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General report
on the colloquium subject
"The Preliminary Reference to the Court of Justice
of the European Communities"

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1. INTRODUCTION

The 17th colloquium of the Councils of State and Supreme Administrative Jurisdictions of the European Union in Vienna in 2000 decided that the topic of the 18th colloquium in Helsinki would be 'Preliminary Reference to the Court of Justice of the European Communities'. In order to discuss this topic, the courts of law participating in the colloquium from all 15 Member States have drawn up national reports¹. These reports have been compiled on the basis of a list of questions (appended to this general report) drawn up by the General Reporter of the colloquium. The Court of Justice of the European Communities (hereafter 'EC Court of Justice') has also drawn up a report using the national reports.

Poland, Hungary, the Czech Republic, Slovenia, Estonia and Cyprus, which have begun accession negotiations with the EU, participated in the colloquium as observers. Poland's supreme administrative court has submitted a report for the colloquium, dealing specifically with issues related to the preparations being made by the Polish court system for the accession to the European Union.

The General Reporter thanks those who have drawn up the reports for their clear presentations, which contain useful and comparable information. The systematic presentation form has greatly facilitated compilation of this general report. The reports contain an extensive collection of practical information and experience on the application of preliminary reference procedure in the 15 Member States. This will hopefully facilitate communication of national courts of law with each other and with the EC Court of Justice.

The general report is essentially based on the information provided in the national reports. The report of the EC Court of Justice supplements the general report and national reports.

The arrangement of the general report is largely based on the structure of the list of questions, but does not necessarily follow it in detail. The present revised version differs only very slightly from the provisional version presented in preparation of the Colloquium.

¹ Reports have been given by the following courts: Bundesverwaltungsgericht (Germany), Verwaltungsgerichtshof (Austria), the Belgian Conseil d'Etat, the Danish Supreme Court, Tribunal Supremo (Spain), the Finnish Supreme Administrative Court, Royal Courts of Appeal (United Kingdom), the Greek Conseil d'Etat, the Irish Supreme Court, Consiglio di Stato (Italy), Cour Administrative du Luxembourg, Raad van State (The Netherlands), Supremo Tribunal Administrativo (Portugal), the Swedish Regeringsrätten. The United Kingdom has submitted separate reports on England and Wales, on the one hand, and on Scotland, on the other.

2. PROVISIONS ON PRELIMINARY RULING PROCEDURE

Article 234 (ex Article 177) of the Treaty establishing the European Community² provides as follows:

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

- a) the interpretation of this Treaty;
- b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- c) the interpretation of the statutes of the Council, where those statutes so provide.

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 judgement, request the Court of Justice 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 of Justice.

The Statutes and Rules of Procedure of the EC Court of Justice contain more specific provisions concerning preliminary ruling procedure. These provisions deal specifically with procedure in the EC Court of Justice. The Court of Justice has also issued an information note on references by national courts for preliminary rulings.

The wording of Article 234 (ex Article 177) of the EC Treaty has remained the same, with the exception of an amendment made by the Maastricht Treaty to the effect that a request for a preliminary ruling may also concern the validity or interpretation of an act of the European Central Bank³.

In matters of visa, asylum and immigration policy included in the Treaty establishing the European Community through the Treaty of Amsterdam (Title IV of the EC Treaty), a reference for preliminary ruling can only be submitted by a court of the

² Hereafter this article of the Treaty establishing the European Community will be referred to as Article 234 of the EC Treaty.

³ Under Article 110 (ex Article 108 a) the ECB can issue regulations, make decisions and give recommendations and opinions.

last instance (Article 68(1) of the EC Treaty), which is also obliged to do so under Article 234 of the EC Treaty.

Police and judicial cooperation in criminal matters has remained outside the remit of the EC Court of Justice in pillar III, as cooperation between Member States (Treaty on European Union, Title VI). On the basis of Article 34 of the Treaty on the European Union, the Council may, by unanimous decision, approve for instance framework decisions to approximate legislation and certain other decisions, and conclude conventions. Article 35 of the Treaty lays down provisions on the jurisdiction of the EC Court of Justice to give preliminary rulings on such decisions and conventions. Adoption of this judicial procedure is optional for Member States, however. A Member State can also restrict the right to request a preliminary ruling to courts of the last instance. Another special feature is that these courts are not obliged to request a preliminary ruling. In this respect the system derogates essentially from the procedure laid down in Article 234 of the EC Treaty.

Article 150 of the Treaty establishing the European Atomic Energy Community is largely equivalent to Article 234 of the EC Treaty. The preliminary ruling procedure is also included in the Treaty establishing the European Coal and Steel Community. Article 41 of this Treaty specifically states that only the EC Court of Justice has the jurisdiction to give a preliminary ruling on the validity of the norms and individual case decisions made by the Commission or the Council. This provision thus originally forced national courts to refer matters to the EC Court of Justice for a preliminary ruling if they were unable to come to a direct conclusion that a decision made by the Commission or the Council was valid. No equivalent specific requirement is evident in Article 234 of the EC Treaty, but the EC Court of Justice has pointed out that the requirement also applies to this Article.⁴

The preliminary ruling procedure has been included - partly in a modified form - in certain agreements between Member States based on Article 293 (ex Article 220) of the EC Treaty. The most important of these continues to be the Brussels Convention on the jurisdiction of courts of law and the enforcement of

⁴ Judgement of October 22, 1987, 314/85, Foto-Frost, ECR 4225. The EC Court of Justice has correspondingly decided that the procedure referred to in Article 41 of the Treaty establishing the European Coal and Steel Community can also be applied to a preliminary ruling question concerning interpretation of the Treaty, Judgement of February 22, 1990, C-221/88, Busseni, ECR I-495.

judgements in civil cases. The attached protocol agrees on the preliminary ruling procedure.⁵

The new Article 225 in the Treaty of Nice would, unlike the currently valid law, allow transfer of authority to the EC Court of First Instance in preliminary rulings, too, but this could only apply to certain special areas defined more closely in Statutes. The Statutes of the EC Court of Justice which form part of the Treaty of Nice do not yet include such provisions.

The above shows that there has been no need to amend the preliminary ruling procedure radically and that its amendment has not been considered a solution to the problems of the EC Court of Justice, which relate specifically to the large number of cases and consequent long handling times.

Plans for developing the EC Court of Justice have suggested restrictions on the rights of courts of lower instance to refer matters for a preliminary ruling. This has been done in some special agreements and in certain areas. Another alternative would be to give the EC Court of Justice discretionary powers to decide whether it will give an answer to the question presented or not (a permit system of a kind). This would transfer to the EC Court of Justice some responsibility for assessing the need for a preliminary ruling. A third alternative is to amend Article 234(3), obliging courts of last instance to refer matters for preliminary ruling.

This general report will concentrate on looking at Article 234 of the EC Treaty in the area of its basic application within the framework represented by the list of questions.

