



The Court clarifies its case-law in *Cilfit* concerning the situations in which national courts or tribunals of last instance are not subject to the obligation to make a reference for a preliminary ruling

Where such a court or tribunal considers that it may refrain from complying with that obligation, the statement of reasons for its decision must show that the matter involves one of the three situations that allows it to do so

In 2017, **the Consiglio di Stato** (Council of State, Italy), a national court of last instance ('the referring court'), made a reference to the Court of Justice for a preliminary ruling in proceedings concerning a public contract for the supply of services relating to the cleaning, inter alia, of Italian railway stations. The Court delivered its judgment in 2018.¹ The parties to those proceedings then asked the referring court to refer other questions for a preliminary ruling.

It is against that background that, in 2019, the referring court made a new reference to the Court for a preliminary ruling. It **was seeking, inter alia, to ascertain whether a national court or tribunal of last instance must bring before the Court 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.**

Findings of the Court

In its judgment, **the Court, sitting as the Grand Chamber, reasserts the criteria identified in the judgment in *Cilfit*,**² which provides for three situations in which national courts or tribunals of last instance are not subject to the obligation to make a reference for a preliminary ruling:³

- (i) the question is irrelevant for the resolution of the dispute;**
- (ii) the provision of EU law in question has already been interpreted by the Court;**
- (iii) the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt.**

Accordingly, **the Court holds that a court or tribunal of last instance cannot be relieved of its obligation to make a reference for a preliminary ruling merely because it has already made a reference to the Court for a preliminary ruling in the same national proceedings.**

With regard to the third situation referred to above, the Court clarifies that the absence of reasonable doubt must be assessed in the light of the characteristic features of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union. **Before concluding that there is no reasonable doubt as to the correct interpretation of EU law, the national court or tribunal of last**

¹ Judgment of 19 April 2018, *Consorzio Italian Management and Catania Multiservizi* (C-152/17).

² Judgment of 6 October 1982, *Cilfit and Others* (283/81).

³ That obligation is laid down in the third paragraph of Article 267 TFEU.

instance 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.

In that regard, **the mere fact that a provision of EU law may be interpreted in several ways is not sufficient for the view to be taken that there is a reasonable doubt as to the correct interpretation of that provision.** Nonetheless, where the national court or tribunal of last instance is made aware of **the existence of diverging lines of case-law** – among the courts of a Member State or between the courts of different Member States – concerning the interpretation of a provision of EU law applicable to the dispute in the main proceedings, that court or tribunal must be particularly vigilant in its assessment of whether or not there is any reasonable doubt as to the correct interpretation of that provision.

National courts or tribunals of last instance must take upon themselves, independently and with all the requisite attention, the responsibility for determining whether the case before them involves one of the situations in which they may refrain from submitting to the Court a question concerning the interpretation of EU law which has been raised before them. If such a court or tribunal takes the view that it is relieved of its obligation to make a reference to the Court, the statement of reasons for its decision must show that the matter involves one of those three situations.

Moreover, where the case before the court or tribunal of last instance involves one of those situations, it is not required to bring the matter before the Court, even when the question concerning the interpretation of EU law is raised by a party to the proceedings before it.

By contrast, if the question concerning the interpretation of EU law does not involve any of those situations, the court or tribunal of last instance must bring the matter before the Court. The fact that that court or tribunal has already made a reference to the Court for a preliminary ruling in the same national proceedings does not affect the obligation to make a reference for a preliminary ruling when a question concerning the interpretation of EU law the answer to which is necessary for the resolution of the dispute remains after the Court's decision.

Moreover, it is for the national court or tribunal alone to decide at what stage in the proceedings it is appropriate to refer a question to the Court for a preliminary ruling. However, **a court or tribunal of last instance may refrain from referring a question to the Court for a preliminary ruling on grounds of inadmissibility specific to the procedure before that court or tribunal.** Where the pleas in law raised before such a court or tribunal must be declared inadmissible, a request for a preliminary ruling cannot be regarded as necessary and relevant for that court or tribunal to be able to give judgment. The applicable national procedural rules must however observe the principles of equivalence⁴ and effectiveness.⁵

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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⁴ The principle of equivalence requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law and to similar actions alleging infringement of national law.

⁵ According to the principle of effectiveness, national procedural rules must not be such as to render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order.