

II Background and statistics

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

Tribunal Supremo. Supreme Court

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

Civil and commercial, criminal, administrative, social and militar

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)?

Concerning the application of the third paragraph of Article 267 of the Treaty on the Functioning of the European Union, it is challenging to distinguish between obligated and unobligated courts in Spain. Proceedings should instead make the distinction, and indeed to those against whose decisions no further appeal is possible, the paragraph mentioned above of Art. 267 would then be applicable. However, in our doctrine, there is a tendency to think that the national judge must raise the preliminary question when it is relevant according to the circumstances of the case, regardless of whether or not an appeal is possible against the decision of the proceedings.

In any case, some courts could be cited concerning the article referred to in the question. Such would be the case of the Constitutional Court, the Supreme Court when an appeal before the Constitutional Court is ruled out, or the High Courts of Justice of the autonomous communities in certain circumstances and jurisdictions. However, we insist that in our legal system, the distinction should not be made by the type of courts since there are lower bodies that, in specific processes and jurisdictions, may issue decisions against which no appeal is granted and in which a possible appeal to the Constitutional Court, attending to the specific circumstances of the case, is ruled out.

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

24.000

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

80



Fuente

<https://www.poderjudicial.es/stfls/ESTADISTICA%20JUDICIAL%20NUEVO/FICHEROS/3002E%20Cuestiones%20Prejudiciales/Cuestiones%20Prejudiciales.xls?t=202303175746>

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

Yes

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.

The contentious-administrative Chamber is the one that raises the most pre-trial questions, because it is the Chamber that supports the greatest volume of work and because in the field of Administrative and Tax Law, the presence and application of European Union Law is particularly intense.

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.

At the contentious-administrative Chamber, there is one preliminary question of validity, raised by the court through a resolution of June 2, 2015, in relation to the distribution of greenhouse gas emission rights. Decision 2013/448UE.

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

Yes

If “yes”, did the CJEU grant the request or requests?

Yes

No

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.



The most recent case is C-158/21, concerning interpreting Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

The Court considered that the Supreme Court had not provided enough evidence on the existence of exceptional circumstances specific to the case that could demonstrate extraordinary urgency.

The Court argued that since the preliminary ruling procedure requires the proceedings pending before the referring court to be stayed during the Court's answer, that suspensive effect inherent in the preliminary ruling procedure cannot justify a reference for a preliminary ruling being submitted to the expedited preliminary ruling procedure. Additionally, it was added that the fact that the persons subject to the main criminal proceedings are not currently in custody is a reason for not initiating the expedited preliminary ruling procedure under Article 105(1) of the Rules of Procedure.

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

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.

Yes

Article 4 bis, second paragraph, of the Organic Law of the Judiciary establishes that when the Courts decide to raise a European question for a preliminary ruling, they shall do so under the case law of the Court of Justice of the European Union and, in any case, by order, after hearing the parties.

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).

Yes

Judges always have access to official case law databases that include the decisions of the European Court on preliminary rulings. The General Council Of The Judiciary provides on the website poderjudicial.es information and materials on the preliminary ruling question. The materials include the court's recommendations, model decisions, and practical examples for the approach to the preliminary ruling question.

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?

Any party to the proceeding may request that the question be raised and has the legal remedies available to attack an adverse decision, if necessary.

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.

The court shall give the parties a hearing on the opportunity to raise the question, specifying the terms of the question and stating the reasons for its necessity. Once the parties have been heard, the court will decide on a resolution specifically dedicated to this matter.

The decision to raise the question always corresponds to the judge or judges in charge of the case in which the question arises. In the case of a unipersonal body, the judge is in control. In the case of a collegiate body, the decision is taken by the entire chamber.

No specific time frames are prescribed for handling claims to request preliminary rulings.

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.

The Court will analyze the specific provision(s) concerned, the specific interpretation or scope of which is of interest. It shall examine the case law of the Court of the Union hitherto existing, which may directly or indirectly affect the question. Based on the preceding, the Court will reason about the relevance, opportunity, suitability, and necessity of raising the question. A comparative law analysis is optional, although it is not necessarily excluded, and in some cases, it is carried out.

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

- Yes**
- No**

No



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.

No. If the government is a party to the proceeding, then it will know the issue being raised as a party.

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.

The court will examine the issue from a holistic perspective. It will undoubtedly consider the criteria and recommendations of the Court of the Union, as well as its jurisprudence. Still, additional reasoning cannot be excluded as long as it is consistent with the parameters of admissibility and inadmissibility drew by the European Court.

In any case, the reasoning must be sufficient and capable of answering all the questions raised by the parties at the hearing.

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

Yes

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?

Concerning decisions of the Supreme Court, there is no appeal. Nevertheless, there could be a remedy to the constitutional court in certain circumstances.

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

Yes

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

No

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 questions should be as precise as possible. To this end, the Court asks several short and accurate questions instead of long and complex ones. The questions are also formulated in such a way that the answers of the European Court can effectively respond to the specific doubts that have arisen in the case regarding the application and scope of European law.

In formulating the questions, care is taken to ensure that the background information provided is sufficient and explicit. Reference is therefore made to the facts of the case, to the rules of EU and national law concerned, to the parties' positions, and to the case law of the Court that may be applicable or considered.



It also includes a statement of reasons for the question's appropriateness and necessity.

However, there may be slight differences depending on the procedure particulars.

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 must have the opportunity to be heard on all the particulars of the prejudicial question to be raised, and for this purpose, all the necessary information and reasoning must be provided. However, the hearing of the parties does not necessarily have to be upon the draft of the question but on all the essential elements that in some way will be raised in the formulation of the preliminary ruling request.

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.

No, in raising the question, the Court does not indicate the answers that, in its opinion, should be given by the Union court. However, depending on the case, the Court may refer to its criterion applied in similar circumstances and why it has been applied. Or it can even refer to the Union Court case law that, from his point of view, could be relevant to the raised questions.

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.

Leave to appeal does not exist in our system. However, there are certain filters in a previous admission procedure in our Supreme Court. On the one hand, these filters refer to the formal requirements of the appeal, but on the other hand, they also refer to the interest of the subject matter in question.

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)?

No

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?

Not pertinent in our legal system, as no filters apply to preliminary ruling matters.

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?

Not pertinent in our legal system. Please see answer to question 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 Court shall give the parties notice of the Union Court's decision, lift the suspension and continue with the proceedings according to the answers to the questions raised.

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



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No

No

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

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.

Please, see answer to question 31

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.

No

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



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.

No

