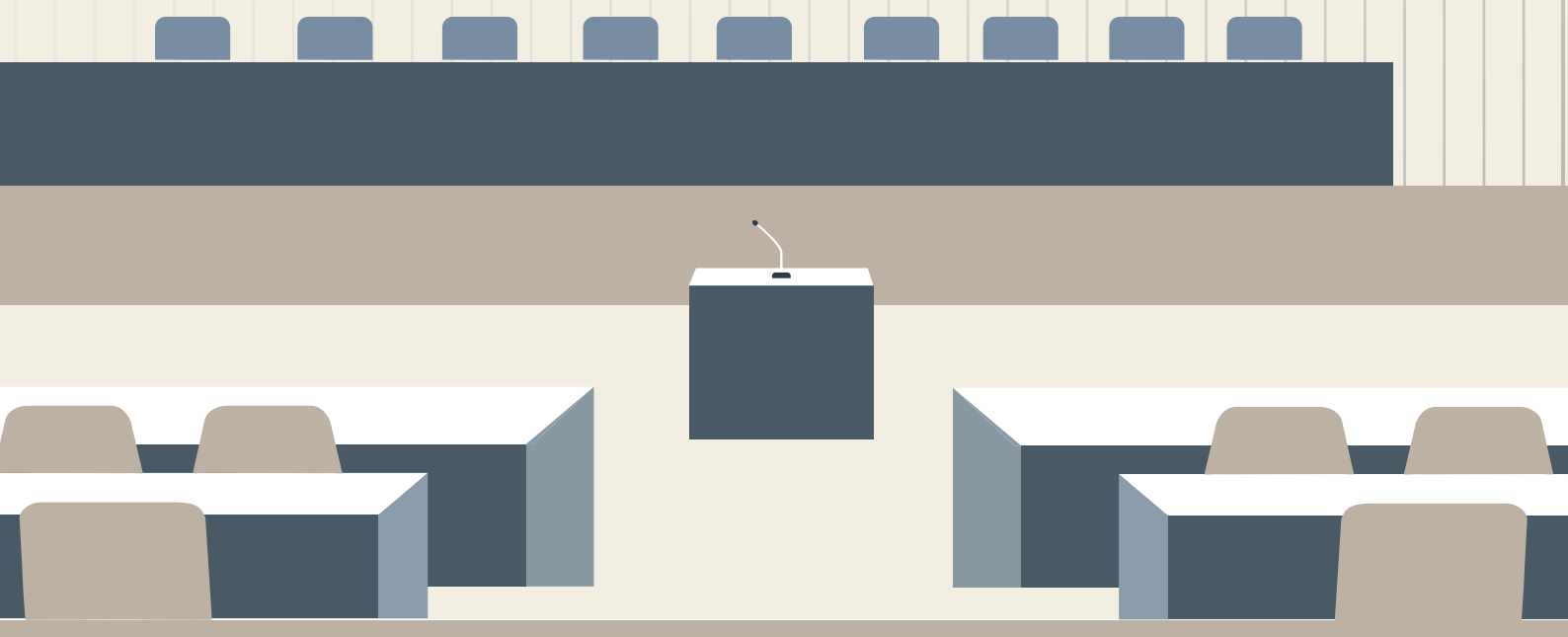


Training Curriculum and Manual on Proceedings before the Court of Justice of the European Union



Kingdom of the Netherlands



ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
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List of Abbreviations

AFSJ	Area of Freedom, Security and Justice
AG	Advocate General
Art.	Article
CELEX	Communautés Européennes Lex
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EGC	General Court of the European Union / General Court
ELI	European Legislation Identifier
EU	European Union
Euratom	European Atomic Energy Community
NGO	Non-Governmental Organization
PPA	Expedited Procedure (Procédure préjudicielle accélérée)
PPU	Urgent Preliminary Ruling Procedure (Procédure préjudicielle d'urgence)
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
VAT	Value Added Tax

Abstract

The continuous legal education of the judiciary is pivotal in enhancing the skills of judges, prosecutors, and legal practitioners, fostering a shift in mindset, and equipping them with the requisite knowledge of jurisprudence from the Court of Justice of the European Union and the practical implementation of the Charter within national legal frameworks.

Supported by the Kingdom of the Netherlands, the regional project “Strengthening Regional Judicial Cooperation in the Western Balkans for Effective Litigation before the Court of Justice of the EU and Implementation of the EU Charter of Fundamental Rights” aims to strengthen the capacity of judicial actors in North Macedonia, Montenegro, Serbia, and Albania to effectively apply EU law and the EU Charter of Fundamental Rights ahead of their future accession to the European Union.

The specific objectives to be achieved through this project are (i) strengthened regional collaboration and (ii) knowledge-sharing regarding common challenges and solutions related to the EU Charter and CJEU litigation, and (iii) enhanced capacities of the judiciary for CJEU litigation and application of the EU Charter.

This highly practical course will provide with a sophisticated understanding of the preliminary ruling procedure of the Court of Justice of the European Union (CJEU). The CJEU’s practices and case law is essential to realise a successful dialogue between the national court and the CJEU.

Through practical examples and case-law discussions the participants will learn the insights of the actions to be entertained before the CJEU.

In Module 1 the following topics are explained:

- a) General introduction to the work of the Court of Justice of the EU (CJEU) and the general court including the competence of the CJEU;
- b) The website of curia and eurlex and how to find information about judgments, opinions, pending cases at the CJEU and other relevant documents for the national judges such as the *Recommendations to national courts in relation to initiating preliminary ruling proceedings*;
- c) Different types of procedures at the CJEU and the general court.

In Module 2 the following topics are explained:

- a) Scope of Article 267 of the Treaty on the Functioning of the European Union and EU law competence of the CJEU;
- b) Language regime;
- c) Three stages of the CJEU in the preliminary ruling procedure:

1. Stage 1: national court may, and in some cases must, refer to the CJEU to clarify the interpretation of EU law ("Stage 1").
 - a) Role of the highest national court and the lower court in the preliminary ruling procedure: When may a national court (or must, if no appeal is pending) refer a question if a decision on EU law is necessary for a ruling.
 - b) Application of the CILFIT criteria: Assessing whether there is an acte clair or acte éclairé which determines the need for the national court to submit questions to the CJEU.
 - c) Rejection to refer by the national court and the obligation to motivate in the judgment (case law CJEU and ECtHR)
 - d) Role of the parties in the national and preliminary ruling procedure;
 - e) Role of the national court in the preliminary ruling procedure;
2. Stage 2: The CJEU then decides how the relevant Union law is to be interpreted;
3. Stage 3: CJEU sends the case back to the national court to decide on the merits of the case.

In Module 3 the following topics are explained:

- a) Preliminary reference – practical considerations for making a reference;
- b) Recommendations to national courts in relation to initiating preliminary ruling proceedings;
- c) Role of the national court after the CJEU judgment.

In Module 4 the following topics are explained:

- a) Interim measures at CJEU and General Court;
- b) Speedy procedures: PPA, PPU and preference;
- c) General Court and jurisdiction for preliminary ruling.

Course methodology/highlights

- » The course will be conducted by legal experts who will discuss key topics, illustrated with examples and cases from litigation practice.
- » The focus is on the intertwining of European and national law in a shared legal order. Lecturers train participants in the impact and direct effect of EU law.
- » The CJEU has published recommendations (curia website) that serve as the methodology for submitting questions.
- » The lectures will explain the website of the CJEU (curia) and what to find on the website of the CJEU such as judgements, opinions, pending cases, final national judgments, and research and knowledge center reports.
- » Practical guidelines in how to formulate the preliminary questions to the CJEU will be shared in a document for the participants.
- » All sessions will be followed by periods of Q & A for the exchange of ideas, and discussions where participants will have the opportunity to share their professional experiences.

