Applying EU law in domestic proceedings and requesting a preliminary ruling

-practical guidelines-

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
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)

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.
My checklist – questions regarding a request for a preliminary ruling

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

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
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

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, Mellicke
C-431/14, Vietnam Airlines Co. Ltd.
C-431/13, Finanmadrid
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](http://www.curia.europa.eu)

Good luck!