

CJEU Clarifies Duty to Refer for National Last Instance Courts



euclid

European Law Forum: Prevention • Investigation • Prosecution

Thomas Wahl

News

On 6 October 2021, the CJEU handed down a judgment, in which it [clarifies its case law in *Cilifit*](#) under which conditions national last instance courts may refrain from making a reference for a preliminary ruling. The reference (C-561/19 – *Conorzio Italian Management and Catania MultiserviziSpA/Rete Ferroviaria Italiana SpA*) concerned a situation where a reference for a preliminary ruling has already been made in the case at issue, but the parties asked the referring court to refer other questions for a preliminary ruling at an advanced stage of the proceedings.

The [Grand Chamber judgement](#) of the CJEU reasserts the criteria identified in the 1982 judgment in *Cilifit*, 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 – an obligation laid down in Art. 267 TFEU:

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

The CJEU then further clarifies the third situation: 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 EU. The national last instance court/tribunal must observe the following:

- It must be convinced that the matter would be equally obvious to the other last instance courts/tribunals of the Member States and to the CJEU;
- It must vigilantly assess diverging lines of case law (among the courts of a Member State or between the courts of different Member States) of whether there is any reasonable doubt as to the correct interpretation of the provision in question;
- It must state the reasons for the decision to be relieved from the obligation to make a reference for a preliminary ruling, whereby the reasoning must show that the matter involves one of the three situations as established in *Cilifit*;

If the question concerning the interpretation of EU law does not involve any of those situations, the last instance court/tribunal must bring the matter before the CJEU. The fact that that court or tribunal has already made a reference to the CJEU 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 CJEU's

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://euclid.eu>



decision. Nonetheless, the national court/tribunal can refrain from a new reference for a preliminary ruling if national procedure law provides for the inadmissibility of the parties' pleas.

By its judgment, the CJEU basically maintains its case law on "*acte éclairé*" and "*acte clair*". The Advocate General proposed the CJEU to fully revise its previous case law on the exceptions from the obligation for last instance courts/tribunals to request preliminary rulings (→ [eucrim 1/2021, 12](#)).

About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and "criministrative" law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by
the European Union**