Introduction

The preliminary reference procedure is set out in Article 267 of the Treaty on the Functioning of the European Union (“TFEU”) and promotes a uniform interpretation and application of EU law across all EU Member States, by offering the courts and tribunals of the Member States a means of bringing before the CJEU for a preliminary ruling questions of interpretation of EU law where that a decision of the CJEU is necessary to enable them to give judgment.

Therefore, when issues arise in relation to the interpretation of the EU law, it is not for the national criminal courts alone to resolve them. The interpretation of the Directives, the EU Charter of Fundamental Rights (the “Charter”) and other relevant principles, as well as any gaps in the EU legislative framework will be for the CJEU to resolve, via preliminary rulings on questions referred by courts in the Member States in accordance with Article 267 TFEU.

1. Module 1: Introduction to the CJEU and Digital Resources

Learning objectives

By the end of this module participants should be able to:

- Understand the role and structure of the CJEU and General Court
- Distinguish between the main types of procedures before the CJEU
- Use CURIA and EUR-Lex to identify relevant EU case law and documents
- Identify key sources relevant for preliminary ruling procedures

1.1 About the Court of Justice of the EU

The Court of Justice of the European Union (CJEU) is the judicial institution of the European Union.

It is an institution that comprises two courts:

1. [the Court of Justice and](#)
2. [the General Court.](#)

The Court enforces and interprets EU law. It ensures that the EU’s institutions and Member States respect this law. The Court provides a single interpretation of EU law so that it is applied in the same way throughout the EU.

1.1.1 What does the Court do?

The Court of Justice of the European Union was created in 1952. Its mission is to enforce and interpret EU law.

The Court:

- reviews if EU decisions and laws are legal;
- makes sure that Member States and EU institutions follow these laws;
- when a national court does not know exactly how to interpret EU law, or has doubts about whether an EU act is valid, replies to questions from that national court to make it clearer.

1.1.2 Key functions and types of cases handled by the CJEU

1. Preliminary Rulings: Answering questions from national courts regarding the interpretation or validity of EU law to ensure consistent application.
2. Actions for Annulment: Declaring EU acts unlawful if they violate EU treaties or fundamental rights.
3. Actions for Failure to Act: Ruling on whether EU institutions have failed to act when required.
4. Actions for Failure to Fulfill Obligations (Infringement Procedures): Ensuring Member States comply with EU law, often initiated by the European Commission.
5. Appeals: Dealing with points of law only from judgments delivered by the General Court

1.1.3 Key Tasks and Jurisdictions of the General Court

1. Annulment Actions: Reviews actions for annulment or failure to act filed by natural or legal persons against EU institutions, agencies, or bodies.
2. Competition and Trade Law: Handles cases regarding competition, state aid, trade, and intellectual property (e.g., trademarks).
3. Member State Actions: Reviews actions brought by member states against the European Commission or Council regarding specific areas like state aid or dumping;
4. Damages Cases: Rules on cases seeking compensation for damages caused by EU institutions;
5. Initial Rulings: Manages specific preliminary ruling references transferred from the Court of Justice (e.g., VAT, customs).

1.1.4 Website of curia

The Curia website is the official portal for the Court of Justice of the European Union (CJEU). It provides access to case-law, procedures, and the e-Curia platform for electronic filing.

Link: <https://curia.europa.eu/site/>

- Case Tracking: The case-law database holds all requests, judgments, and legal documents.

Link: https://curia.europa.eu/site/jcms/d2_5106/en/case-tracking-publicly-available-information

- e-Curia: This application is used for exchanging documents electronically, mandatory for some proceedings and free of charge.
- Information about how the CJEU works: https://curia.europa.eu/site/jcms/d2_5108/en/how-the-procedure-works
- Hearings: Major hearings and judgment deliveries are streamed live on the site

1.1.5 Website eurlex

EUR-Lex is the official online database of European Union (EU) law, providing free, daily-updated access to legal documents in all 24 official EU languages. It is managed by the Publications Office of the European Union and offers comprehensive information ranging from foundational treaties to national transposition measures.

- EU Law (Treaties, Regulations, Directives, Decisions);
- Case-Law: Documents from the Court of Justice of the European Union, including judgments, orders, and opinions of the Advocates General;
- Preparatory Documents: Legislative proposals, reports, green and white papers;
- EU Lawmaking Procedures: A timeline and detailed information on the stages of legislative procedures, from proposal to adoption;
- International Agreements.

1.1.6 Key Features & Functionalities

- CELEX Numbers: Each document has a unique, language-independent CELEX identifier;
- ELI/ECLI Identifiers: Supports the European Legislation Identifier (ELI) and European Case Law Identifier (ECLI) for precise document location;
- Multilingual Display: Allows viewing up to three language versions of a document simultaneously;
- Advanced Search & Alerts: Offers quick, advanced, and expert searches (Boolean operators) and allows registered users to save searches and receive RSS alerts;
- N-Lex Access: Links to the N-Lex platform for access to national law.

Key takeaway

The preliminary ruling procedure is based on cooperation between national courts and the CJEU and aims to ensure the uniform interpretation and application of EU law across all Member States.

2. Module 2: The Preliminary Ruling Procedure

Learning objectives

By the end of this module participants should be able to:

- Understand the purpose and stages of the preliminary ruling procedure
- Identify when a national court may or must refer questions to the CJEU
- Apply the CILFIT criteria in practice
- Understand the roles of national courts, parties and the CJEU during the procedure

2.1 The purpose of the preliminary ruling procedure

In 2025: 774 cases were resolved:

- 561 preliminary ruling procedures, including 3 urgent preliminary ruling procedures,
- 51 direct actions, including 38 failures to fulfil obligations found against 20 Member States,
- 5 judgments finding a 'twofold failure to fulfil obligations',
- 156 appeals against decisions of the General Court, including appeals in which the decision adopted by the General Court was set aside.

Average duration of proceedings:

- 16.7 months

Average duration of urgent preliminary ruling (PPU) proceedings:

- 3.4 months

Number of cases pending as at 31 December 2025:

- 1322 cases

2.1.1 Principal matters dealt with by CJEU in 2025

Field	Number of cases
Area of freedom, security and justice	142
State aid and competition	132
Economic and monetary policy	111
Freedom of movement and of establishment - internal market	106
Consumer protection	95
Common foreign and security policy	79
Approximation of laws	76
Environment	63
Social policy	52
Transport	47

- These statistics reflect the importance of the preliminary reference procedure to the legal system of the European Union. EU law operates through a system of ‘decentralised’ enforcement, where the national courts are the primary driver of compliance.
- However, it is not for national courts alone to determine the precise nature of the rights and obligations arising under EU acts. The interpretation of the Treaties, Directives and other acts of the EU is for the CJEU to determine.
- In the decentralised EU judicial system, the preliminary reference procedure is a means to promote legal unity and encourage development of EU law, by creating opportunity for dialogue between national courts and the CJEU.
- The CJEU cannot provide an interpretation of national law (Case C-6/64, Costa - ENEL). If the national court formulates its question in such a way as to require the CJEU to nevertheless rule on the validity of national law, the EU Court may declare itself incompetent.
- Moreover, the CJEU answers only preliminary questions concerning an actual dispute. Purely hypothetical cases – however interesting they may be – are not considered by the CJEU (e.g., case C-83/91, Meilicke or C-156/23, Ararat).

