

## **I. Vade mecum – good example of a request for a preliminary ruling**

A well-drafted request for a preliminary ruling under Article 267 TFEU should clearly outline the factual and legal context, specify the relevance of EU law, and formulate precise questions for the EU Court of Justice of the EU. Below is an example structured according to recommendations from CJEU guidelines and case law:

Example Request for a Preliminary Ruling

[National Court Name]

Case Reference: [Number/Year]

Parties: [Applicant] v. [Respondent]

### **1. Factual and Legal Context**

The dispute concerns [briefly describe the core issue, e.g., "a consumer's claim for compensation under Directive 2011/83/EU after a retailer failed to deliver goods"]. The national court has established the following facts:

- [Key factual details, e.g., "The consumer ordered a product online on [date], paid in full, but received no delivery after 30 days."]
- [Relevant national law or procedural steps, e.g., "Under [National Law X], consumers must initiate mediation before litigation."]

### **2. Applicable EU Law and Legal Doubts**

The case raises questions about the interpretation of:

- Directive 2011/83/EU on consumer rights, particularly Article 18(1) (delivery deadlines).
- Whether national mediation requirements under [National Law X] are compatible with Article 6(1) of the Directive, which guarantees direct legal redress.

### **3. Questions Referred**

1. Does Article 18(1) of Directive 2011/83/EU preclude a national rule requiring mandatory mediation before a consumer can bring legal proceedings for non-delivery of goods?
2. If the answer to the first question is affirmative, must the national court disregard the mediation requirement to ensure the effectiveness of EU consumer rights under Article 6(1)?

#### 4. Relevance to the Outcome

- The national court cannot rule on the consumer's claim without clarifying whether the mediation requirement is compatible with EU law.
- A conflicting interpretation by [National Supreme Court, if applicable] in [Case Y] creates legal uncertainty, necessitating a uniform EU-wide interpretation.

#### 5. Procedural Context

- This court is a [court of first instance/non-final appeal] with discretion to refer under Article 267(2) TFEU].
- The parties were invited to submit observations on the referral, but the decision to refer rests solely with this court.

## II. Examples

### 1. C-284/16, Achmea

(1) Does Article 344 TFEU preclude the application of a provision in a bilateral investment protection agreement between Member States of the European Union (a so-called intra-EU BIT) under which an investor of a Contracting State, in the event of a dispute concerning investments in the other Contracting State, may bring proceedings against the latter State before an arbitral tribunal where the investment protection agreement was concluded before one of the Contracting States acceded to the European Union but the arbitral proceedings are not to be brought until after that date?

If Question 1 is to be answered in the negative:

(2) Does Article 267 TFEU preclude the application of such a provision?

If Questions 1 and 2 are to be answered in the negative:

(3) Does the first paragraph of Article 18 TFEU preclude the application of such a provision under the circumstances described in Question 1?

### 3. C-202/24, Alchaster I

Where, pursuant to the Trade and Co-operation Agreement between the EU and the UK [TCA], surrender is sought for the purposes of prosecution on terrorist offences and the individual seeks to resist such surrender on the basis that he contends that it would be a breach of [Article] 7 [ECHR] and [Article] 49(1) of the [Charter] on the basis that a legislative measure was introduced altering the portion of a sentence which would be required to be served in custody and the arrangements for release on [licence] and was adopted after the date of the alleged offence in respect of which his surrender is sought and, where the following considerations apply:

- (i) the requesting state (in this case the [United Kingdom]) is a party to the ECHR and gives effect to [the ECHR] in its domestic law ...;
- (ii) the application of the measures in question to prisoners already serving a sentence imposed by a court has been held by the courts of the United Kingdom ... to be compatible with the [ECHR];
- (iii) it remains open to any person including the individual if surrendered, to make a complaint to the European Court of Human Rights;
- (iv) there is no basis for considering that any decision of the European Court of Human Rights would not be implemented by the requesting state;
- (v) accordingly, the Supreme Court is satisfied that it has not been established that surrender involves a real risk of a violation of [Article] 7 [ECHR] or the [national] Constitution;
- (vi) it is not suggested that surrender is precluded by [Article] 19 of the Charter;
- (vii) Article 49 of the Charter does not apply to the trial or sentencing process;
- (viii) it has not been submitted that there is any reason to believe there is any appreciable difference in the application of [Article] 7 [ECHR] and [Article] 49 of the Charter;

is a court against whose decision there is no right of appeal for the purposes of Article 267(3) TFEU, and having regard to [Article] 52(3) of the Charter and the obligation of trust and confidence between Member States and those obliged to operate surrender to the [European arrest warrant] provisions pursuant to the [TCA], entitled to conclude that the requested person has failed to establish any real risk that his surrender would be a breach of [Article] 49(1) of the Charter or is such a court obliged to conduct some further inquiry, and if so, what is the nature and scope of that inquiry?

### **Reformulated by the CJEU**

*The referring court asks, in essence, whether the TCA, read in conjunction with Article 49(1) of the Charter, must be interpreted as meaning that, where a person who is the subject of an arrest warrant issued on the basis of that agreement invokes a risk of a breach of Article 49(1) in the event of surrender to the United Kingdom, on account of a change, which is unfavourable to that person, in the conditions for release on licence, which occurred after the alleged commission of the offence for which that person is being prosecuted, the executing judicial authority must assess the existence of that risk before deciding on the execution of that arrest warrant, in a situation where that judicial authority has already ruled out the risk of a breach of Article 7 ECHR by relying on the guarantees offered generally by the United Kingdom as regards compliance with the ECHR and on the possibility for that person to bring an action before the European Court of Human Rights.*



Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.