary ruling from the CJEU.

22. Are there any differences in the procedure in your court for requesting a preliminary ruling when the question is raised in a case where the expedited or urgent procedure is applied (cf. question 8 and 9 above)?

- Yes
- No
- The procedure has not been applied**



If “yes”, please describe in what way the procedure differs.

Formulation of the questions submitted to the CJEU

23. Briefly describe how questions to the CJEU in general are formulated when your court requests a preliminary ruling.

For example, are the questions formulated in a narrow way in order to provide the most concrete guidance possible in the case or in a more open way in order to give the CJEU more freedom to formulate its answer?

The way in which the questions in resolution on the suspension of proceedings (when the court has decided to request the CJEU for a preliminary ruling) are formulated depends on the specific case. In general, a reasoning of the resolution on the suspension of proceedings when the court has decided to request the CJEU for a preliminary ruling usually contains description of the Union law and national provisions, a brief description of the relevant circumstances, a description of why there is a need to make a request for a preliminary ruling and the precise question for which the court wishes to receive an answer. The questions are usually formulated as precisely and concisely as possible.

24. Are the parties usually given the opportunity to comment on the request for a preliminary ruling before the request is submitted to the CJEU (cf. the CJEU’s recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, 2019/C 380/01, para. 13)?

- Yes**
- No**

If "yes", briefly describe the material in the case on which the parties are given the opportunity to comment.

The parties are given the opportunity to comment, when the party motions that the court shall request a preliminary ruling from the CJEU. The resolution is delivered to the parties and they can express their views.

25. In a request for a preliminary ruling, does your court usually state its own view on the answer to be given to the question referred (cf. the CJEU’s recommendations, para. 18)?

- Yes**
- No**



Briefly describe the reasons why your court does or does not usually state its view on the answer to be given to the question referred.

In our requests, we focus on the questions the CJEU has to answer, rather than the answers.

Leave to appeal and other "filters"

26. Does your national legal system prescribe any requirement of leave to appeal or other forms of "filters" in order for a case to be admitted for adjudication in your court?

- Yes
- No**

If "yes", briefly describe the regime and state whether it applies generally or only to certain types of cases. If "no", please go to question 30.

Cassation complaint (as an extraordinary remedy) is required in most of the court's cases in order for the case to be able to be tried on the merits. Any final decision of court of first instance can be challenged by a cassation complaint for grounds of cassation stipulated by the Code of Administrative Court Procedure.

However, cassation complaint is not required, for example, in disciplinary cases.

27. Is the preliminary ruling procedure different when the question is raised in a case requiring leave to appeal or another "filter" (cf. question 14 above)?

Since our national legal system does not prescribe any requirement of leave to appeal or other forms of "filters" in order for a case to be admitted for adjudication in our court, there hasn't been such case.

28. Please estimate in how many cases, out of the total amount of cases in which your court has made a request for a preliminary ruling from the CJEU during the period 2012 to 2022, leave to appeal or other "filters" have been required in order for the case to be admitted for adjudication?

Since our national legal system does not prescribe any requirement of leave to appeal or other forms of "filters" in order for a case to be admitted for adjudication in our court, there hasn't been such case.



29. Is the reasoning different as regards rejections of a claim to make a request for a preliminary ruling in cases in which leave to appeal or other "filters" are prescribed?

Please see the response to questions 26 and 28.

IV The process after having received the judgment of the CJEU

30. Briefly describe the handling after your court has received the judgment from the CJEU regarding a preliminary ruling.

The parties are given the opportunity to comment on the CJEU's judgment. After that, they are also given the opportunity to comment on submissions made by the other parties. The court may order a hearing but it is not mandatory.

In accordance with the rules of the ACA-Europe we deliver CJEU's judgment to ACA-Europe, so it can be included in JuriFast.

Final opinion of court will be known to the parties in judgment.

31. Has it occurred that your court has had difficulties understanding the specific consequences of the ruling from the CJEU on legal questions in the national case i.e. to use the CJEU's answer as a basis for the decision in the case? (*cf.* the CJEU's recommendations, para. 11)?

- Yes
- No**

If "yes", describe how common it is and please provide an example of a case where such difficulties have occurred.

No application for the interpretation of the CJEU's judgment has yet been submitted. It can therefore be said that such situation did not occur.

32. Briefly describe the factors, if any, which your court considers have had an impact on the clarity of the judgment of the CJEU.

For example, is it relevant that the CJEU has reformulated the referred questions, whether the Advocate General has commented, whether your court has itself given an account of its own position as to the manner in which the referred questions are to be answered, etc.



It is relevant that the Advocate General has commented. Our court itself does not express an opinion on how the questions should be answered. The main reason for not stating the court's own view is that it could be seen as prejudging the final outcome of the case.

Other factors which might be relevant are whether the language versions of the preliminary ruling differ and whether CJEU has correctly understood the national legal system or the factual circumstances in the case.

33. During the period 2012 to 2022, has it occurred that your court has considered it necessary to make a renewed request for a preliminary ruling concerning the same questions?

- Yes
- No**

If "yes", briefly describe what gave rise to the renewed request.

V Miscellaneous

34. Has it occurred that an infringement procedure has been commenced against your Member State as a consequence of the fact that a preliminary ruling was not requested by a court in your State?

- Yes
- No**

If "yes", briefly describe the matter and whether the proceedings gave rise to amended legislation or altered routines for addressing questions regarding preliminary rulings.

No infringement procedure has been commenced against Slovak Republic. As regards to amendment of legislation, we can mention the judgment C-240/09 which had an impact on the legislation amendments in the field of environmental protection.

35. Has your Member State been ordered to pay damages in a matter as a consequence of the fact that a court has failed to make a request for a preliminary ruling or that a court did not rule in accordance with an issued preliminary ruling?

- Yes
- No**





If "yes", briefly describe the matter and whether the proceedings led to legislative amendments or changes in routines for addressing questions regarding preliminary rulings by your court.