⁵ Concerning other agreements, see particularly the 1968 Convention on the mutual recognition of companies and legal persons, the Convention on the law applicable to contractual obligations (Rome Convention, 1980) and the 1998 Convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters (Brussels II).

Article 107 and Protocol 34 of the agreement on the European Economic Area contain provisions on the possibility of an EFTA country to adopt a procedure in which a court of its own can request a preliminary ruling on the interpretation of an EEC norm from the EC Court of Justice.

3. GENERAL QUESTIONS

3.1. National procedures resembling the preliminary ruling procedure referred to in Article 234 of the EC Treaty (question 1.1)

The preliminary ruling procedure laid down in Article 234 of the EC Treaty was originally influenced by certain national systems, particularly those of Italy and Germany, where matters are referred to the Constitutional Court for a preliminary ruling, and the French system, in which general courts can refer matters to administrative courts for a preliminary ruling, or vice versa.⁶ Those drawing up the founding treaties had hardly any international models to follow, and in this respect the preliminary ruling procedure has been and continues to be an advanced form of cooperation between a national court and an international court.

In some original and more recent Member States, the preliminary ruling system was unknown. On the other hand, the procedure referred to in Article 234 of the EC Treaty has been a model for the establishment of certain subsequent national procedures. In this respect, too, there has been interaction between national and EC law.

Of all the Member States, only Denmark, the Netherlands, Finland, and the United Kingdom (England and Wales) do not have any national preliminary ruling procedure. Sweden has no such procedure in the administrative court system, but a general court can refer matters to the Supreme Court for a preliminary ruling. This requires agreement from all the parties concerned. The Supreme Court can refuse to give an answer if the issue is not significant in terms of future application of the law.

On the basis of the national reports, the preliminary ruling procedure takes four basic forms: reference for a preliminary ruling (i) to a Constitutional Court, (ii) to a court in another branch of law, (iii) to a court of last instance in the same branch of law and (iv) in order to settle jurisdiction over the subject matter between two branches, and also if courts with different jurisdictions have given conflicting rulings on a case.

Reference for a preliminary ruling concerning an act's constitutionality

⁶ See e.g. David W.K. Andersen, *References to the European Court*, 1995, pp. 5-6.

In Belgium, Austria, Italy, Luxembourg, Germany and Spain, Constitutional Courts handle matters referred by other courts for preliminary rulings on the constitutionality of acts. In Belgium, however, this only concerns provisions on equality, prohibition on discrimination and freedom of teaching under the Constitution; by the interplay of other provisions, this authority extends to certain provisions on the distribution of jurisdiction.

The grounds on which the court handling the main cause of action can itself deem an act constitutional are regulated in various ways. In Germany, reference of the question to the Constitutional Court requires that the court handling the main cause of action is convinced that the act is unconstitutional. Belgian law incorporates the 'acte clair' and 'acte éclairé' principles which, however, do not apply to the duty to refer a matter for a preliminary ruling in the case of courts whose decisions can be appealed. In Italy, reference for a preliminary ruling need not be made if the question of unconstitutionality is obviously groundless.

A ruling by the Constitutional Court is binding but the systems vary concerning whether this extends beyond the case at hand.

Preliminary ruling to solve a conflict of authority between two branches of law

The most advanced manner of solving conflicts of authority can be found in France, where the issue is solved by a special court (Tribunal des Conflits) consisting of members of the courts of last instance in the various branches of law. The Conseil d'Etat can then refer to the Tribunal des Conflits a matter concerning the division of authority between general courts and administrative courts (correspondingly, the Cour de Cassation can do the same in a current case). Handling of the main cause of action is suspended until the Tribunal des Conflits has given its ruling, which then binds all the courts.

Coordination of conflicting rulings by different branches of law

The courts of last instance in the five branches of law in Germany (Bundesgerichtshof, Bundesverwaltungsgericht, Bundessozialgericht, Bundesfinanzgericht and Bundesarbeitsgericht) form a joint senate that handles cases in which a court of last instance intends to derogate from the legal practice of another court of last instance or of the joint senate.

In Greece, a matter can also be referred to a special court (Supreme Special Court/Cour Spéciale Supérieure) for a preliminary ruling concerning the interpretation or constitutionality of an act if two of the three courts of last instance (Conseil d'Etat, Cour de Cassation and Cour des Comptes) have given conflicting rulings. Rulings by the special court have an erga omnes effect. This court also handles references for preliminary rulings, deciding whether a certain norm of international law is generally recognized. If such a question arises in any Greek court, the court will refer the matter to the above special court for a preliminary ruling.

Reference to a court in another branch of law for a preliminary ruling

A ruling in the main cause of action may require an opinion concerning a question which, as a main cause of action, would fall within the branch of law of another court. Under such circumstances the court must in some countries suspend the main cause of action and refer the preliminary question at hand to this other court for an opinion. A system of this kind exists in France, Portugal and Germany. The procedure (at least in France) may be that, in derogation from the procedure laid down in Article 234 of the EC Treaty, the court referring a matter for a preliminary ruling does not refer it immediately to the relevant court; rather, a party in the matter must institute proceedings within a set period of time.

As a related special case, we might mention the Belgian system, in which the Conseil d'Etat suspends a handling while a party in the matter institutes proceedings in a general civil or criminal court concerning whether the procedural materials pertaining to the matter pending in the Conseil d'Etat have been forged in some respect.

Reference to a court of higher instance for a preliminary ruling

In order to get a fast decision by a court of last instance, some countries have adopted a procedure in which a court of lower instance may refer a matter to a court of higher instance for a preliminary ruling bypassing the ordinary appeal procedure. In France, an administrative court of first instance (tribunal administratif) and the administrative court of appeal (cour administrative d'appel) can request an opinion (avis contentieux) on a legal question in connection with a main cause of action if this legal question is new, particularly difficult and comes up in a number of cases. The question is submitted to the Conseil d'Etat, which must reply within three

months. The opinion is not formally binding. In Greece and Portugal, plans are being made to adopt a similar practice.

Sweden does not have such a procedure in the administrative court system, but a general court of first instance can refer matters to the Supreme Court for a preliminary ruling. However, this requires agreement from all parties. The Supreme Court may refuse to give an answer if the question is not significant in terms of future application of the law.

In civil cases handled by the Irish District Court, a party can ask the judge to refer a question of law to the High Court for determination. Correspondingly, the Circuit Court can refer a legal question to the Supreme Court for determination. In criminal cases, such a procedure applies to the District Court but not the Circuit Court.

The 1998 Scotland Act (establishing the Scottish Parliament and the Scottish Executive) created a kind of preliminary ruling procedure in which a court of lower instance refers a matter to a court of higher instance for a ruling on whether laws passed by the Scottish Parliament and administrative decisions by the Executive are valid when assessed by certain criteria. For instance, if a law or an administrative decision is claimed to be in conflict with EC law or the European Convention of Human Rights, a court of lower instance can refer the question to a court of a higher instance for a preliminary ruling.

