

Advanced Training in EU Law for Court Coordinators:  
2nd Edition



**From judge to judge:  
Recommendations on a preliminary reference**

*Galis Adriana  
Budapest, 23 May 2024*

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# 1. Be informed and stay informed

## Article 267 TFUE

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is **necessary** to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case **pending** before a court or tribunal of a Member State **against whose decisions there is no judicial remedy** under national law, that court or tribunal **shall** bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in **custody**, the Court of Justice of the European Union shall act with the minimum of delay.

<https://eur-lex.europa.eu/homepage.html>

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# 2. Reflect on admissibility

- Article 53 paragraph 2 Rules of Procedure of the Court of Justice

Where it is clear that the Court has no **jurisdiction** to hear and determine a case or where a request or an application is **manifestly inadmissible**, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings

- C-450/15 – *application of fines on national law basis*
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### 3. Reflect on : is my question an « act claire » / « act éclairé »?

- Article 99 of Rules of procedure of CJEU:

Where a question referred to the Court for a preliminary ruling is **identical** to a question on which the Court **has already ruled**, where the reply to such a question may be **clearly** deduced from existing case-law or where the answer to the question referred for a preliminary ruling **admits of no reasonable doubt**, the Court may at any time, on a proposal from the Judge Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

- *CILFIT vs. Consorzio Italian Management*

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## Acte claire/acte éclairé – Final Instance

### CILFIT

C-283/81, Srl CILFIT and Lanificio di Gavardo SpA/Ministry of Health, EU:C:1982:335

*“Does the third paragraph of Article 177 of the EEC Treaty, [...], lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?”*

Exceptions from the obligation of referring:

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*“The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.”*

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Consorzio Italian Management et Catania Multiservizi, C-561/19, EU:C:2021:799

*“Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law is relieved of the obligation, laid down in the third indent of that article, to bring before the Court of Justice a question concerning the interpretation of EU law where that question is put to it by a party at an advanced stage of the proceedings, after the case has been set down for judgment for the first time or where a reference for a preliminary ruling has already been made in that case?”*

- Before concluding that **such is the case**, the national court must be convinced that the matter would be equally obvious to the other courts or tribunals of **last instance** of the Member States and to the Court of Justice (point 40)
- **No more requirement to examine**, in that regard, **each of the language versions** of the provision in question, but bear in mind those divergences between the various language versions of that provision in particular when those divergences are set out by the parties and are verified (point 44)
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Order of 27 april 2023, Ministero della Giustizia, C-495:22,  
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### Case law on « acte claire » and « acte éclairé »

Three hypotheses:

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## 4. Start writing

- To whom it may concern?
  - Transfer of competence
  - Implication for national courts
- Templates
- Guides
- Solutions of the Court for form vices

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### *Transfer of competence*

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the common system of value added tax	the Customs Codexe	compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services;
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## *Implications for the national courts*

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It is not referring courts or tribunals themselves that decide the question as to which court has jurisdiction to hear and determine a request for a preliminary ruling:

- legal certainty and expedition,
- every request for a preliminary ruling should be submitted to the Court of Justice, which should determine, in accordance with detailed rules set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas laid down in the Statute
- TRANSFER to the General Court.

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## *Transitive application*

- Article 2 paragraph 1

Requests for a preliminary ruling pending before the Court of Justice *on the first day of the month* following the date of entry into force of this Regulation shall be dealt with by the Court of Justice.

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*Annexe: The essential elements of a request for a preliminary ruling*

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## Template

- **CONTENT:**

1. the identity of the court/tribunal making the reference
2. the precise identity of the parties to the main proceedings and of anyone representing them before the referring court/tribunal ! **Personal data!**
3. the subject matter of the dispute and the relevant facts
4. the relevant provisions of national law and of EU law
5. the reasons that prompted the referring court/tribunal to inquire about the interpretation or validity of EU law
6. the questions referred for a preliminary ruling
7. the possible need for specific treatment of the request (PPU or PA)

- **FORM:**

typewritten, dated and signed  
 drafted simply, clearly and precisely, avoiding superfluous detail  
 10 pages

- **TRANSMISSION:**

*e-curia*, preferably electronically, together with all the documents that are relevant and useful for the handling of the case

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## 5. Wait for the dialog to happen

