



Funded by the European Union's Justice Programme (2014-2020).

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Advanced Training in EU Law for Court Coordinators

I THE PRELIMINARY RULING PROCEDURE
Monday, 11 October 2021

*Session: A judge's recommendation on a preliminary reference
& working with the preliminary ruling procedure in practical terms*

*Trainer: Herman van Harten, Senior Judge, European law coordinator, District Court
of The Hague*

SEMINAR MATERIALS

Treaties & procedure

Article [19 TEU](#)
Article [267 TFEU](#)
Article [47 CFR](#)
Article [51\(1\) CFR](#)
Article [6\(1\) ECHR](#)

- Title III, [Rules of Procedure of the Court of Justice](#) (1-1-2020)
- [Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings](#) (8-11-2019)
- Fact Sheet on [Urgent preliminary ruling procedure and expedited procedure](#) (31-10-2019)

Essential Case Law:

On the notion of judicial independence of national courts in light of Article 19 TEU and their role with regard to the functioning of the preliminary reference procedure:

- [Judgment of 27 February 2018, Associação Sindical dos Juizes Portugueses \(Case 64/16, EU:C:2018:117\)](#)

On the conditions and exceptions to the obligation to refer questions on interpretation of EU law:

- [Judgment of 24 May 1977, Hoffmann-Laroche \(107/76, EU:C:1977:89\)](#)
- [Judgment of 6 October 1982, CILFIT \(283/81, EU:C:1982:335\)](#)
- [Opinion of AG Bobek of 15 April 2021 \(C-561/19, ECLI:EU:C:2021:291\)](#) ('[Conorzio Italian Management e Catania Multiservizi](#)') Summary in [press release of the CJEU](#)
- Judgment of 6 October 2021, [Conorzio Italian Management e Catania Multiservizi](#) (Case C-561/19, ECLI:EU:C:2021:??)

On the conditions to refer questions on the validity of an EU legal act:

- [Judgment of 22 October 1987, Foto-Frost \(C-314/85, ECLI:EU:C:1987:452\)](#)
- [Judgment of 6 December 2005, Gaston Schul Douane-expediteur \(C-461/03, ECLI:EU:C:2005:742\)](#)

On the potential state liability of not referring:

- [Judgment of 30 September 2003, Köbler \(C-224/01, ECLI:EU:C:2003:513\)](#)
- [Judgment of 4 October 2018, Commission v France \(Advance payment\) \(C-416/17, EU:C:2018:811\)](#)
- [Judgment of 13 July 2021, Bio Farmland Betriebs S.R.L. v. Romania \(application no. 43639/17\)](#) Summary of this case at [EU Law Live](#).

Background information and further reading

- Project website EJTN, [Court Coordinators in European Law](#)
- Research Note CJEU, [Application of the Cilfit case-law by national courts or tribunals against whose decisions there is no judicial remedy under national law \(31-05-2019\)](#)

Academic Literature:

- [Morten Broberg, Niels Fenger, *Preliminary references to the European Court of Justice*, third edition \(Oxford: Oxford University Press 2021\)](#)
- [Marleen Botman, Jurian Langer \(eds\), *National Courts and the Enforcement of EU Law: The Pivotal Role of National Courts in the EU Legal Order* \(The Hague: Eleven International Publishing 2020\)](#)

WORKING GROUP SESSION: PRELIMINARY RULING PROCEDURE IN PRACTICAL TERMS

Dear participants,

This Monday morning session is aimed at exchanging and discussing your experiences, challenges, doubts and questions with regard to the functioning of the preliminary reference procedure. Furthermore, we hope to get to know each other better as national court coordinators in European law originating from a broad variety of legal traditions and Member States of the European Union: united in diversity!

For the purpose of an open conversation, and to guarantee the possibility for all to contribute, the group will be divided in several sub groups (in breakout rooms) in which you will visit various elements surrounding the practical use of this keystone procedure in the EU's judicial system.

After a short hour we will meet again in plenary, and discuss and revisit some of the main issues of conversation in the working groups.

Please assign a chair and a reporter organically in your sub group in order to guide you through the following set of questions. You can choose a selection of questions you find most interesting to answer. The questions are mainly aimed at fostering the conversation and debate. Feel free to dive in the seminar materials mentioned above and provided beforehand to elaborate on your answers.

Setting the scene

How often does the preliminary reference procedure come up in your daily court practice?

Did you or your court ever refer a question to the Court of Justice?

If so, were you involved in the drafting of the question(s)?

What is your experience/best practice regarding the preliminary reference procedure?

Do you feel responsible for the proper functioning of the EU's judicial system?

The role of the national court

What is the 'classic' division of tasks in the interpretation and application of EU law between national courts and the CJEU?

When are you obliged to refer questions?

Are you aware of the exceptions to the obligation to refer?

Who decides if a question is (ir)relevant for solving the dispute?

How do you explain the notion of 'acte clair' to your colleagues here and at your court?

How do you explain the notion of 'acte éclairé' to your colleagues here and at your court?

How do you explain the *CILFIT*-requirement to consult various language editions before accepting that the interpretation of European law is obvious?

Is the reasoning of the *CILFIT*- judgment outdated or alive and kicking?

How do you appreciate the Opinion of Advocate General Bobek in the *Consorzio Italian Management e Catania Multiservizi* case?

Is (the possibility of) referring a case to Luxembourg a matter for parties to bring up or an *ex officio* matter for the national court?

How does a preliminary reference relate to judicial independence?

Do you feel free to refer and not to refer to the CJEU?

Does a court coordinator in European law play a (potential) role in the practice of referral?

When and how do you use the Recommendations of the CJEU in relation to the initiation of preliminary ruling proceedings?

What are your practical reasons not to make use of the preliminary reference procedure?

Were you aware that refraining from referral can infringe Article 6(1) ECHR and/or lead to (potential) state liability?

Questioning

What is a good question?

How do you focus on the interpretation and/or validity of EU law in drafting the question?

How do you know if the issue is not yet decided in previous case law?

Do you give parties the possibility to respond on the draft question(s)?

Do you circulate questions within your court or within a network of courts?

At which stage in proceedings do you preferably use the preliminary ruling procedure?

When do you make use of the urgent and expedited preliminary ruling procedure?

How do you take into account that your ruling will be translated at the CJEU?

How do you value the practice of reformulation of questions in the judgments of the CJEU?

Is it easier to ask a question than to answer a question?

Do you formulate your own ideas on how to interpret the question of EU law?

Do you visit the hearing in Luxembourg?

The End-game

What happens if you asked questions to the CJEU and parties settle the case meanwhile?

If you need to apply a preliminary ruling of the CJEU, do you give parties room to reflect on the CJEU's judgment?

Do you send your final judgment to the CJEU?

If you refrain from referral, how do you give reasons not to refer?