The Belgian Conseil d'Etat has a further internal preliminary ruling procedure in which a party can request the ordinary composition of the Conseil d'Etat to submit to the extended composition of the Conseil d'Etat (assemblée générale de la section d'administration) a question concerning the conformity of administrative decisions or lower-level legislation with Articles 10, 11 or 24 of the Constitution.

3.2. Other international preliminary ruling arrangements (question 1.2)

The preliminary ruling procedure has spread very little internationally outside the EC Court of Justice.⁷ As stated earlier, the EC Court of Justice gives preliminary rulings also outside the actual sphere of EC law on the basis of certain international agreements.

⁷ See Jean Moussé, *Le Contentieux des organisations internationales et de l'Union européenne*, 1997, pp.175-180.

The Community Patent Convention of 1989 includes a court system in which a specially established court of appeal would in certain cases give national courts preliminary rulings (the Convention also incorporates other preliminary ruling procedures). The agreement is not yet in force.

Belgium, the Netherlands and Luxembourg formed the Benelux Economic Union in 1958. Within that framework, they entered into an international agreement in 1965, establishing the Benelux Court of Justice (Benelux Gerechtshof, la Cour de Justice Benelux), whose jurisdiction includes the issue of preliminary rulings concerning common legal provisions. Its jurisdiction covers only the interpretation of norms and not invalidity, since the Benelux Economic Union does not issue secondary norms.

A national court can decide not to refer a matter for preliminary ruling if the question does not prompt justified doubts concerning the answer, or if a previous ruling has already been given by the Benelux Court of Justice. These grounds were expressed in a specific provision in the 1965 agreement referred to above. The agreement also stipulates that a particularly urgent matter need not be referred for a preliminary ruling.

In its judgment of November 4, 1997 on *Parfums Christian Dior*, C-337/95 (ECR I-6013), the EC Court of Justice decided that the Benelux Court of Justice is a court as referred to in Article 234 of the EC Treaty, which can thus refer matters to the EC Court of Justice for a preliminary ruling.

As EFTA countries participating in the European Economic Area, Austria, Sweden and Finland joined a 1994 arrangement giving national courts a possibility (but not the duty) to refer matters to the EFTA Court of Justice for preliminary opinions concerning legal provisions within the European Economic Area. The opinion was not formally binding. The EFTA Court of Justice continues to operate, with Norway, Iceland and Liechtenstein participating.

3.3. National supplementary provisions concerning the procedure referred to in article 234 of the EC Treaty (question 1.3)

The preliminary ruling procedure referred to in Article 234 of the EC Treaty is based directly on this Article and cannot be

restricted or otherwise amended by national legislation.⁸ On the other hand, the community law does not have rules on the details of the procedure followed in national courts, which is a national process. It is notable that national legislations only exceptionally incorporate specific norms concerning the preliminary ruling procedure. As the example reported by Greece shows, the relation of such national norms to Article 234 of the EC Treaty must be assessed carefully.⁹

In Scotland, the procedural rules of the Court of Session and the High Court of Justiciary include concise provisions on how references for preliminary rulings should be drawn up. In both courts, the formulation of the preliminary ruling questions has been left to the parties under court supervision. The rules stipulate that attention should be paid to the instructions issued by the EC Court of Justice concerning references for preliminary rulings. A reference for a preliminary ruling must not be submitted before the appeal period has elapsed or, if an appeal has been filed, before a ruling has been given thereon.

In England and Wales, Civil Procedure Rules regulate the procedure, whereby preliminary ruling procedures take place in civil courts (with the exception of the House of Lords). As in Scotland, the rules do not concern the time of submitting a preliminary question, but only practical issues. There are rules allowing a reference for a preliminary ruling to be made on a court initiative or at the request of an interested party, concerning the drawing up of a decision on reference for a preliminary ruling, suspension of handling of the main cause of action, and the effect of an appeal on submission of the reference for a preliminary ruling.

A request for a preliminary ruling is submitted when the appeal period has elapsed or, if an appeal has been filed, when a ruling has been given on the appeal. In practice, references for preliminary rulings are submitted before the appeal period has elapsed, however. More specific instructions concerning references for preliminary rulings have been issued in instructions issued by the High Court and the Court of Appeal.

In Austria, there are national provisions on suspending a handling when a matter is referred for a preliminary ruling.

⁸ See Judgment of January 16, 1974, 166/73, Rheinmülen, ECR 33 and judgment of March 9, 1978, 106/77, Simmenthal, ECR 629.

⁹ An act passed in 1984 stipulated that if the Greek Conseil d'Etat's division considered reference for a preliminary ruling it was to refer the matter to the Conseil d'Etat's plenary session; this act was repealed in 1987 since it was considered to be in conflict with article 234 of the EC Treaty.

The Danish report states that in criminal cases in which EC law is relevant and in which a matter may be referred for a preliminary ruling, the prosecutor must submit the matter to the Ministry of Justice in order to receive instructions on whether the matter should be referred for a preliminary ruling and how the question should be formulated (circular from the State Prosecutor of August 17, 1978). This procedure binds the prosecuting authorities. The court handling of the matter is suspended until an answer is received from the ministry.

3.4. Appeal to a court of higher instance against a decision of a court of lower instance to refer or not to refer a matter for preliminary ruling (question 1.6)

Internal national appeals against decisions by courts of lower instance can be filed in principle in the following situations concerning preliminary rulings: first, separate appeals against decisions by courts of lower instance to refer an issue for a preliminary ruling; second, appeals against decisions turning down a party's demand that a preliminary ruling be given; third, appeals against rulings on main causes of action on the basis that the matter has or has not been referred for a preliminary ruling.

EC law does not prevent appeals in accordance with national law against decisions to refer a matter for a preliminary ruling. If such an appeal is made, the EC Court of Justice will adjourn the handling concerning the preliminary ruling at the request of a national court. The EC Court of Justice would thus appear to be neutral in terms of the appeal arrangements, at least insofar as the appeal is based on general national procedural provisions.

The procedural provisions of most Member States are uniform, in that interim decisions given before handling of the main cause of action has ended concerning reference for a preliminary ruling cannot be appealed separately, and that appeals can be filed only in the context of the main cause of action. Separate appeals are possible on the basis of general provisions at least in England, Wales, Scotland, France, Portugal and Denmark. Such separate appeals are rare, however, though there are individual cases in which a court of higher instance has reversed an interim decision by a court of lower instance to refer a matter to the EC Court of Justice for a preliminary ruling.

In the case of Swedish general courts, it might be possible to appeal separately against a decision, made by a court of first instance, to refer a matter for a preliminary ruling on the basis that this would prolong the process unnecessarily.

It can further be concluded from the reports that appeals filed against court decisions on whether or not to refer a matter for a preliminary ruling in the context of the main cause of action have no significant importance either, at least not in terms of their number.

