



## **Advanced training in EU law for Court coordinators**

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**Preliminary ruling procedure**

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## Short introduction – Key principles

### • Preliminary ruling mechanism (Article 267 TFEU)

- **Objective:** uniform interpretation and application of EU law
- **Landmark features/Conditions of admissibility**
- **'Functional' protection** in Member States:
  - (a) No hurdles to MS courts' ability to refer questions;

- **Judicial Independence/Rule of law value**

- 'Inherent in the task of **judicial adjudication**' (ex. *Wilson* case – link with right to an effective remedy);
- Essential precondition to uphold the **Rule of Law** value (Art. 2 TEU);
- **Multi-level protection**: national constitutions, Article 47(2) Charter, Article 6 ECHR...;
- **Consistent approach** of judicial independence between ECJ and ECtHR (see, as regards the latter, case *Nuñez de Carvalho*)

- **'Connecting factors' between concepts**

- dialogue between *courts/judicial organs* (See *TDC* case)
- Independence as a guarantee that judges effectively contribute to upholding the **EU rule of law** (*Les Verts, Opinion 1/09*) by:
  - (a) **autonomously deciding to refer** questions when they have doubts AND;
  - (b) are in a position to **implement** preliminary rulings.

## Case studies – CASE 1

### Fact pattern

You and your colleagues have just received the new decree temporarily reducing remuneration of all public officials, which also applies to courts. That decree forms part of a set of 'austerity' measures proposed by the government (including also a general reduction of social allowances) in order to reduce excessive budget deficit and thus conform budgetary discipline imposed on members of the *Eurozone*. There are four levels of reduction applied to members of the judiciary (1,5%, 2.5%, 4% and 6%) depending on the level of remuneration. You decide to challenge that salary reduction before the supreme administrative court, which has doubts on two EU law issues.

### Queries

*First*, does the principle of judicial independence in Article 19.1, second subparagraph, TEU and Article 47, second subparagraph, of the Charter offer any protection to the applicants here?

*Second*, if the answer is 'Yes', do those provisions preclude a salary reduction measure such as that contained in the challenged decree insofar as it is applied to judges and prosecutors?

## CASE 2

### Fact pattern

Company X, established in Member State A, is active in the sector of telecommunications and specialised in electronic firewalls. It took part in several public procurements in Member State B, but none of them was successful. Member State B systematically disqualified X on the ground that it does not fulfil all conditions for participating in procurement in the field of defence and security, set out in special statute. All statements of reasons explain that 'hacking' of any public body poses a real threat to national security and thus warrant the special precautionary rules contained in that legislation. Company X challenges that position before a district court in Member State B. It argues both that national law of Member State B disregards the conditions under which Directive 2014/24/EU enables the Member States to derogate the general rules on public procurement for awarding public contracts 'in the fields of defence and security' and that the decision at issue is a disguised discrimination of a foreign company.

You are the single judge sitting in the case and you have doubts on whether the special statute complies EU rules on public procurement.

Consider the following situations

## Case 2 (cont'd)

Queries  
(1)

The new president of the court of which you are also a member has clearly announced that he should endeavour to increase the court's productivity and improve its statistics; being conscious of the average length of a preliminary ruling procedure (apart from the specific case of urgent preliminary ruling proceedings), he decided that no reference should be made to the Court without his prior authorisation, including in cases in which he does not act as a sitting judge ; that decision is to be based on a balancing of various criteria, including a confirmation of the 'doubts' of the judges deciding on the case concerning the interpretation of EU law, the importance of the case, and whether or not the parties themselves have suggested such reference.

Is that acceptable? Would the position be different if the president of the court announces (with the same objective of reducing the number of preliminary references) that he will make sure to *preside* the formation deciding on all cases in which the conformity of a national measure with EU law is at issue?

## Case 2 (cont'd)

Queries  
(2)

A request for a preliminary ruling has been made to the Court. However, before the Court decides on it, the national constitutional court declares the provisions of the law at issue unconstitutional and annuls them; should you necessarily withdraw the reference for a preliminary ruling?

## Case 2 (cont'd)

Queries  
(3)

Appeal proceedings were initiated before a regional court by the defendant authority against the order of the district court deciding to refer a question for a preliminary ruling; the regional court annuls that order but the reference had already been made to the Court; the referring court decides to maintain the reference because it takes the view that the interpretation given by the regional Court's judgment to the EU law provisions at issue is not beyond doubt...

## Case 2 (cont'd)

Queries  
(4)

No reference was made to the Court and the national law at issue is applied despite doubts on its compatibility with EU law. The Commission has received a complaint on the part of a Bar association and a union of magistrates of the Member State concerned, showing with statistics that, over the last 3 years, all judges who had referred a question for a preliminary ruling to the Court failed in obtaining a promotion ; the complaint also contains indications that, during interviews for nominations in the judiciary, negative comments were regularly made by interviewers on preliminary references as a means to (indirectly) call into question national law.

Is there any possibility to remedy that situation under EU law?

## Case 2 (cont'd)

Queries  
(5)

In its order for reference, the referring court submits that, in its view, an interpretation of national law complying with the EU law act which forms the subject-matter of the request for a preliminary ruling seems to be possible; however, the competent minister has opposed that interpretation and it therefore has doubts whether – whatever the interpretation of EU law given by the Court – it will be in a position to come up with an outcome that conforms EU law. How is the Court likely to react?

Thank you for your attention