

Applying EU law in domestic proceedings and requesting a preliminary ruling

-practical guidelines-

Dr. Claudia Schmidt, Prague 24 April 2015

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My checklist – questions regarding a request for a preliminary ruling

A. Is EU law applicable?

1. *ratione materiae*

- ▶ **Treaty provisions**
- ▶ **Secondary legislation (regulations, directives, decisions)**

if (+)

- ▶ **Charter of fundamental rights of the EU**

cf. C-617/10 Åkerberg Fransson, 26 February 2013

C-399/11 Melloni, 26 February 2013

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My checklist – questions regarding a request for a preliminary ruling

A. Is EU law applicable?

2. *ratione temporis*

- ▶ **The ECJ has jurisdiction to interpret EU law only as regards its application in the MS from time of its accession to the EU**

cf. C-153/13, *Pohotovost'*, 3 April 2013

(clear lack of jurisdiction of the Court regarding events preceding the accession of the Slovak Republic to the EU)

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My checklist – questions regarding a request for a preliminary ruling

B. Is the interpretation of EU law relevant for the outcome of the main proceedings?

if (-)

- ▶ **request for preliminary ruling inadmissible or no answer given**

cf. C- 393/08 *Sbarigia*, 1 July 2010

cf. C- 363/12 *Z.*, 18 March 2014

***Nota bene:* in principle ECJ is bound to give a ruling. It is for the national Court to determine the relevance of the questions which it submits to the Court.**

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C. What about existing case law?

1. Has a demand concerning my doubts of how to interpret EU law already been submitted to the ECJ?

2. Could the interpretation be obvious?

if (-)

Art. 267 TFEU:

- ▶ submission by national courts: faculty**
- ▶ court of last instance: obligation**

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My checklist – questions regarding the way to present a request for a preliminary ruling

A. When?

- ▶ the appropriate stage**

B. What are the requirements?

- 1. clear factual context**
- 2. clear legal context**
- 3. reasons for requesting the interpretation of EU law and the relationship EU law-national law**

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My checklist – questions regarding the way to present a request for a preliminary ruling

C. What are the consequences of not fulfilling the requirements?

- ▶ request for clarification (seldom)
- ▶ order stating inadmissibility

cf. C- 433/11, *SKP k.s.*, 8 November 2012
C- 366/14, *Herrenknecht AG*, 6 November 2014

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My checklist – questions regarding the way to present a request for a preliminary ruling

D. How?

- ▶ structure
- ▶ length: « *less is more* »
« *to little is not enough* »

E. Practical examples...a critical view on selected references

C-465/04, Honeyvem Informazioni commerciali
C-94/07, Raccanelli
C-262/09, Meilicke
C-431/14, Vietnam Airlines Co. Ltd.
C-431/13, Finanmadrid

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My basic provisions and further reading

► Rules of Procedure of the Court of Justice, esp.:

TITLE III - REFERENCES FOR A PRELIMINARY RULING

CHAPTER 1 - GENERAL PROVISIONS (Art. 93 to 104)

Art. 93 Scope (↳ statute of the Court, Art. 23)

Art. 94 Content of the request for a preliminary ruling (cf. slide 6 B.)

Art. 99 Reply by reasoned order (cf. slide 5 C.)

Art. 100 Circumstances in which Court remains seised (withdrawal of request)

Art. 101 Request for clarification (cf. slide 7 C.)

Art. 102 Costs of the preliminary ruling proceedings

► Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (JO C 338 p.1 of 6 Nov. 2012)

► <http://www.curia.europa.eu>

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Good luck !

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