3.5. Effect of restrictions concerning appealing on the application of Article 234(3) of the EC Treaty. Special channels of appeal against a decision of a court of last instance on the basis that Article 234 has been misapplied (question 1.4)

A 'concrete theory' has been established in legal practice for assessing which courts are courts as referred to in Article 234(3) of the EC Treaty whose decisions cannot be appealed. Thus, also courts other than a country's court of last instance or the courts of last instance in various branches of law may be obliged to refer certain matters for a preliminary ruling.

Appeals to courts of last instance are usually restricted. National reports show that two techniques are primarily applied, and that they may overlap. First, appeals may be subject to permit, so that permits are granted by either the court that has given the decision appealed and/or a relevant court of higher instance. Second, appeals may be restricted to cassation appeals in which facts cannot be queried, only matters of law. Such restriction of appeal raises the question of whether courts of lower instance should be regarded as courts as referred to in Article 234(3) of the EC Treaty.

Cassation appeals are not considered to cause such consequences, but the permit system is somewhat more open to interpretation. The EC Court of Justice has not had to take a stand on this issue yet.¹⁰

According to the reports, permit systems in which a permit is applied for through an application submitted to a court of last

¹⁰ This question is related to the pending case C-99/00, Lyckeskog (reference for a preliminary ruling by the Swedish court of appeal in the matter of the effect of appeals to the Swedish Supreme Court being subject to permit). See the Advocate General's suggestion for a ruling on February 21, 2002, which takes the stand that the fact of appeals being subject to permit does not make a court of lower instance a court as referred to in Article 234 of the EC Treaty.

instance are common in Sweden and France and to a limited degree in Finland. England, Wales and Germany have extensively used systems in which permit to appeal can be granted by a court of lower or higher instance.

France and Germany find that a permit system does not make a court of lower instance a court as referred to in Article 234(3) of the EC Treaty. According to the reports from England, Wales, Finland and Sweden, this issue would appear to be open to debate.

In Denmark, appeals against decisions on matters of lesser economic importance by a court of lower instance (city court) require a permit issued by a special independent council (Processbevillingsnaevnet). In such situations the court of lower instance is considered to be a court of last instance in the sense referred to in Article 234(3) of the EC Treaty.

Apparently, potential uncertainty concerning the effect of appeal restrictions on the duty of courts of lower instance to refer matters for a preliminary ruling has not caused very extensive problems, since a court of last instance can take the requirements of Community law into account when considering grant of a permit.

The reports show that action by a court of last instance in applying Article 234 of the EC Treaty could be assessed by the Constitutional Courts in Germany or Spain.

In Germany, decisions by courts and other authorities can be appealed to the Constitutional Court through special legal channels on the basis that basic rights have been violated. The right to have a question referred to the EC Court of Justice on the basis of Article 234(3) of the EC Treaty is such a basic right. According to this, the Constitutional Court in one case (Judgment of January 9, 2001) found that the Bundesverwaltungsgericht had violated this basic right by not referring a matter to the EC Court of Justice for a preliminary ruling. The Constitutional Court returned the matter to the Bundesverwaltungsgericht, which subsequently referred it for preliminary ruling.

According to the Spanish report, it might be possible to file a 'Recurso de amparo' to the Constitutional Court concerning a decision by a court of appeal of last instance refusing to refer the matter for preliminary ruling on the basis that the right to a court handling, which is a fundamental right, has been violated. So far the Constitutional Court has rejected appeals made on this basis.

3.6. Constitutional Courts and Article 234 of the EC Treaty (questions 1.5 and 1.6)

It has already been pointed out that it may be within the jurisdiction of a Constitutional Court to supervise the work of courts of last instance in the application of Article 234(3) of the EC Treaty (Germany and Spain). Apart from this, the position of a Constitutional Court can be assessed in the light of Article 234 of the EC Treaty in respect of whether it, too, can be obliged to refer a matter to the EC Court of Justice for a preliminary ruling. Another problem may arise from the relationship between a national reference to a Constitutional Court for a preliminary ruling and the reference for a preliminary ruling referred to in article 234 of the EC Treaty.

Of the Constitutional Courts of the EC Member States, the Belgian Cour d'Arbitrage and the Austrian Verfassungsgerichtshof have referred matters for preliminary ruling.¹¹

In investigating the constitutionality of acts, the French Conseil Constitutionnel does not investigate the relationship of acts to international agreements or to EC law. In processing complaints on elections the Conseil Constitutionnel can instead also consider the compatibility of a provision with an international agreement. In this context, the issue of referring a matter to the EC Court of Justice for a preliminary ruling might arise in theory.

The Italian report notes that the Italian Constitutional Court is not a national court as referred to in Article 234(3) of the EC Treaty and that it cannot thus refer matters for preliminary rulings. If consideration of the constitutionality of an act involves a question concerning interpretation of EC law, the Italian court should refer the matter to the EC Court of Justice for a preliminary ruling before referring it to the Constitutional Court for a preliminary ruling.

The Portuguese Constitutional Court investigates the constitutionality of acts primarily by ruling on decisions by other courts. Some authorities may also request consideration of an act's constitutionality in abstracto. In principle, the

¹¹ Judgment of July 16, 1998, C-93/97, Fédération Belge des Chambres Syndicales de Médecins, ASBL, ECR I-4837 and judgment of November 8, 2001, C-143/99, Adria-Wien Pipeline GbmH, Wietersdorfer & Peggauer Zementwerke GmbH, ECR I-8365 and pending case C-465/00, Österreichischer Rundfunk E.A.

Constitutional Court might, in the context of such a measure, be required to interpret EC law, too, and thus to refer a matter to the EC Court of Justice for a preliminary ruling.

The German Constitutional Court is of the opinion that it is required to refer a matter to the EC Court of Justice for a preliminary ruling when necessary.

It is not within the jurisdiction of the Luxembourg Constitutional Court to investigate whether an act is consistent with EC law. Likewise, it is not within the jurisdiction of the Spanish Constitutional Court to handle questions of EC law concerning which a request for a preliminary ruling should have been made.

There is no Constitutional Court in Greece. Instead, the Cour Spéciale Supérieure has ruled in a judgment that it cannot consider the relationship of national law to EC law when it receives a request for a preliminary ruling on conflicting decisions by courts of last instance. The Cour Spéciale Supérieure noted that it would otherwise have parallel jurisdiction to the EC Court of Justice, which would prevent national courts of last instance from referring matters direct to the EC Court of Justice for preliminary rulings.

Finally, we might note that there is no Constitutional Court in Ireland, Denmark, the Netherlands, Sweden, Finland, Scotland, England and Wales.

3.7. Statistical data concerning matters related to Community law in national courts (questions 1.8 and 1.13)

Annex II to the general report consists of a simplified table based on the national reports concerning the relative number of cases related to Community law in courts of last instance. On the other hand, it must be noted that it is difficult to determine which matters are related to Community law, since Community and national law are usually applied in parallel.

This information shows that cases related to Community law are still a clear minority in matters to which national law is solely or essentially applied, in spite of the fact that the role of Community law has increased in the past few years and continues to increase. The figures vary from court to court, ranging from a few per cent to close on one third of all cases. This is probably explained for the most part by differences in jurisdiction over the subject matter.