- staying the main proceedings only with regard to the aspects of those proceedings that are likely to be affected by the Court's response to that request (*BK et ZhP, C-176/22*)
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Member State Liability for Decisions of National Courts Adjudicating at Last Instance

*CILFIT, Welthgrove, Köbler*

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*« By postulating CILFIT, Welthgrove and Köbler simultaneously, it [CJEU] sets impossible standards, which it thus is not able to meet itself, as it obviously makes as many manifest errors as national highest Courts do.» (PETER J. WATTEL, Common market law review. Vol. 41 (2004), no. 1, p. 177-190)*

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*Transfer of competence*

- Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Protocol No 3 on the Statute of the Court of Justice of the European Union
- [EUR-Lex - ST\\_7155\\_2024\\_INIT - EN - EUR-Lex \(europa.eu\)](#)
- Foreseen entry into force September 2024
- Areas of competence:

the common system of value added tax	the Customs Codexe	compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services;
excise duties	the tariff classification of goods under the Combined Nomenclature	system for greenhouse gas emission allowance trading

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*Transfer of competence*

**Court of Justice will retain jurisdiction** to hear and determine requests for a preliminary ruling that raise independent questions relating to the interpretation of

- primary law,
- public international law,
- general principles of Union law or
- the Charter of Fundamental Rights of the European Union.

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## *Implications for the national courts*

- Article 1 paragraph 4, preamble 11

It is not referring courts or tribunals themselves that decide the question as to which court has jurisdiction to hear and determine a request for a preliminary ruling:

- legal certainty and expedition,
- every request for a preliminary ruling should be submitted to the Court of Justice, which should determine, in accordance with detailed rules set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas laid down in the Statute
- TRANSFER to the General Court.

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## *Transitive application*

- Article 2 paragraph 1

Requests for a preliminary ruling pending before the Court of Justice *on the first day of the month* following the date of entry into force of this Regulation shall be dealt with by the Court of Justice.

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## Template

### Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

- [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC\\_2019\\_380\\_R\\_0001](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2019_380_R_0001)

*Annexe: The essential elements of a request for a preliminary ruling*

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## Template

### • CONTENT:

1. the identity of the court/tribunal making the reference
2. the precise identity of the parties to the main proceedings and of anyone representing them before the referring court/tribunal ! **Personal data!**
3. the subject matter of the dispute and the relevant facts
4. the relevant provisions of national law and of EU law
5. the reasons that prompted the referring court/tribunal to inquire about the interpretation or validity of EU law
6. the questions referred for a preliminary ruling
7. the possible need for specific treatment of the request (PPU or PA)

### • FORM:

typewritten, dated and signed  
 drafted simply, clearly and precisely, avoiding superfluous detail  
 10 pages

### • TRANSMISSION:

***e-curia***, preferably electronically, together with all the documents that are relevant and useful for the handling of the case

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## Case-Law

- *Ordonnance du 1er juillet 2021, Tolnatext*, [C-636/20](#), EU:C:2021:538
- *Ordonnance du 14 avril 2021, Casa di Cura Città di Parma*, [C-573/20](#), EU:C:2021:307
- *Ordonnance du 25 février 2021, Stadtapotheke E*, [C-378/20](#), EU:C:2021:130
- *Order of 25 mai 2020, Resopre*, [C-643/19](#), EU:C:2020:388
- *Ordonnance du 6 mai 2021, Ministero dell'Istruzione, dell'Università e della Ricerca e.a.*, [C-571/20](#), EU:C:2021:364
- *Ordonnance du 12 novembre 2020, Novart Engineering*, [C-170/20](#), EU:C:2020:908
- *Order of 28 february 2023, Caixabank*, [C-254/22](#), EU:C:2023:134

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## 5. Wait for the dialog to happen

- **staying the main proceedings only with regard to the aspects of those proceedings that are likely to be affected by the Court's response to that request** ([BK et ZhP, C-176/22](#))
- **withdraw the question** ([C-382/97](#)) – *radiation, Kobler*
- **repeat the question** ([C-692/15 à C-694/15](#))

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*...We can't go on meeting like this*

Member State Liability for Decisions of National Courts Adjudicating at  
Last Instance

*CILFIT, Welthgrove, Köbler*

(PETER J. WATTEL, Common market law review. Vol. 41 (2004), no. 1, p. 177-190)

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*Final frontier*

*Your mission:  
to explore new meanings, to boldly go  
where no one has gone before*

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