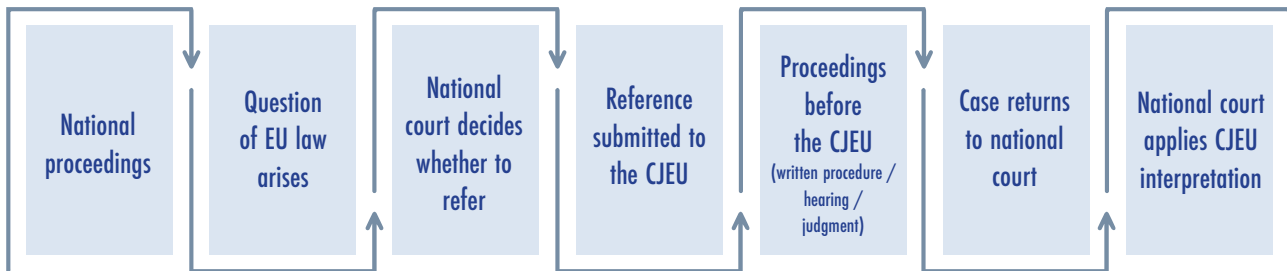
2.2 Language

- An important feature of the procedure is the language of the case. Being able to bring a case to court in a language that you understand and being able to read court judgments is a fundamental part of democracy and the rule of law. The CJEU’s working language is French and all documents will be translated into French by the CJEU. However, each case also has its own ‘language of the case’.
- In preliminary ruling cases, the language of the case will be the language of the country where the reference originates. This enables the parties to the case before the national court to make all their written and oral observations in their own language.
- Therefore, the Court of Justice works in all 24 official EU languages. All communication with parties is done in the language of the case. In direct actions, the language of the case is the language chosen by the applicant. If the defendant is an EU Member State, it must be one of the official languages of that State. In appeals, the language of the case is the language in which the judgment of the General Court has been delivered.

2.3 Three stages

The CJEU has issued a set of recommendations addressed to national courts in relation to the initiation of preliminary ruling proceedings (the “Recommendations”). This document draws from the Recommendations, the Rules of Procedure of the CJEU (the “Rules of Procedure”), case law, as well as other sources, in order to provide a practical overview of the preliminary ruling procedure for practitioners.

When a national court is presented with a case which gives rise to a question on the interpretation of EU law the national court may, and in some cases must, refer to the CJEU to clarify the interpretation of EU law (“Stage 1”). The CJEU then decides how the relevant Union law is to be interpreted (“Stage 2”) and sends the case back to the national court to decide on the merits of the case (“Stage 3”). Each of these stages are considered in turn in this section.



2.3.1 Key features of the preliminary reference procedure

- For a reference to be possible, there must be a question of EU law on which a ruling from the CJEU is necessary to enable the local court to give judgment.
- The average time to obtain a ruling on a request for a reference is 15-18 months.
- There is an urgent procedure (“PPU”) available under Article 267 TFEU, fourth subparagraph and Articles 107-114 of the CJEU Rules of Procedure. This will be applied where the person is in detention and the CJEU’s ruling may impact upon the decision to detain or when the rights of children is at stake. The national court must request the procedure, setting out the reasons for it.
- The national court is entitled by virtue of Article 267 TFEU to make a reference at any point in the national procedure; a rule of national law which prevents this must be set aside.
- As well as ordinary courts, an investigating judge can refer a question; a prosecutor, however, cannot.
- Courts of last instance infringe Article 6 ECHR and Article 267 TFEU jo Article 47 of the EU Charter if they provide no reasoning for a refusal to refer an EU law question to the CJEU. Constitutional Courts in some countries (e.g. Germany, Slovenia) also consider the refusal to refer an EU law question to the CJEU an infringement of the constitutional right to the lawful judge. The availability of an individual right of petition to a Constitutional court is not considered a further judicial remedy, so a supreme court is required to make a reference to the CJEU if the question is not an “acte clair” / “éclairé”.

2.3.2 Stage 1 of the procedure: Before the national court or tribunal

2.3.2.1 When is it useful to ask for preliminary reference?

National courts have an obligation to apply EU rights that have direct effect and to set aside national law and practice that may contravene these rights. The first objective of a defendant is that the national court disregards national legislation or practice in breach of EU law, and directly applies EU rules that are more favorable. In that respect, litigants need to show that EU law is clear and that it applies to their case. In that respect, it is sometimes useful to convince a court of the clear meaning of a EU law provision by using foreign judgments giving it the same meaning. It is only when a national court is not ready to interpret EU law as suggested by the defendant that asking for a reference may become useful. At that point, it is necessary to show the national court that there is a question or doubt as to the exact meaning of EU law and that it must be resolved by the CJEU.

The power to refer a preliminary question lies exclusively with the national court, regardless of whether the parties have requested this in the main proceedings. The assessment of the necessity of referring a preliminary question and its relevance falls within the exclusive competence of the national court to which the dispute has been submitted.

2.3.2.2 Who makes the request?

- Parties in proceedings before a national court do not themselves submit references directly to the CJEU.
- The decision whether to make a reference to the CJEU rests solely with the national court.
- National courts and tribunals at any instance enjoy a discretion to make a reference to the CJEU, and a superior court cannot prevent a lower court from making a reference. Equally, there is no requirement that the parties accept the reference request.
- ‘Any court or tribunal’ of a Member State may ask such a question. The CJEU has also accepted questions from an ad hoc body. If the question of EU law arises before a court against whose decisions there is no judicial remedy, then the matter must be referred.
- Only ‘judicial bodies’ of the Member States are competent to refer questions for a preliminary ruling. This term is not defined anywhere in the Treaty, but in the case law of the Court (Case C-54/96, Dorsch), a number of criteria have been formulated on the basis of which it can be determined whether a judicial body is indeed involved (see also Case C-115/22). These criteria are:
 1. an independent body established regularly under national law, having a permanent character and mandatory jurisdiction, and
 2. giving a ruling in accordance with the rules of law following an adversarial procedure.

Arbitrators do not meet these criteria (Case C-102/81, Nordsee), nor do administrative bodies dealing with administrative appeals (Case C-24/92, Corbiau). They cannot refer questions for a preliminary ruling to the EU Court.

2.3.2.3 In what circumstances may a request be made?

- In the event of a question of interpretation of EU law, the national court must determine whether a preliminary ruling of the CJEU is necessary to enable it to deliver judgment. This is, for example, where existing CJEU jurisprudence does not provide the necessary guidance on how to apply a provision of EU law to a new set of facts.
- The CJEU does not answer hypothetical questions, so it is important that the clarification is necessary for the national court to rule on proceedings.
- Questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining enjoy a presumption of relevance.
- The CJEU may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.
- Under Article 267 TFEU, the CJEU has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and secondary law, including the EU Procedural Rights Directives. It is important to note that the national court cannot formulate questions based only on the Charter. The questions need to make reference to EU law.