It comes as no surprise that the figures for Community law are considerable in such key areas as indirect taxation, customs, social welfare, agriculture and public procurement. It is perhaps slightly surprising that there were so many mentions concerning direct taxation in spite of the fact that there is no harmonized secondary legislation in this sector.

Appendix III gives the references for a preliminary ruling by courts of last instance in table form, particularly for the period 1995-2001.

3.8. Internal arrangements in national courts for the preparation and handling of cases related to Community law (question 1.10)

The national reports give the fairly consistent impression that matters related to Community law are prepared and handled following ordinary procedure and using normal modes of information acquisition. Thus, special arrangements are resorted to only exceptionally, and concern only acquisition of information on Community law and not the handling of the actual case.

In Austria, a special unit for literature and other material on Community law has been set up in the Verwaltungsgerichtshof. Community law has also been taken into account in the electronic documentation of the Verwaltungsgerichtshof legal practice.

A special unit, 'Cellule de droit communautaire', was set up in France in 1998. It is led by a former judge of the EC Court of First Instance and its job is to produce services related to Community law. This unit has regular contact with the documentation unit of the EC Court of Justice (and similar units in the European Parliament and Commission).

The Raad van State in the Netherlands has formed a small group of court members that the division handling a case in question can consult in matters related to Community law in general. The Raad van State also participates in an unofficial group of members of courts that discusses matters related to Community law. We might also mention that the College van Beroep voor het bedrijfsleven court has two judges coordinating matters of Community law.

According to the national reports, the web pages of the EC Court of Justice are an important source of information and are used a great deal. General satisfaction with the pages was

expressed. Suggestions for improving the web pages concern primarily better search functions (search words and judgment summaries). It is considered a serious defect that it is difficult to access information on pending matters not only on the web pages, but otherwise, too. Very few courts contact the EC Court of Justice documentation unit direct, for instance.

The Member States have no special arrangements concerning contact or information exchange between courts within the individual States in matters related to Community law. The above-mentioned unofficial group of courts in the Netherlands is an exception.

When matters related to Community law are handled in national courts it is only in some cases that efforts are made to investigate law or legal practice in other countries. The reports report difficulties in finding such information.

National courts are not generally in touch with the Commission when handling matters related to Community law. The Spanish report mentions a few contacts with the Commission regarding matters of state aid and competition. The Greek Conseil d'Etat has consulted the Commission in one case (the 'feta' case, which was referred for a preliminary ruling in 1995 though the reference was later cancelled). The College van Beroep voor het bedrijfsleven consulted the Commission in one case on a matter of the validity of an EC legal act. Some reports specify that there is nothing in principle to prevent contact with the Commission and that this could be done, particularly in state aid matters. The French Conseil d'Etat points out that it does not consult the Commission in state aid or competition matters either, because of the delay this causes in handling the matter.

Finally, we must point out that, in both Great Britain and Ireland, it is an essential element of the general role of lawyers involved in the process to present material pertaining also to the substance of Community law and legal practice. In this respect there would appear to be a significant difference between these countries and the other Member States in the duty of a judge to investigate the matter on his own initiative.

3.9. Application of Community law ex officio (question 1.9)

Effective implementation of Community law already favours the idea that the national courts should also possess extensive powers to allow ex officio for the requirements of Community law. This view is also supported by the fact that Community law

often determines the relations between private and public interests. On the other hand, Community law is applied in national courts that are organised in different ways and observe varying procedures. Community law recognises these aspects of national autonomy. This state of affairs leads to tensions, and particularly in recent years the European Court of Justice has issued several judgements that take a position on national rules of procedure, especially in so far as these may be viewed to be discriminatory or in respect of whether they are adequate to satisfy the requirement of efficient implementation of Community law. In this connection the European Court of Justice has also had to assess the extent to which a national court must allow, *ex officio*, for the application of Community law¹². It remains a difficult matter to draw far-reaching conclusions from this case law. This currently somewhat unclear situation is reflected in differences between the national courts of the various Member States.

The national reports indicate that there are no general impediments of principle to the *ex officio* consideration of Community law in (the courts currently under review in) most countries. On the other hand, such consideration seldom occurs in practice. It would thus appear that in practice responsibility usually remains with the concerned parties. However the Swedish Regeringsrätten and the Supreme Administrative Court of Finland have taken a particularly active role.

The report from France specifies that the Conseil d'Etat gives no *ex officio* consideration to conflicts between national provisions and European Community Directives. On the other hand, the Conseil d'Etat has submitted all of its references for preliminary rulings on its own initiative, which indicates its active role in allowing for the requirements of Community law. The report from Spain, on the other hand, stresses that in cassation appeals the Tribunal Supremo is bound by the appeal grounds submitted by the concerned parties. When serving as the first and final appeal instance for government decisions, the Tribunal Supremo has, in certain cases, applied Community law in an *ex officio* manner.

¹² See, for example, the judgements C-430 and 431/93 of 14 December 1995, *Van Schijndel / Stichting Pensioenfonds voor Fysiotherapeuten* (Rec. 1995, p. I-4705), C-312/93 of 14 December 1995, *Peterbroeck, Van Campenhout & Cie / Belgian State* (Rec. 1995, p. I-4599), C-72/95 of 24 October 1996, *Kraaijeveld and others* (Rec. 1996, p. I-5403), C-126/97 of 1 June 1999, *Eco Swiss* (Rec. 1999, p. I-3055), C-240 - 244/98 of 27 June 2000, *Océano Grupo Editorial and Salvat Editores* (Rec. 2000, p. I-4941) and C-344/98 of 14 December 2000, *Masterfoods and HB* (Rec. 2000, p. I-11369).

The reports from Great Britain and the Republic of Ireland indicate that the leading role of counsel in clarifying the matter also with respect to the applicable law is reflected in references to Community law. It is not, however, entirely unknown for the court to take up, *ex officio*, a matter of Community law.

The general principle in civil actions (which here include administrative matters) in Denmark is that the court limits itself to the claims and pleas of the concerned parties. This means that recourse to Community law generally depends on the concerned parties. This, however, does not exclude the possibility that the court may, in important Community law cases, take up a question of Community law *ex officio* and ask the concerned parties to express their views on the Community law applicable to the case and on the need to submit a reference for a preliminary ruling. In practice, however, there are no Supreme Court judgements on whether Community law should be applied *ex officio*. In one case the court of first instance (the city court) submitted a reference for a preliminary ruling despite the wishes of the concerned parties.

3.10. Hearing of the Commission when considering the invalidity of a Community act in a national court (question 1.12)

When assessing the invalidity of a Community act and the associated need to submit a reference for a preliminary ruling to the European Court of Justice, one approach to clarifying the matter could be to hear a representative of the Commission (or of the Council) before a national court. The reports indicate, however, that this procedure has not been applied or that such a hearing has not even been deemed possible under national procedural rules.

