

## **RULES OF THUMP - Preliminary references**

### **Rule of Thump: use this format:**

‘Should article X of EU Directive Y be interpreted in a way so as to preclude (uitsluiten) national legislation coexisting with which?’ The focus of the questions should be on a request for an interpretation of specific provisions of EU law and the reasons why the national court considers such an interpretation is needed.

### **Rule of thumb: no irrelevant questions (only if the judge believes that the interpretation to be given by ECJ is necessary for adjudicating the case) (in/admissible);**

If it appears that the question raised is manifestly irrelevant for the purposes of deciding the case, the Court must declare that there is no need to proceed to judgment. A reference is inadmissible where the question asked is obviously irrelevant to solve the dispute before the national court.

*For example C-152/03*

*For example C-83/91*

### **Rule of thumb: the (main) action should be real, not imaginary; no questions of a hypothetical nature; no construed cases (in/admissible)**

*For example C-322/98*

*For example C-82/13*

*For example: C-396/11 (Radu; workshop)*

*For example: C 104/79*

### **Rule of thumb; give sufficient factual and legal information to the Court in order to provide an useful answer (in/admissible):**

*For example: C440/10*

*For example: C-49/18*

### **Rule of thumb: no questions about national law or validity of national law**

There are questions which are formulated in such a way that they fall outside the jurisdictional scope of the CJEU. Usually this is where the national court asks the CJEU to assess whether a national provision is compatible with EU law. Questions should be formulated so that the CJ is not requested to make a specific application of the law to the case.

*For example: C-489/09*

*For example: C-343/08*

*For example: C-338/04*

### **Rule of thumb: no questions about (the application of union law) the facts.**

Questions should be formulated so that the ECJ is not requested to decide on the facts or to make a specific application of the law to the case. Instead, the formulation of the question should ensure that the ECJ can make an, in principle, abstract interpretation of the relevant eu-rule.

*For example: C-31/09*

### **Rule of thump: there should be an identifiable relationship with Union law; only questions concerning the interpretation and the validity of Union law**

**Rule of thumb: no leading questions..**’The questions should be open. Leading questions would not be proper as questions should so far as possible be impartially worded (risk: you

don't get an answer)

For example: C-267/12 (Hay; *workshop*)

For example: C-614/14 (Ognyanov; *workshop*)

## LITERATURE

<https://ejls.eu.europa.eu/wp-content/uploads/sites/32/2018/11/4.-EJLS-Special-Issue-2018-Krommendijk.pdf>

[http://www.era-comm.eu/oldoku/Adiskri/12\\_Jurisdictions/2009\\_ODempsey\\_EN.pdf](http://www.era-comm.eu/oldoku/Adiskri/12_Jurisdictions/2009_ODempsey_EN.pdf)

[http://www.ejtn.eu/Documents/About%20EJTN/Administrative%20Law%202016/AD201605%20Preliminary%20Ruling%20ERA%2019-20%20Sept/Ramascanu\\_PPT\\_Referring\\_questions\\_CJEU.pdf](http://www.ejtn.eu/Documents/About%20EJTN/Administrative%20Law%202016/AD201605%20Preliminary%20Ruling%20ERA%2019-20%20Sept/Ramascanu_PPT_Referring_questions_CJEU.pdf)

[http://www.ejtn.eu/Documents/EJTN\\_SKRIPT\\_DETTMERS\\_final.pdf](http://www.ejtn.eu/Documents/EJTN_SKRIPT_DETTMERS_final.pdf)

<http://www.aca-europe.eu/index.php/en/jurisprudence-en/9-uncategorised/384-guide-to-preliminary-ruling-proceedings-before-the-european-court-of-justice>

[https://www.iarmj.org/images/stories/lisbon\\_sep\\_2010/storey.pdf](https://www.iarmj.org/images/stories/lisbon_sep_2010/storey.pdf)

<http://www.ejtn.eu/PageFiles/17294/WR%20-%20TH-2018-3%20-%20CZ.pdf>

[http://www.hfhr.pl/wp-content/uploads/2019/03/ENG\\_Pytania-prejudycjalne-podrecznik-dla-pelnomocnikow.pdf](http://www.hfhr.pl/wp-content/uploads/2019/03/ENG_Pytania-prejudycjalne-podrecznik-dla-pelnomocnikow.pdf)

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[http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608628/EPRS\\_BRI\(2017\)608628\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608628/EPRS_BRI(2017)608628_EN.pdf)

*Sannah Hübel, Judge, District Court of Amsterdam, Court Coordinator*