A word of caution

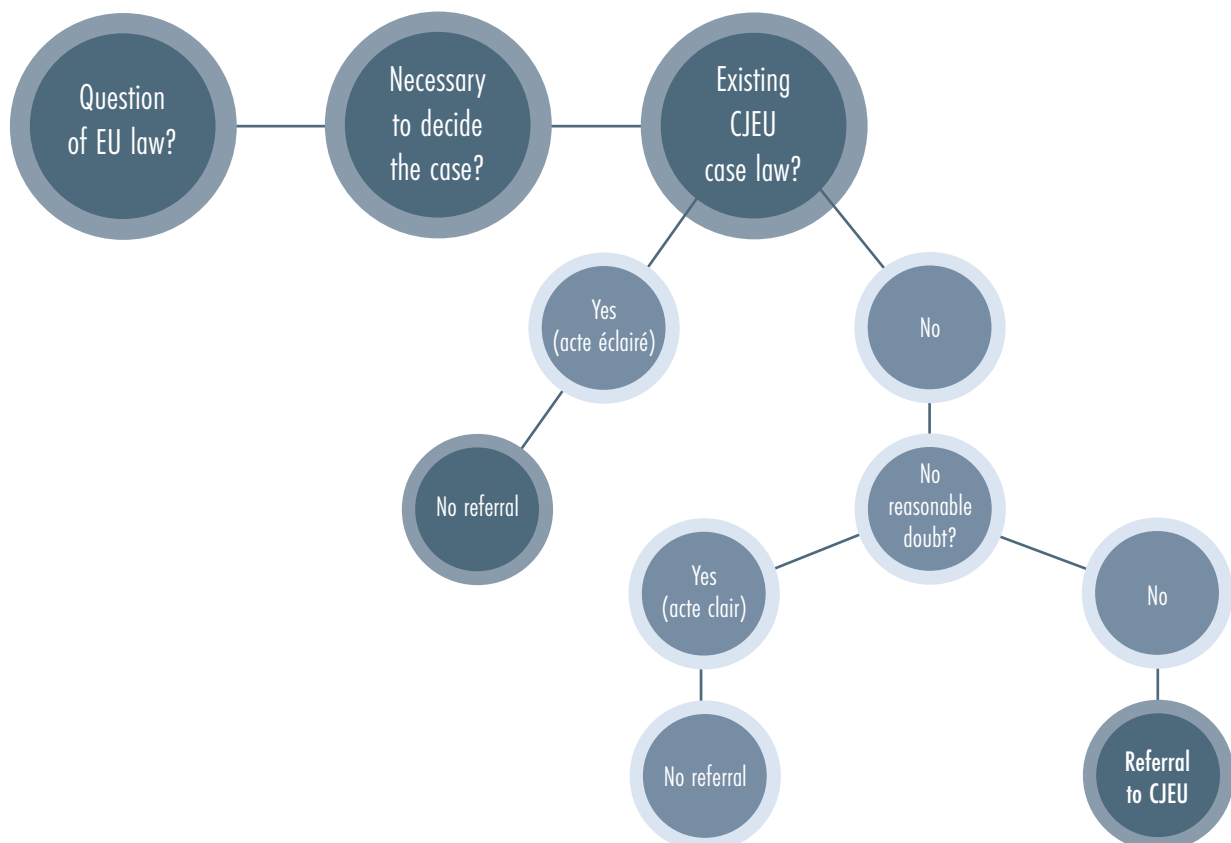
A preliminary reference may not be advised when there is a conflict between a defendant's individual interest and the strategic litigation objective that the reference is seeking to achieve. Among others, it is worth taking into consideration that the reference process may take over a year and has the impact of delaying the outcome of a case that may otherwise be resolved faster. This is particularly relevant when the defendant is detained.

2.3.2.4 How are the questions determined?

- It is up to the national court to write the question for reference. After determining that a preliminary ruling is necessary, the national court may invite the parties to make their submissions on the questions to be asked. This provides an important opportunity for the parties to influence the way in which the questions are framed before the CJEU.
- Ultimately, it is for the national court to determine the final form and substance of the request.

2.3.2.5 Is the preliminary reference procedure optional or mandatory?

The decision to refer a question to the CJEU is generally at the discretion of the national court. It is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need of a preliminary ruling in order to enable it to deliver judgment, and the relevance of the questions which it submits to the CJEU.



2.3.2.6 Is there a right to a ruling on a preliminary reference when it comes to the interpretation of EU law?

Under Article 267(3) TFEU, a national court of last instance **must ask** the CJEU for a preliminary ruling where a genuine question of interpretation exists.

The CILFIT criteria arise from the 1982 landmark case Srl CILFIT v Ministry of Health (283/81), setting the conditions under which a national court of last resort is exempt from its obligation to refer questions of EU law to the Court of Justice of the European Union (CJEU).

2.3.2.7 The 3 Main CILFIT Exceptions

1. **Irrelevant Question:** The answer to the question of EU law can in no way affect the outcome of the case.
2. **Acte Éclairé (Established Case Law):** The question is “materially identical” to an issue already decided by the CJEU in a similar case or where settled case-law has already resolved the legal point.
3. **Acte Clair (Obvious Interpretation):** The correct application of EU law is so obvious that it leaves no scope for any reasonable doubt.

Exception	Meaning	Referral required?
Irrelevant question	EU law not necessary for the case	No
Acte éclairé	Issue already clarified by CJEU case law	No
Acte clair	Correct interpretation leaves no reasonable doubt	No

- In the 2021 CJEU ruling in the case *Consorzio Italian Management (C-561/19)*, the CJEU confirmed and clarified these criteria:

1. **Duty to Give Reasons:** While national courts of last resort have discretion not to refer, they are now under a strict obligation to explain why they believe an exception applies (i.e., why it is acte clair or acte éclairé).
2. **Language Check:** Courts do not need to examine every language version, but must look at divergences they are aware of or are brought to their attention.
3. **Lower Court Conflicts:** Just because a lower court interpreted the law differently does not necessarily mean a supreme court cannot find the matter acte clair, provided they perform the analysis.

2.3.2.8 Motivation in judgment when the national court will not refer

Courts of last instance infringe Article 6 ECHR if they provide no reasoning for a refusal to refer an EU law question to the CJEU. (ECtHR 9 October 2013, *Dhahbi v. Italy* (Application no. 17120/09)). Moreover, in several Member States, the obligation of a court of last instance to refer is further reinforced by a constitutional guarantee, allowing the affected party to sue in constitutional court for an arbitrary refusal to refer.

In the judgment of the Court in Case C-767/23 | [Remling], it pointed out that a national court or tribunal of last instance must always give reasons for its refusal to refer questions to the Court of Justice for a preliminary ruling.

Even if such a court or tribunal is allowed to dismiss actions by means of a summary statement of reasons, it must, in all cases, set out specifically and concretely the reasons why one of the exceptions to the obligation to make a reference for a preliminary ruling applies.

In this case, the Court had to rule on the compatibility with EU law of the possibility, afforded by Netherlands law to a supreme court, of dismissing an appeal solely on the basis of summary reasoning. Such legislation was intended, in the interests of the sound administration of justice, to reduce the length of court proceedings and to allow that court to devote more time to important cases. After having emphasised the fundamental role of the preliminary ruling procedure in general and the obligation to make references for a preliminary ruling in particular for the EU judicial system, the Court recalls that a supreme court or tribunal is subject to an obligation to make a reference for a preliminary ruling, of which it may be relieved only in three situations: where the question of EU law raised was irrelevant, where the EU law provision in question had already been interpreted by the Court or, last, where that interpretation of EU law was so obvious as to leave no scope for any reasonable doubt. Where a supreme court or tribunal considers itself to be in one of those three situations, it must state the reasons for its refusal to refer the matter to the Court, setting out, in all cases, specifically and concretely, the reasons why, in its view, there is no need to refer the matter to the Court. Such a court or tribunal may, in that regard, appropriate the grounds relied on by the lower court in the dispute concerned, provided that that lower court explained why the case fell within one of the three abovementioned situations.

2.3.2.9 Mandatory referral: Validity of EU law

In *Foto-Frost v Hauptzollamt Lübeck-Ost* (Case 314/85), the CJEU established that national courts do not have the power to declare acts of EU institutions invalid. If a national court doubts the validity of an EU measure, it must refer the question to the CJEU under Article 267 TFEU, ensuring uniform application.

2.3.2.10 Key Aspects of the Foto-Frost Doctrine

1. **Exclusive Jurisdiction:** The CJEU has exclusive authority to declare invalid a Union act.
2. **Duty to Refer:** Even lower courts (not just courts of last instance) must refer questions of validity to the CJEU if they consider arguments against the measure's validity to be well-founded.
3. **Preventive Role:** The judgment ensures that EU law is not applied inconsistently across different Member States.
4. **Exception (Interim Measures):** In very narrow circumstances, national courts may grant interim measures to suspend an EU act temporarily while awaiting a CJEU ruling, provided they refer the validity issue.

