

Summary of the conclusions of the working group

Chapter II Amending the formal framework of the preliminary rulings procedure

II A Amending the EC Treaty

As the working party is of the opinion that amendments of the Treaty are, practically speaking out of the question in the near future, it limits itself to advising the Community Institutions to study the following proposals for possible realisation in the future if delays in handling prejudicial references would deteriorate further:

- Introduction of a filtering system inspired by existing national systems;
- Empowering the Court of Justice to establish its Rules of Procedure¹; and
- Introduction of a system of advisory opinions of a general nature on the interpretation of Community law to be given by the Court of Justice at the request of domestic courts, inspired by existing national systems.

II B Amending the Statute of the Court of Justice

- The working group, for various reasons, does not consider it opportune for the moment to transfer (classes of) preliminary references from the Court of Justice to the Court of First Instance.
- The majority of the working group dismisses the introduction of the possibility of a reduction of time limits prescribed in article 23 of the Statute (apart from the derogation foreseen with regard to the urgent references in the area of freedom, security and justice.
- The working group advises to include in article 20 of the Statute the criterion of the importance of the points of law for the development of Community law raised by a preliminary question.

II C Amending the Rules of Procedure of the Court

- The working group is of the opinion that the "green light "procedure should be encouraged as a *best practice* by domestic courts, but that it should not become an obligation for the courts. Moreover, even if the Court of Justice agrees with the proposed answers, the Court should nevertheless include these answers in its own ruling, giving the ruling thus the authority required under article 234 of the EC-Treaty.
- The majority of the working group recommends to incorporate elements of articles 104a, third paragraph, and 104b, second paragraph, of the Rules of Procedure, for the accelerated procedure and for the urgent procedure for references for a preliminary ruling relating to the area of freedom, security and justice, also in article 104 of the Rules of Procedure, eventually after the use of this provision in the said articles has been evaluated by the Court of Justice.
- The majority of the working group is of the opinion that the scope of article 104, 3 (2) should be enlarged to include also cases which are of minor importance for the unity, the coherence and the development of community law.
- The majority of the working group dismissed the option to enlarge the scope of the articles 44a and 104, paragraph 4.

Chapter III What can national courts do

There was full agreement in the working group that that national courts – as European courts – should do everything necessary to ensure that the preliminary rulings procedure operates

¹ This option was supported by the majority of the working Group.

as efficiently and effectively as possible. In this respect the working group advises the following.

III A Assessing the need for the reference for a preliminary ruling

- The working group recommends national courts to follow the "Information note on references by national courts for preliminary rulings", provided by the Court to the letter, and to consult the guide for references for preliminary rulings on the Associations website.

- In the opinion of the working group it is necessary that judges in general have a good knowledge of EU law and are systematically kept abreast of developments in that field of law. The working group is of the opinion that national courts and institutions providing training, refresher courses and continuing education courses for judges should regard it as a priority to raise the level of knowledge of EU law of all the judges. A sufficient availability of EU law training that is well adapted to the needs of judges should be ensured. In addition, there may be a need for arrangements to ensure the presence of particular EU law expertise especially in cases posing complicated problems.

- The working group submits that the CILFIT criteria must be assessed and applied "in a rational and reasonable way, in other words "with common sense", bearing in mind that it is in the interest of the parties, the national courts as well as the Court of Justice to avoid burdening the preliminary rulings procedure with questions that are of minor importance with a view to the unity, the coherence and development of EU law.

As a particular point, given the increase in the number of working languages within the EU since the CILFIT judgment, the original requirement to compare the text of all language versions is no longer realistic or feasible.

In view of the need that CILFIT be applied with common sense it follows in the opinion of the working group, that the national court should consider whether the problem under consideration is worth the burden of a reference for a preliminary ruling. Interpretation with common sense entails that the lesser the problem the more the national court can convince itself that it is capable, at first sight, to solve itself the question on the basis of its own knowledge and understanding of EU law, as the Court should not be bothered by minor problems or by problems the national court itself can solve in a satisfactory and acceptable way.

Publication of all prejudicial references

The working group recommends that

a) national supreme courts should publish immediately the full text of all preliminary references and the other documents attached, on a national level;

b) national supreme courts should cooperate in publishing, as soon as possible, all preliminary questions and the other documents attached, on the international level; and

c) the working group invites the Association to arrange that member institutions of the Network of Presidents of Supreme Judicial Courts may put the same information on JURIFAST, which being an open channel is accessible for the members of the Network too. It recommends member institutions of the Network to publish their texts on JURIFAST.

Other questions

- The majority of the working group is of the opinion that in provisional proceedings in principle no prejudicial questions should be put to the Court of Justice.

- The working group is of the opinion that in case national law provides for the possibility of an appeal against the decision to refer, the national court should notify the Court of Justice in case such an appeal is made, and request as a rule that

consideration of the case be deferred, unless the appeal is clearly lodged for purposes of delay or is reckless and provocative,

IIIB Measures to be taken by national courts to expedite handling of cases both at a national level and at the Court level

The working group recommends as a good practice that the domestic court should deal with the case as exhaustively as possible before formulating the preliminary questions. It should try to solve all the issues of fact and law involved in the case in such a way that the only aspect left is the decision of the Court of Justice on the preliminary question.

The working group considers it advisable that the domestic court consults with the parties on the texts of the reference. The influence of the parties should however never be preponderant as the domestic court should always remain exclusively responsible for the reference.

The working group recommends further that

- the references made should be as clear and short as possible;
- in case a substantial number cases is pending before the national court which depend for their solution of the answer of the Court of Justice, that information should be provided to the Court;
- the referring court should, if possible and allowed by national law, try to formulate a provisional, reasoned answer for the benefit of the Court of Justice, give all relevant clarifications and indications for the benefit of the Court, and pool questions as much as possible.

IV Measures to be taken by the Court of Justice

The working group recommends

- that the full text of references is published in all EU languages on the website of the Court of Justice as early as possible and facilitates links with national electronic systems that are in existence for the judiciary of the member states to national information systems and with JURIFAST;
- that the possibility should be considered that the Court takes the decision to stay the case itself as soon as it has become aware that an appeal is made to the decision to refer, for instance by having the Registrar of the Court sent a communication to the referring judge that the Court will suspend its work on the case.
- that contact between national courts and the Court should be encouraged, even by non-classical methods like the telephone, in order to know – for instance - if a preliminary question on a certain subject is already pending before the Court.

The majority of the working group recommends

- that the Court should seize a suiting opportunity to clarify its position on CILFIT in a judgement, taking into account that since CILFIT the number of member states and languages has increased.