One exception to this is the *College van Beroep voor het bedrijfsleven* in the Netherlands, which gave the Commission an opportunity to be heard in one case before submitting a reference for a preliminary ruling (judgement of 17 July 1997, C-183/95, *Affish*, Rec. 1997 p. I-4315). This case concerned the validity of Commission Decision 95/119/EC concerning certain protective measures with regard to fishery products originating in Japan, and of an associated national decision issued pursuant thereto¹³.

The report for England and Wales refers, in respect of a particular case, to the fact that there would appear to be no impediment in principle to the idea of the Commission appearing as an intervening party in proceedings.

¹³ At the European Court of Justice the Commission requested the Court to supplement its case law with respect to the conditions upon which a national court may impose a stay of execution on an administrative measure taken by a national public authority pursuant to a Community law statute the validity of which has been challenged. According to the Commission, in a case of this kind the Community institution that issued the statute must be given an opportunity to be heard in the national court. However, the European Court of Justice did not examine this proposal as it was not included in a reference for a preliminary ruling.

4. REFERENCES FOR A PRELIMINARY RULING

4.1. References for a preliminary ruling ex officio and at the request of concerned parties (question 2.1 in part)

From the point of view of the European Court of Justice responsibility for seeking a preliminary ruling ultimately rests with the national court. The extent to which the reference for a preliminary ruling is submitted on the initiative of a concerned party or of the court itself is, in part, a further question.

The information provided in the reports indicates great variation in whether the initiative of a concerned party is emphasised in references for preliminary rulings. These variations would seem to be at least partly influenced by differences in national procedural systems. In those systems where the role of counsel in clarifying the case is considerable, such as Great Britain, the Republic of Ireland and Denmark, references for preliminary rulings are generally submitted on the initiative of concerned parties. On the other hand, it is in practice not excluded that such a reference could occur on the initiative of the court.

In many other countries it has also generally been the concerned party that takes the initiative. For example Raad van State in the Netherlands has issued only one reference for a preliminary ruling on its own initiative, in case C-72/95, Kraaijeveld (judgement of 24 October 1996, Rec. 1996, p. I-5403). A reference for a preliminary ruling on the initiative of the Centrale Raad van Beroep court has been submitted on only one or two occasions. On the other hand, the Hoge Raad has, particularly in matters concerning value-added tax, often submitted references for preliminary rulings on its own initiative.

The report from France includes an interesting note to the effect that the Conseil d'Etat has submitted all of its references for preliminary rulings ex officio, without a specific proposal by the concerned parties for such a procedure.

4.2. Requests of concerned parties for a preliminary reference and justification of decisions to refuse such requests (question 2.1 in part)

As the national courts generally compile no separate statistics on requests by concerned parties that references for

preliminary rulings be submitted, the national reports have mostly been able to provide only estimates. The number of such requests also varies according to the type of case.

However, the report of the Belgian Conseil d'Etat was able to state that in 30 cases out of a total of 2,560 concerning the application of Community law since 1991 the Conseil d'Etat has supplied a definitive response to the proposal of a concerned party that a reference for a preliminary ruling be submitted (this issue may, however, also have been aired on the initiative of a concerned party in other cases as well). Between 1995 and October 2000 the French Conseil d'Etat entertained only 15 explicit proposals of this kind. This figure is very small by comparison with the overall volume of business of this organ.

Over the period 1997 - 2001 the Danish Supreme Court received a total of ten requests by concerned parties that a reference for a preliminary ruling should be submitted. Some 10 to 15 such requests are entertained each year by the Dutch Raad van State and about ten are submitted to the College van Beroep voor het bedrijfsleven court annually. The report from the Netherlands also observes that the concerned parties are generally content merely to raise the issue of Community law. The Conseil d'Etat of Greece receives about five such proposals a year. The number of proposals is also relatively small at least in the case of the Portuguese Supremo Tribunal Administrativo, the German Bundesverwaltungsgericht and the Spanish Tribunal Supremo.

Generally speaking, all of the courts that are currently under consideration give justifications for their decisions to decline the request of a concerned party that a reference for a preliminary ruling be submitted - if necessary by referring to the case law of the European Court of Justice.

4.3. Frequency with which submitting a reference for a preliminary ruling has been considered, even though the reference was not eventually submitted to the European Court of Justice (question 2.2)

Most of the national reports indicate the difficulties involved in estimating the number of cases in which there has been serious consideration of submitting a reference for a preliminary ruling. The reports that are able to present precise or fairly precise figures for this may be divided into two groups. Firstly, there are the courts that seldom have to consider submitting a reference for a preliminary ruling and nearly always decide to do so in such cases. On the other hand, there are the courts that often have to consider such

possibility but finally decide to render judgement in the case without a preliminary ruling - which obviously quite often occurs because the request of the concerned party is unfounded.

Actual practice would appear to be influenced by the system in the Member State concerned. When the parties to a matter play an active role in the proceedings (Republic of Ireland, Scotland, England and Wales), references for preliminary rulings are submitted when so proposed by these parties and little or no consideration is given to submitting such references in other cases. Obviously the system in question has an impact on the respect afforded to the proposals of concerned parties that references for preliminary rulings be submitted.

The German report indicates that serious consideration is given to submitting a reference for a preliminary ruling in some 20 cases a year before the Bundesverwaltungsgericht. The corresponding annual figure for the Spanish Tribunal Supremo is no more than ten. At the Supreme Administrative Court of Finland the number of cases in which reference for a preliminary ruling is seriously considered but turned down is at least equal to the number of such references that are actually submitted. The number of cases of this kind before the Dutch Raad van State has been estimated at 15 to 20 a year, while the corresponding annual figure for the College van Beroep voor het bedrijfsleven court is between 5 and 10. Since 1991 the Belgian Conseil d'Etat has considered submitting a reference for a preliminary ruling in the course of reaching 51 judgements (over the same period the Conseil d'Etat has submitted 30 references for preliminary rulings).

4.4. Practical application of the criteria referred to in the CILFIT judgement (question 2.3)

In its CILFIT judgement no. 283/81 (Rec. 1982 p. 3415) issued on 6 October 1981 the European Court of Justice provided more precise criteria on the obligation under paragraph 3 of Article 234 of the EC Treaty to submit a reference for a preliminary ruling. These criteria include the theories known as *acte clair* and *acte éclairé*, which discharge a court from the obligation to submit a reference for a preliminary ruling. On the other hand, the *acte clair* grounds are limited by very narrow conditions¹⁴.

¹⁴ The European Court of Justice has defined an *acte clair* in the following manner: "the correct application of community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved."

The national reports indicate that the criteria set out in the CILFIT judgement form the basis for assessments by national supreme courts concerning their obligation to submit references for preliminary rulings¹⁵. The problems that arise in practice clearly concern, in the first place, how to allow for the requirement of speedy proceedings in the light of this obligation (this point is noted in the reports from Denmark, the Netherlands, Sweden, Finland and Spain). The margin of appreciation permitted under the CILFIT criteria has clearly enabled a certain "functional flexibility" in the application of paragraph 3 of Article 234 of the EC Treaty, even though it is clear that national courts have encountered almost insuperable harmonisation problems, particularly with respect to matters of urgency¹⁶.