Foto-Frost is crucial for maintaining the “complete system of remedies” within EU law, requiring that any challenge to an EU measure's validity is handled through the CJEU rather than domestic court:

- Courts of last instance infringe Article 6 ECHR and Article 47 of the EU Charter if they provide no reasoning for a refusal to refer an EU law question to the CJEU.
- Moreover, in several Member States, the obligation of a court of last instance to refer is further reinforced by a constitutional guarantee, allowing the affected party to sue in constitutional court for an arbitrary refusal to refer.

2.3.2.11 If the highest national court will not refer to the CJEU: consequences and risks?

- Doubts on the part of lower courts do not oblige the highest court to refer a preliminary question. However, when there is a risk of divergent case law within the Union, the highest court is obliged to refer a preliminary question to the Court. This is the case when judicial bodies in different Member States have repeatedly referred questions to the CJEU regarding a subject (Case C-160/14, J.F. Ferreira da Silva e Brito e.a.).
- If the highest national court itself has no doubts regarding the correct interpretation of EU rules, it is not obliged to await answers from the CJEU to questions from another judge or to ask questions itself (Case C-197/14, X en Van Dijk).
- In Case C-416/17, the CJEU ruled that the French Conseil d'État violated Union law by failing to refer questions regarding the free movement of capital for a preliminary ruling, despite doubts about the interpretation.
- The case concerned whether the Conseil d'Etat's treatment for tax purposes of French parent companies receiving dividends from foreign subsidiaries breached Articles 49 (free movement of establishment) and 63 TFEU (free movement of capital). The Commission brought infringement proceedings on the basis that:
 1. the Conseil d'Etat applied French tax law in a way that disregarded previous preliminary rulings of the CJEU on the interpretation of Articles 49 and 63 TFEU in this context.
 2. In failing to make a preliminary reference when it clearly had doubts as to the correct interpretation of the CJEU's case law on the subject, the Conseil d'Etat breached the third paragraph of Article 267 (3) TFEU.
- If the highest national court fails to refer preliminary questions to the CJEU even though it may be required to do so, this can lead to state liability, provided that the strict criteria of the Köbler judgment are met.

2.3.2.12 Criteria for State Liability: Case C-224/01 Gerhard Köbler v Republic of Austria

In accordance with settled case-law the CJEU has laid down three conditions which are necessary and sufficient to render the State liable for infringements of Union Law attributable to it.

Those conditions, which also apply where a national court adjudicating at last instance infringes a rule of Community law, are as follows:

1. the rule of law infringed must be intended to confer rights on individuals;
2. the breach must be sufficiently serious; and
3. there must be a direct causal link between the breach of the obligation incumbent on the State and the loss or damage sustained.

2.3.3 Stage 2 of the procedure: before the CJEU

Key stages of the procedure before the CJEU:

2.3.3.1 Decision on urgency

If the urgent or expedited procedure is requested, the CJEU will quickly make an order as to whether the procedure is justified. Typically, pretrial detention will justify an expedited procedure.

2.3.3.2 Written submissions

After the request for a preliminary reference is lodged before the CJEU, the parties in the national proceedings are invited to make their written submissions. These can be made by mail to the Registry of the CJEU, or using the CJEU's electronic filing platform, e-Curia.

2.3.3.3 Oral hearing

Depending on the needs of the case, an oral hearing may be held, giving the parties an opportunity to make their arguments in person. This is a public hearing.

2.3.3.4 Advocate General Opinion

After all the submissions are made, the Advocate General ("AG") assigned to the case will give his/her opinion.²⁴ An AG is only required to give an opinion if the Court considers that the case raises a new point of law. Although the opinion of the AG does not bind the Court, it is very often followed by the Court.

2.3.3.5 Decision of the CJEU and return to the Referring Court

Soon after the AG gives the opinion, the Court gives a ruling on the preliminary reference, in response to the national court's question(s). The Court interprets EU law and outlines the legal test to be applied (where necessary), but does not decide on the case itself. Therefore, after the Court makes its judgment, the case is returned to the national referring court to make a decision on the merits of the case.

2.3.3.6 When does the procedure before the CJEU begin?

When the national court has made an order staying proceedings, it sends the request for a preliminary reference to the Registry of the CJEU at the following address: L-2925, Luxembourg, LUXEMBOURG.

The CJEU Registry will then 'notify' the reference to interested parties and more generally by a note published in the Official Journal of the EU.

2.3.3.7 How long does the process take?

In terms of timing, lodging a request for a preliminary ruling requires national proceedings to be stayed until the CJEU gives judgment.

The average length for a preliminary request is 18 months. However, importantly for criminal practitioners, there are expedited (PPA) and urgent procedures (PPU) available, the latter of which is frequently used where an individual is in custody. The urgent procedure is explained in more detail below.

2.3.3.8 Who takes part in the procedure before the CJEU?

The parties in the national proceedings all take part in the CJEU procedure (including any third parties). Under Article 23 of the Statute of the CJEU,²⁷ when a case is received at the Registry, it is notified to the Member States, the European Commission, and the EU Institution which adopted the act whose interpretation is in question (for the Procedural Rights Directives, this means the Council and the European Parliament). These other parties have an absolute privilege to make observations in a case, both in writing and orally. Some Member States may intervene if they believe the CJEU's decision could have effects for them. The Commission will always intervene.

2.3.3.9 Third party interventions in CJEU proceedings

Please be aware that there is no possibility for third parties such as NGOs to intervene at the CJEU in a case to which they are not party at the national level. If third parties wish to make formal observations before the CJEU, they must be formally joined to the national proceedings before the reference is made to the CJEU.

2.3.3.10 What are the costs?

Preliminary ruling proceedings are free of charge, and it is for the national court to decide as to the allocation of costs.

2.3.3.11 Is there legal aid available?

Importantly for criminal law practitioners, the CJEU may itself grant legal aid, to the extent that any aid received under national rules does not cover costs incurred before the CJEU.²⁹ Under Article 115 of the Rules of Procedure, a party to the main proceedings who cannot meet the costs of the CJEU proceedings may apply for legal aid, setting out the details of the party's financial situation which entitles them to assistance. There is no 'merits' test in this context, as there is no 'winning' or 'losing' in preliminary ruling cases. If you already have legal aid in the national proceedings, include the relevant decision, which will be persuasive.

2.3.3.12 When can a party submit observations?

As from the date the case is notified by the Registry, the 'written procedure' begins. The parties to the case, the Commission and the EU Institution(s) that authored the act in *question then have two months to submit written observations*.

2.3.3.13 Communicate with the CJEU?

All communications prior to the hearing will be between you and the Registry of the Court.

- The CJEU relies heavily on written pleadings, as these can be carefully translated and studied closely. The written procedure is therefore important: by the time a case comes to a hearing, the Judges and Advocate General will already have formed a view of the likely answer to the case.
- Each case lodged at the CJEU is allocated to a 'Judge-Rapporteur', that is, the judge who will actually write the Court's judgment. When the written part of the procedure is closed, the Judge-Rapporteur puts together a preliminary report, which will include recommendations as to which formation of the Court to assign the case to, whether to dispense with a hearing and whether to dispense with an Opinion of the Advocate-General. The Advocate-General also gives a view on those matters and the Court then decides, at its weekly general meeting of all 27 judges, whether to proceed as proposed. The Judge-Rapporteur can, in the time

following the close of the written procedure, request the parties involved in the case to submit further information. S/he can also send specific questions to be addressed at the hearing. This again shows the extent to which cases are considered on the basis of written observations.

2.3.3.14 What Chamber will hear the case?

The Court sits in Chambers of three or five judges, and sometimes as a Grand Chamber of 15 judges, and in cases of exceptional importance or specific institutional duties (such as ruling on the resignation of certain EU officials) as a full chamber of 27 judges. Cases are allocated to the Chambers of three or five insofar as the difficulty and importance of the case do not justify their being heard by the Grand Chamber.

