



**PRELIMINARY
RULING PROCEDURE**

a useful tool within the national judicial system

*Galis Adriana
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Reflect on admissibility

- Article 53 paragraph 2 Rules of Procedure of the Court of Justice

Where it is clear that the Court has no **jurisdiction** to hear and determine a case or where a request or an application is **manifestly inadmissible**, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings

- C-450/15 – *application of fines on national law basis*
- C-456/14 – « *offence punishable by a detention order for a minimum period of one year* », *national law vs. EU Law*
- C-79/21 – *suspension of the proceedings – hypothetical question*
- C-131/21 – *question upon the interpretation of the Charter with no connection to other EU Law*

Is my question an « act claire » / « act écaliré »?

- Article 99 of Rules of procedure of CJEU:

Where a question referred to the Court for a preliminary ruling is

- ✓ **identical** to a question on which the Court **has already ruled**,
- ✓ where the reply to such a question may be **clearly** deduced from existing case-law or
- ✓ where the answer to the question referred for a preliminary ruling **admits of no reasonable doubt**,

the Court may at any time, on a proposal from the Judge Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

- *CILFIT vs. Consorzio Italian Management*

Acte claire/acte éclairé – Final Instance

CILFIT

C-283/81, Srl CILFIT and Lanificio di Gavardo SpA/Ministry of Health, EU:C:1982:335

“Does the third paragraph of Article 177 of the EEC Treaty, [...], lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?”

Exceptions from the obligation of referring:

- *the question raised is irrelevant;*
- *the EU law has already been interpreted;*
- *the correct application of EU law is so obvious*

as to leave no scope for any reasonable doubt.

“The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.”

Consorzio Italian Management

Consorzio Italian Management et Catania Multiservizi, C-561/19, EU:C:2021:799

“Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law is relieved of the obligation, laid down in the third indent of that article, to bring before the Court of Justice a question concerning the interpretation of EU law where that question is put to it by a party at an advanced stage of the proceedings, after the case has been set down for judgment for the first time or where a reference for a preliminary ruling has already been made in that case?”

- Before concluding that **such is the case**, the national court must be convinced that the matter would be equally obvious to the other courts or tribunals of **last instance** of the Member States and to the Court of Justice (point 40)
- **No** more requirement to examine, in that regard, **each of the language versions** of the provision in question, but bear in mind those divergences between the various language versions of that provision in particular when those divergences are set out by the parties and are verified (point 44)
- EU law may be interpreted **in another way or several other ways** is not sufficient for the view to be taken that there is a reasonable doubt as to the correct interpretation of that provision (point 48)
- existence of diverging lines of case-law implies a **particular vigilance** in its assessment of whether or not there is any reasonable doubt (point 49)
- if a national court takes the view that it is relieved of its obligation to make a reference, the **statement** of reasons for its decision must show either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the Court’s case-law or, in the absence of such case-law, that the interpretation of EU law was so obvious as to leave no scope for any reasonable doubt (point 51)

Acte claire/acte éclairé – Final Instance

Order of 27 april 2023, Ministero della Giustizia, C-495:22,
EU:C:2023:405

*Article 267 TFEU must be interpreted as meaning [...]. **That national court or tribunal is not required to prove** in detail that the other courts of last instance of the Member States and the Court of Justice would carry out the same interpretation, but must have acquired, on the basis of an assessment which takes account of that evidence, the conviction that the other national courts and tribunals and the Court of Justice would be equally obvious to them and to the Court of Justice.(point 36 and disp.)*

Case law on « acte claire » and « act éclairé »

Three hypotheses:

- Question identical to a question already answered by the Cour
(C-690/18 à C-692/18 and C-693/18 ; C-646/18 and C-464/18 : « in substance identical »)
- The answer to the question can be clearly deduced from existing case-law
(cf. « acte éclairé »)
(C-102/00, Welthgrove)
- The answer to the question admits of no reasonable doubt (cf. « acte clair »)
(C-98/20 ; C-229/22 : comparaison of linguistique versions)

Stay informed

Article 267 TFUE

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is **necessary** to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case **pending** before a court or tribunal of a Member State **against whose decisions there is no judicial remedy** under national law, that court or tribunal **shall** bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in **custody**, the Court of Justice of the European Union shall act with the minimum of delay.

<https://eur-lex.europa.eu/homepage.html>

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