The report concerning the French Conseil d'Etat presents an interesting estimate that over the period from 1 January 1978 to 30 September 2001 the Conseil d'Etat applied the acte clair theory with respect to European Community law on 191 occasions.

The report on England and Wales notes that in its case law the Court of Appeal has established "guidelines" for assessing

The European Court of Justice has further imposed, as criteria for applying this provision, the following conditions, which require attention to be paid to whether the norm to be interpreted is current mandatory law in several Member States and in several languages, and part of the Community law order:

- Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other member states and to the court of justice. Only if those conditions are satisfied, may the national court or tribunal refrain from submitting the question to the court of justice and take upon itself the responsibility for resolving it.
- however, the existence of such a possibility must be assessed on the basis of the characteristic features of community law and the particular difficulties to which its interpretation gives rise.
- the statutes of community legislation are drafted in several languages and the different language versions are all equally authentic. An interpretation of a provision or regulation of community law thus involves a comparison of the different language versions.
- even where the different language versions are entirely in accord with one another, community law uses terminology which is peculiar to it. Furthermore, it must be emphasised that legal concepts do not necessarily have the same meaning in community law and in the law of the various Member States.
- every provision or regulation of community law must be placed in its context and interpreted in the light of the provisions of community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.

See also the opinion of Advocate General Tizzano in case C-99/00, Lyckoskog. In this case both the Danish government and the Commission have proposed some degree of amelioration of the CILFIT criteria.

¹⁵ The Belgian report calls attention to the possible effect of the new paragraph 3 of Article 104 of the Rules of Procedure of the Court of Justice of the European Communities on how a national court should provide reasons for its reference for a preliminary ruling in relation to existing case law.

¹⁶ In this light the accelerated procedure prescribed in Article 104a of the Rules of Procedure of the Court of Justice of the European Communities may prove especially useful from the point of view of supreme courts.

whether it is obliged under Article 234(3) to submit a reference for a preliminary ruling. The principal factor is the difficulty and importance of the applicable provision of Community law. It is further noted that a reference for a preliminary ruling should be submitted if the courts are unable to resolve a matter "with complete confidence". Attention may also be paid to the impact of any delay on the concerned parties, to the question of whether any similar matter is already pending before the European Court of Justice, and to the wishes of the concerned parties.

4.5. Procedure in cases where a similar matter is pending before the European Court of Justice (question 2.4)

If a case is brought to a national court involving an issue of Community law that is currently covered by a reference for a preliminary ruling pending before the European Court of Justice, then the national court has to consider three alternatives as to how to proceed. It can await the preliminary ruling of the European Court of Justice, submit a new reference of its own for a preliminary ruling, or resolve the case without waiting for a preliminary ruling.

The most common practice followed is to wait for the forthcoming preliminary ruling without submitting a new reference, provided that the cases are sufficiently similar. On the other hand, the reports from England and Wales, and those from Scotland, Portugal and Sweden indicate that a supreme judicial instance may consider a point of law to be clear (*acte clair*), even though another court has submitted a reference for a preliminary ruling on the same point of law. In this respect the reports also indicate, as a factor hampering considerations, that it is not always easy to establish precisely which matters are currently pending before the European Court of Justice and the stage of consideration that these have reached.

The report from Italy refers to the principle that a supreme court may itself submit a reference for a preliminary ruling, because otherwise the parties to the principal claim will be unable to submit their points of view to the European Court of Justice. In practice, however, it has been possible to postpone the oral hearing until the European Court of Justice has issued its judgement in the identical matter.

4.6. Procedure in cases where several similar cases are pending that require a preliminary ruling (question 2.5)

The situation described has not been faced in all of the courts reviewed. For example it follows from the role of the German Bundesverwaltungsgericht as a court of precedent that such situations do not arise. The inferior courts wait for a judgement to be issued if the Bundesverwaltungsgericht has submitted a reference for a preliminary ruling in a similar case.

The reports indicate that it is quite common to submit only one reference for a preliminary ruling, whereupon both the supreme court and the inferior courts postpone consideration of other cases while waiting for the ruling.

In Denmark cases are combined and a single reference for a preliminary ruling is submitted. The inferior courts, in turn, postpone consideration of cases until the European Court of Justice has issued its response to a reference by the Supreme Court for a preliminary ruling, even if the views of the concerned parties are of great significance. The report from the Netherlands notes that the Raad van State submits a reference for a preliminary ruling in one or two, but not in all cases if the relevant questions can be addressed in this way. The report refers to one example in which it was necessary to submit a reference for a preliminary ruling in five different cases in order for the entirety to be perceived as a whole (cases C-307 - 311/00, Oliehandel Koeweit B.V. et. al.). The report from Sweden indicates that the reference for a preliminary ruling is submitted in the most typical case and the European Court of Justice is then advised that there are several similar cases pending (for example case C-292/97, Karlsson et. al., judgement of 13 April 2000, Rec. 2000, p. I-2737).

Efforts are made at the Belgian Conseil d'Etat to combine similar matters. This procedure ensures that all concerned parties have an opportunity to submit their views to the European Court of Justice. Such combinations are not always possible, however, if the number of cases pending is considerable (see, for example, case C-459/99, Mrax ASBL).

The view in Italy is that the adversarial principle requires a reference for a preliminary ruling to be submitted in every case pertaining to the same point of law.

The large number of similar cases pending and the delay occasioned by submitting a reference for a preliminary ruling may have an impact in certain situations when considering

submission of the reference (for example in the Netherlands and in Finland).

4.7. Preliminary rulings in procedures concerning precautionary measures (question 2.6)

A reference for a preliminary ruling may also be submitted when deciding on a stay of execution or on some other interim precautionary measure. Such a reference may, on the other hand, constitute a problem in view of the usual need to process such questions urgently. In this connection the European Court of Justice has actually specified the criteria that discharge the national court from the need to submit a reference for a preliminary ruling under paragraph 3 of Article 234 of the EC Treaty when the matter concerns a precautionary measure (judgement of 24 May 1977, Hoffmann-La Roche, 107/76, Rec. 1977 p. 957).

Most of the national reports state that the competent court has no experience of submitting a reference for a preliminary ruling in connection with a precautionary measure.

The Belgian Conseil d'Etat has, on the other hand, considered several cases in which it has been necessary to assess the relationship between the preliminary ruling and precautionary measure procedures. It has been the practice to submit no reference for a preliminary ruling, having regard particularly to the fact that the point of Community law may later arise when the principal claim is considered.

The Austrian Verwaltungsgerichtshof has submitted one reference for a preliminary ruling in a precautionary measure procedure. This concerned case no. C-65/98, Eyüp (judgement of 22 June 2000, Rec. 2000 p. I-4747). The Dutch College van Beroep voor het bedrijfsleven has also submitted one reference for a preliminary ruling in connection with a precautionary measure procedure.