2.3.3.15 Will there always be an oral hearing?

There is not an automatic right to a hearing. The Court may decide not to grant an oral hearing. In such case, written pleadings may be the only opportunity to influence the outcome of the case. The written pleadings generally have more impact than oral pleadings on the Court.

2.3.3.16 What happens after the hearing?

After the hearing, the oral procedure remains open until the Advocate-General has given his/her Opinion on the case. The Opinion consists of a set of reasoned written submissions, a short summary of which is read out in court on the day of publication. The Opinion will always be translated into the language of the case.

2.3.3.17 Advocates-General's Opinions

- An Advocate General is not assigned to all cases.
- Putting forward an argument based on fundamental rights may lead the case to the assignment of an Advocate General.
- The Advocate-General's Opinion is a non-binding advisory document recommending to the Court that it decide the case in a particular way.
- The Advocate-General is a Member of the Court, just like the Judges, but does not take part in deliberations. His or her role is to 'assist the court', in complete impartiality and independence.
- The Advocate-General's Opinion will generally include a more complete assessment of the law and will engage with extra-judicial academic debate on the law. It represents an opportunity for dissent in a system which does not currently allow for dissenting judgments.
- It also acts as a quality control mechanism, ensuring the Chamber deciding the case takes account of an authoritative, independent view before giving its decision.

2.3.3.18 What happens after the Advocate-General's Opinion?

- After the Advocate-General has delivered his/her Opinion, the oral part of the procedure closes and the Chamber will start its deliberations and give its own judgment.
- The Judgment will not include as much reasoning as the Opinion, in part because it represents a committee judgment incorporating the views of all the judges.

2.3.4 Stage 3 of the procedure: back to the national court

- It is important to emphasise that the CJEU's ruling only provides an interpretation of the relevant provisions of EU law.
- Once that is done, it is still incumbent upon the national court to apply the ruling to the facts before it and decide the case on the merits.
- In some cases, for instance involving a proportionality assessment, this may still leave some room for arguments of the parties in the national procedure.

2.3.4.1 Are CJEU rulings binding on national courts?

- Preliminary rulings are binding on the national court that referred the preliminary question (Case C-29/68, *Milchkontor*). The national court will subsequently still have to give a ruling in the national proceedings, taking into account the judgment of the Court.
- All other judicial bodies in the Union will also have to adopt the interpretation of the CJEU. This is only logical, since the EU Court is the highest authority capable of interpreting Union law and Member States are obliged, on the basis of the principle of Union loyalty (Article 4, paragraph 3, of the EU Treaty), to apply European law in its entirety. Moreover, the procedure based on Article 267 of the Treaty on the Functioning of the EU would fail to achieve its objective (uniform application of European law) if national authorities were not obliged to follow the interpretation of the EU Court in their rulings.
- In this context, case C-453/00, *Kühne and Heitz*, is relevant. In this case, the CJEU held that, under certain circumstances, administrative bodies are obliged on the basis of Union loyalty to re-examine a decision that has become final, when the original decision has been called into question by a later ruling of the CJEU.
- This ruling also shows that preliminary rulings have retroactive effect in addition to their binding effect. This means that the interpretation of a provision given by the EU Court applies from the date of entry into force of that provision.
- Since this effect *ex tunc* can have significant financial consequences and, moreover, can jeopardize legal certainty, the CJEU has in the past, in a few cases, proceeded to limit the temporal effect of its ruling (see, for example, C-43/75, *Defrenne II*, C-24/86, *Blaizot* and C-262/88, *Barber*).
- It is advised to send the final national judgements to the CJEU. Nowadays, they are published on the website of the CJEU and it can be used by the CJEU for research.

3. Module 3: Drafting and Submitting the Preliminary Reference

Learning objectives

By the end of this module participants should be able to:

- Identify the formal requirements for a preliminary reference
- Draft clear and structured preliminary questions
- Understand the practical steps for submitting a request to the CJEU
- Identify the key elements required under Article 94 of the Rules of Procedure

3.1 The preliminary reference request

3.1.1 Practical tips:

- The request for a preliminary ruling may be in any form allowed by national law in respect of procedural issues
- The request should be drafted simply, clearly and precisely.
- The request should be no more than 20 pages long.
- The form should be in typewritten form on white, unlined, A4-size paper. Please number pages and paragraphs of the order consecutively. Use common font (such as Times New Roman) in 12 point (body of text) and 10 (footnotes) with 1,5 line spacing and horizontal and vertical margins of at least 2.5 cm.
- The request for a preliminary ruling must be dated and signed, then sent by registered post to the Court Registry at the following address: L-2925, Luxembourg, LUXEMBOURG.
- Where a PPU or PPA is required, send a signed copy of the request first by email at CJEU Registry@curia.europa.eu and the original by registered post (at the address indicated above). The request must be accompanied by any relevant documents and include the precise contact details for the parties to the main proceedings and their representatives. The request must include a copy of the file of the case.
- The request can be drafted in the language of the national proceedings. It will be translated into French, the working language of the CJEU, by the Court's translation services.

Preliminary reference checklist

- ✓ Relevant EU law identified
- ✓ Facts clearly summarised
- ✓ National law provisions included
- ✓ Questions clearly formulated
- ✓ Need for interpretation explained
- ✓ Request concise and structured

3.2 How should an order for reference be drafted?

- The request may be in any form allowed by national law in respect of procedural issues. As it will be translated into all the official languages of the EU, it is vital that the request be drafted simply, clearly and precisely. The Recommendations indicate that about 20 pages are sufficient.
- The pages and paragraphs must be numbered.

3.3 What formalities must be complied with?

The request must be dated and signed, and then sent by registered post to the CJEU Registry: L-2925, Luxembourg, LUXEMBOURG.

3.4 Content of the preliminary reference request

The CJEU is bound by the question(s) formulated by the referring court or tribunal: it cannot take the initiative to answer a question of EU law that has not been asked. As a lawyer in the main proceedings, you can help ensure the CJEU is provided with a satisfactory reference by suggesting what the referring court's order should include. It is often the practice of courts to invite counsel to agree content of a reference, which is then adopted and sent to the CJEU. Article 94 of the Rules of Procedure states that a reference for a preliminary ruling should contain the following:

- Summary of the subject matter of the dispute and the referring court's factual findings. This is important in order to enable the CJEU to understand how the issue of EU law arises in the case. Without this background it will be difficult for the CJEU to provide a useful answer, and the request may be rejected.
- The tenor of the provisions of national law applicable in the case. Where appropriate this should include references to case-law explaining how these provisions are interpreted.
- The reasons which prompted the national court to inquire about the interpretation of the provisions of EU law, and the relationship between those provisions and the applicable national legislation. Essentially, explain how the question being referred arises in the case. In addition to the points covered in Article 94 of the Rules of Procedure, the reference needs to include:
- The questions themselves, which should ask directly about the interpretation of provisions of EU law. It is possible to ask consequential questions (i.e. if the answer to the previous question is X, then...).
- If appropriate, a separate request for application of the urgent ("PPU") procedure (as to which, see Part IV in this toolkit on the PPU. Practical tip from a judge from a national court: Think about adding a subsidiary question in the preliminary reference request for the CJEU to address in the event that the CJEU responds negatively to the first question.
- Structure of the request The content of the request is prescribed by Article 94 of the Rules of Procedure of the CJEU, summarised in the Annex to the Recommendations. Please note that in the absence of any of the required information, the CJEU may decline jurisdiction or dismiss the request as inadmissible.

The request must include the following seven sections:

1. The referring court or tribunal. Please specify the referring court or tribunal and the full contact details.
2. The parties to the main proceedings and their representatives. State the names of the parties to the main proceedings and anyone representing them before that court or tribunal. Please include the exact postal address of the persons concerned, their telephone or fax number and email address.
3. The subject matter of the dispute in the main proceedings and the relevant facts. Please briefly describe the subject matter of the dispute in the main proceedings and the relevant findings of fact as determined by the competent national court or tribunal.
4. The relevant legal provisions. Please include precise references to the national provisions applicable to the facts of the dispute in the main proceedings, including any relevant case-law. The references must include the precise title and citations for the provisions concerned, as well as their publication references. In this section, please also identify the provisions of EU law whose interpretation is being sought.
5. The grounds for the reference. Please state the reasons which prompted the request and specify the relationship between the EU law provisions and national legislation applicable to the main proceedings.
6. The questions referred for a preliminary ruling. The question(s) referred to the CJEU must be self-standing. Please also state a view on the answer to be given to the question(s).
7. Possible need for specific treatment. Please indicate if the person(s) concerned must remain anonymous, or if the request has to be dealt with urgently.

4. Module 4: Urgent Procedures & Interim Measures

Learning objectives

By the end of this module participants should be able to:

- understand interim measures before the CJEU and General Court
- distinguish between the PPU and PPA procedures
- identify situations where urgent procedures may apply
- understand recent reforms regarding preliminary references before the General Court

4.1 Interim Measures in the General Court and the CJEU

Articles 278 and 279 TFEU: actions brought before the Court shall not have suspensory effect. The Court may order, however, if it considers that circumstances so require, the suspension of the application of the act appealed, or adopt other necessary measures.

- There **are two main categories** of measures that may be adopted according to Articles 278 and 279 TFEU:
 - 1- a specific interim measure, namely, the suspension of the application or enforcement of the contested act, and;
 - 2- other measures which are not further specified but which the Court deems necessary, for instance, relating to what procedures should be followed, including the question of whether the government should be given a chance to comment or respond to requests for preventive measures before they are issued.
- Interim measures can be applied for in direct actions.
- **Provisional Legal Protection before National Courts:** Member States must provide for the possibility of immediate and provisional judicial protection when this is necessary in order to make legal protection effective.
- CJEU ruling Factortame, Case C-213/89, ECLI:EU:C:1990:257: the principle of sincere cooperation (Article 4(3) TEU) and on the principle of effectiveness.
- CJEU ruling Case C-432/05, Unibet, ECLI:EU:C:2007:163: the basis shifted to the principle of effective judicial protection. This principle requires: 'that it be possible in the legal order of a Member State for interim relief to be granted until the competent court has given a ruling on whether national provisions are compatible with Union law, where the grant of such interim relief is necessary to ensure the full effectiveness of the judgment to be given on the existence of such Union law rights in the main proceedings.

4.2 Urgent procedures: PPU and PPA

4.2.1 Key features PPU procedure

- The national referring court may make a request for the urgent procedure (“PPU”).
- The CJEU designates a five-judge chamber to deal with PPU cases on a rotating basis (the “Chamber”). The Chamber decides whether to accede to the PPU request.
- The PPU procedure is typically accepted where a person is in detention pending the outcome of the proceedings.
- If the PPU request is accepted, the reference is only notified to the Member State concerned (as opposed to all Member States), as well as the EU institution that adopted the legislation in question.
- The decision to deal with the reference under the urgent procedure will lay down shorter time limits for those parties to submit observations and can specify the issues to be covered in observations and set maximum lengths (saving translation time).
- The decision is also sent to other interested parties (that is, the Member States), who are informed of the likely date of the hearing so that they can make observations on that occasion (i.e. not in writing, again, to save translation time).
- The Chamber must ‘hear’ the Advocate-General. The current practice is for the Advocate General to issue a ‘view’ which is published and notified to the parties at the same time as the Judgment.

4.2.1.1 What is the urgent procedure?

The average time for consideration of a preliminary ruling is about 18 months. This can be a long time to wait for someone who is in detention. Accordingly, since 2008, the CJEU has had in place an urgent procedure for preliminary rulings, called the “PPU” (procédure préjudicielle d’urgence). For criminal practitioners, and frequently used in practice, the urgent preliminary ruling procedure is particularly relevant. Under this procedure, cases are typically judged by the CJEU within a few months of the lodgement of the request by the national court. PPU cases are provided for by Articles 107-114 of the Rules of Procedure and follow a streamlined procedure. The number of parties authorised to lodge written observations can be limited, the length of written submissions and the time to submit them can be limited, and the written procedure is generally conducted electronically. In extremely urgent cases, the written procedure may be omitted entirely, although this is uncommon.

4.2.1.2 Who can ask for the urgent procedure?

In principle, the PPU is requested by the referring court, which must set out the matters of fact and law which establish the urgency and justify the application of this ‘exceptional’ procedure.

4.2.1.3 When can the urgent procedure be used?

- The urgent procedure applies only in the area of freedom, security and justice (AFSJ), that is, EU laws relating to asylum and immigration and judicial cooperation in civil and criminal matters, and only in urgent matters where it is necessary for the CJEU to rule very quickly.
- There is no exhaustive set of criteria stating when it is to apply.

There are **three scenarios** when the PPU procedure is applied:

- 1-The first scenario is where a person is in custody, detention, or otherwise deprived of his liberty and the answer to the question referred is decisive to the assessment of that person's legal situation.
- 2-The second situation relates to a risk of serious, and potentially irreparable, harm to a parent/child relationship or some other psychological damage. This may, for example, occur in proceedings concerning parental authority, the custody of children, or in applications for the return of a child who has been deprived of contact with one of his or her parents.
- 3-The scope of application of the PPU, taking on board, as criterion, the existence of a real risk that certain fundamental rights, such as the protection against inhuman and degrading treatment, of the persons concerned will be violated.

The urgent procedure is based on Article 23a of the Statute and the detailed rules are provided by Articles 107 to 114 of the Rules of Procedure.

4.2.1.4 What is the impact of the urgent procedure in practice?

- In practice, the PPU process can run very quickly from the point at which an EU law issue is raised. This procedure is mostly used in cases concerning parental authority or custody of young children, or in cases where a person is in detention.
- The Court of Justice designates special Chambers of five Judges in order to deal with these cases. All time limits are severely reduced. Access to the written procedure is limited, with most parties only participating in the hearing.

4.2.2 The Expedited Procedure (PPA) key features

- PPA's scope of application is broader than PPU which is limited to AFSJ area. Used for cases not covered by the PPU but requiring fast-track than handling.
- Available for both the Court of Justice and the General Court.
- Normal preliminary ruling procedure steps: within 1 year judgment CJEU. Absolute priority given to the case, and written stages are significantly shortened.
- Reasons for PPA: danger public health, financial system of the EU, urgent fundamental rights at stake such as expulsion of aliens (fundamental rights: non refoulement principle or family life), EU law constitutional question (see CJEU ruling joined cases C-758/24 (Alace) and C-759/24 (Canpelli), custody of a person.
- No reasons for PPA: many cases pending at national court, economic reasons.

PPU	PPA
Only AFSJ matters	Broader scope
Exceptional urgency	Accelerated handling
Often detention/children cases	Other urgent EU law matters
Very short deadlines	Shortened deadlines
Few months duration	Faster than ordinary procedure

4.3 Amendment preliminary references to the General Court

- On 1 September 2024, a significant amendment to the Statute of the Court of Justice of the European Union (the “Statute”) entered into force. This amendment will bring an end to the current exclusive jurisdiction of the Court of Justice of the European Union in preliminary reference procedures. From 1 October 2024 onwards, jurisdiction will be transferred from the CJEU to the General Court of the European Union (“EGC”) in six specific areas.
- Furthermore, the amendment introduces transparency-enhancing procedural changes for preliminary reference procedures and extends the current mechanism to exclude appeals brought against decisions of the EGC.
- The amendment to the Statute confers jurisdiction on the General Court in six specific areas that represent approximately 20% of all preliminary reference procedures and that have given rise to a substantial body of Court of Justice case law.
- The CJEU retains jurisdiction over cases that also concern other areas or that in any event raise independent questions of a fundamental nature. Concretely, jurisdiction is thus transferred from the Court of Justice to the General Court in cases that exclusively concern questions of EU law within one of the following areas:
 - The common system of value added tax
 - Excise duties
 - The Customs Code
 - The tariff classification of goods under the Combined Nomenclature
 - Compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services
 - The system for greenhouse gas emission allowance trading
- The amendment is part of a broader reform of the EU jurisdictional framework to enhance judicial efficiency and, in this regard, takes advantage of [a previous judicial reform](#) that increased the number of judges in the EGC.
- The amendment consists of the following three pillars: (i) transfer of jurisdiction from the CJEU to the EGC for certain preliminary reference procedures, (ii) procedural changes for preliminary reference procedures and (iii) extension of the current mechanism to exclude appeals to the ECJ. Since the two main functions of the CJEU are to give preliminary rulings and to hear appeals on points of law against the judgments and orders of the General Court, the amendment represents a significant change.

4.3.1 Preliminary rulings

- Preliminary rulings are rulings following a preliminary reference procedure initiated by a national court of an EU Member State. This procedure can be initiated by lower courts and must be initiated by a court of last resort in cases where uncertainties arise regarding the interpretation or validity of EU law. The procedure is therefore a keystone of the EU judicial system, ensuring the consistent application of EU law.

4.3.2 Transfer of jurisdiction from CJEU to EGC

- The possibility of conferring jurisdiction on the EGC for preliminary reference procedures in certain types of cases has **existed for over two decades**. It is now used in response to the increasing number of pending preliminary reference procedures and the average time taken to deal with them. To ensure that the ECJ can continue to safeguard the unity and consistency of EU law and render high-quality judgments, transferring jurisdiction to the EGC in specific areas was considered necessary.
- The amendment to the Statute confers jurisdiction on the EGC in **six specific areas** that represent approximately 20% of all preliminary reference procedures and that have given rise to a substantial body of CJEU case law. The CJEU retains jurisdiction over cases that also concern other areas or that in any event raise independent questions of a fundamental nature.
- The CJEU initially decides on the distribution of cases between the CJEU and EGC. National courts may therefore continue to refer their preliminary questions to the CJEU. The EGC may reassess the CJEU's distribution decision and may refrain from assuming jurisdiction over cases that require a decision of principle likely to affect the unity or consistency of EU law.
- To ensure legal certainty and transparency regarding the distribution of cases, future judgments of the CJEU and the EGC must provide reasons why the court in question is competent to hear and determine a preliminary question.
- To ensure equivalent guarantees in all preliminary reference procedures, the amendment entails an obligation to align the procedural rules of the EGC with those of the CJEU. In this regard, the EGC judges must **elect** from among themselves judges who will perform the duties of Advocate General for a renewable period of three years.

4.3.3 Procedural changes for preliminary reference procedures

Apart from the transfer of jurisdiction from the CJEU to the EGC in specific areas, the amendment to the Statute entails some procedural changes that apply to all preliminary reference procedures.

- First, all requests for a preliminary ruling must now be **notified** to the European Parliament, the Council of the European Union and the European Central Bank, which may then decide whether they wish to exercise their right to submit statements of case or written observations.
- Second, the public disclosure of such statements or observations of all parties involved (within a reasonable period after the case has ended) will now be the rule, as opposed to the current practice of making individual disclosure upon request. In this regard, a party may only object to the publication of its own statement/observation.

4.3.4 Appeals on points of law against judgments and orders of the EGC

- Hearing appeals on points of law against judgments and orders of the EGC is another central function of the CJEU.
- Article 256 of the Treaty on the Functioning of the European Union allows the scope of this function to be determined by the Statute. The amendment now extends the existing **mechanism** under the Statute for the determination of whether an appeal is allowed to proceed. In cases that are covered by the mechanism, appeals are only allowed if the ECJ decides that the case raises an issue that is significant with respect to the unity, consistency or development of EU law.

- According to CJEU statistics, a high number of appeals are brought against EGC decisions. To maintain the efficiency of appeal proceedings and to allow the ECJ to focus on appeals that raise important legal questions, the mechanism for determining whether an appeal is allowed has been extended in two ways.
- First, independent boards of appeal within EU bodies, offices or agencies have been added to the list of relevant boards of appeal whose decisions fall in principle under the EGC's jurisdiction of first and last resort. The list now consists of the following boards of appeal:
 - The European Union Intellectual Property Office
 - The Community Plant Variety Office
 - The European Chemicals Agency
 - The European Union Aviation Safety Agency
 - The European Union Agency for the Cooperation of Energy Regulators
 - The Single Resolution Board
 - The European Banking Authority
 - The European Securities and Markets Authority
 - The European Insurance and Occupational Pensions Authority
 - The European Union Agency for Railways
- Second, a new category for exclusion has been added for some EGC cases concerning decisions on contracts containing an arbitration clause.
- In principle, the EGC now has jurisdiction of first and last resort for disputes relating to the performance of contracts containing an arbitration clause – between an EU institution, body or agency and a private party – which do not raise issues that are significant for the unity, consistency or development of EU law.

4.3.5 The impact of the amendment

While the amendment represents a significant change to the two main functions of the CJEU, it remains to be seen to what extent it will allow the CJEU to manage its work more effectively, especially in the long run.

- It is also uncertain what other, possibly unforeseen, effects the amendment may bring about. For example, time will tell whether the previous judicial reform that increased the number of judges in the EGC will reduce the average time taken to deal with preliminary reference procedures, especially as the barrier for national courts to ask preliminary questions to the EGC might be lower.

Key takeaway

The preliminary ruling procedure is one of the central mechanisms for ensuring the uniform application and effective judicial protection of EU law. National courts play a key role in this judicial dialogue with the CJEU.

Annex documents:

Statute of the Court

https://curia.europa.eu/site/upload/docs/application/pdf/2024-08/statut_cour_en.pdf

Rules of Procedure

<https://curia.europa.eu/site/upload/docs/application/pdf/2024-08/rdp-cour-en.pdf>

Supplementary rules of the Court

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:032:0037:0045:EN:PDF>

Recommandations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (C/2024/6008)

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202406008

Conditions of use of E.Curia

https://curia.europa.eu/site/upload/docs/application/pdf/2024-09/2024-09-05_conditions-utilisation-ecuria_en_2024-09-25_10-50-7_866.pdf

Protection of Personal Data in procedures at the Court

https://curia.europa.eu/site/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508723-05_00.pdf

Publication of statements of case and written observations submitted in preliminary ruling cases

<https://curia.europa.eu/site/upload/docs/application/pdf/2025-04/observations-ecrites-en.pdf>

Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union

<https://eur-lex.europa.eu/eli/reg/2024/2019/oj>

Year report CJEU 2025

<https://curia.europa.eu/site/upload/docs/application/pdf/2026-03/qd-01-25-007-en-n.pdf>

- M. Broberg and N. Fenger, Preliminary References to the European Court of Justice (3rd edn, Oxford 2021)
- M. Costa and S. Peers, 'The Preliminary Ruling Procedure', Steiner and Woods EU Law, 15th edn (Oxford, 2023; online edn, Oxford Law Pro, 1 Aug. 2023),
- .C Lacchi, Preliminary References to the Court of Justice of the European Union and Effective Judicial Protection (Larcier, 2020)
- K.J. de Graaf, H.J. van Harten, A. Prechal, R.J.G.M. Widdershoven, Judicial Coherence in the European Union, Europa Law Publishing (2016)
- S. Prechal and A. Pahladsingh, Urgency and Human Rights in EU Law: Procedures Before the Court of Justice of the EU (2020)