The report from England and Wales refers to the Factortame case, in which the House of Lords submitted a reference for a preliminary ruling as a precautionary measure concerning the interim suspension of application of national law¹⁷.

¹⁷ See judgement of 19 June 1990, C-213/89, The Queen / Secretary of State for Transport, ex parte Factortame (Rec. 1990, p. I-2433).

4.8. References for preliminary rulings concerning the interpretation of Community law concepts that have been transposed into national law (question 2.7)

The European Court of Justice has also responded to certain references for preliminary rulings, in which the connection between the disputed point of law and Community law is limited to the issue that national law has borrowed a Community law concept for application to purely national situations¹⁸.

Most of the courts referred to in the national reports have not encountered questions of this kind.

In this kind of situation the Belgian Conseil d'Etat has put questions to the European Court of Justice concerning the status of third country national spouses of Community nationals.

The report for England and Wales refers to the European Court of Justice judgement C-346/93 of 28 March 1995, Kleinwort Benson / City of Glasgow District Council (Rec. 1995, p. I-615), in which the European Court of Justice rejected a reference by the Court of Appeal for a preliminary ruling on the grounds that the principal claim concerned a purely national situation. Certain provisions of the 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters had been borrowed by national law.

The report from Spain observes that a reference has been made to the Leur-Blom and Giloy case law when considering that a concept derived from Community law had to be given the same interpretation both in purely national and in Community law situations. On the other hand, there was no need to submit a reference for a preliminary ruling on this point.

The Greek Conseil d'Etat has encountered this issue on one occasion with respect to the interpretation of a term in the Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment Directive (85/337/EEC). In this case it was not considered necessary to submit a reference for a preliminary ruling.

¹⁸ See especially the judgement of 17 July 1997, C-28/95, Leur-Bloem / Inspecteur der Belastingdienst/Ondernemingen Amsterdam 2 (Rec. 1997, p. I-4161), and the judgement of the same day in case C-130/95, Giloy / Hauptzollamt Frankfurt am Main-Ost (Rec. 1997, p. I-4291).

4.9. Stage of proceedings when issuing a reference for a preliminary ruling. Hearing of concerned parties and other participation in submitting the reference (question 2.9)

The kind of procedure that should be followed in a national court when considering submitting a reference for a preliminary ruling has been specified neither in Community law nor in the associated case law of the European Court of Justice. Thus it is not a condition for examining the question of submitting a reference for a preliminary ruling that the concerned parties have been heard on the questions so referred, or that the reference should be submitted at a particular stage of the process. A memorandum published by the European Court of Justice states the following with respect to procedures when submitting a reference for a preliminary ruling:

A national court or tribunal may refer a question to the Court of Justice for a preliminary ruling as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgement. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or differences of opinion as to the interpretation or application of rules of national law. It is therefore desirable that a decision to make a reference should not be taken until the national proceedings have reached a stage where the national court is able to define, if only hypothetically, the factual and legal context of the question. In any event, the administration of justice may well be best served by waiting to refer a question for a preliminary ruling until both sides have been heard.

In its case law the European Court of Justice has stressed that it responds only to the questions put by the national court and not, for example, to questions raised by the concerned parties or amendments made by them to the questions of the national court. Even though the competence to submit and formulate a reference for a preliminary ruling is ultimately vested in the national court, Community law does not deny the concerned parties any influence over the form of the questions and actually considers hearing of the concerned parties to be desirable. This gives the national procedure some manoeuvring room in respect of the actual role of the concerned parties when considering the content of the questions.

The national reports indicate that the stage in the national process at which a reference for a preliminary ruling is submitted is chiefly governed by reasons of expedience. Often,

however, this stage comes in the final stages of the proceedings when the case has been extensively examined in other respects. While the concerned parties are generally heard, this is not an absolute principle in all systems. The greatest national differences may well arise on the issue of the actual role of the concerned parties in preparing the questions - as it is the practice in some countries for the concerned parties to formulate the questions, while other countries give the concerned parties a less active role.

At the Tribunal Supremo in Spain a reference for a preliminary ruling is submitted just before issuing the judgement. The concerned parties are heard on the need to submit the questions, if not on their formulation.

The German Bundesverwaltungsgericht submits a reference for a preliminary ruling at once when it has become clear that such a reference must be submitted. Although the concerned parties are heard, their role is not a significant one when considering the need to submit a reference for a preliminary ruling and formulating the questions.

At the Swedish Regeringsrätten a reference for a preliminary ruling is submitted at the stage when the case is clear in respect of points of fact and of law. The proposal to submit a reference for a preliminary ruling is sent to the concerned parties for comments.

The Cour Administrative in Luxembourg gives the concerned parties a hearing if submission of the reference for a preliminary ruling has been entertained ex officio. It is likewise a rule in Portugal to hear the concerned parties on issues pertaining to submitting a reference for a preliminary ruling.

The Greek Conseil d'Etat submits its references for preliminary rulings after the written and oral procedures have ended. The concerned parties may make proposals for submitting a reference for a preliminary ruling and on formulation of the questions to be put to the European Court of Justice. However, the decision to submit the reference is taken by the Conseil d'Etat and the concerned parties are not heard on its draft judgement.

In the Netherlands the concerned parties are usually given an opportunity to present their opinions on the submission of a reference for a preliminary ruling, and sometimes also on the formulation of the questions. It is an absolute rule in Italy that the concerned parties must be heard before deciding to submit a reference for a preliminary ruling.

At the Conseil d'Etat of France the concerned parties are also heard on the decision to submit a reference for a preliminary ruling, but their role is not especially significant when deciding to submit such a reference. The situation in Finland is similar: the concerned parties are heard, but not on the formulation of the questions.

The Belgian Conseil d'Etat generally submits a reference for a preliminary ruling at the stage where the proceedings are already quite advanced. The concerned parties are given an opportunity to offer opinions on submitting the reference for a preliminary ruling, even if they are not heard on the formulation of the questions put to the European Court of Justice.

In Austria there is no need to hear the concerned parties before submitting a reference for a preliminary ruling.

The Republic of Ireland, England and Wales, Scotland and Denmark form a special group, in so far as in these countries the concerned parties play a major role in formulating a reference for a preliminary ruling, even to the degree that the function of the national court largely remains merely to confirm the agreement reached by the concerned parties.

4.10. Legal form of the decision to submit a reference for a preliminary ruling and constitution of the court. Stay of proceedings in the principal action (questions 2.9 and 2.13)

The most common form of a decision to submit a reference for a preliminary ruling is a regular decision or interim decision of a normally constituted competent session of the national court. Such a decision may, however, be given a special name.

Submitting a reference for a preliminary ruling generally means a stay of proceedings. It is stressed in many national reports that urgent measures may be taken while the reference for a preliminary ruling is pending before the European Court of Justice. Many reports also note the possibility of continuing the proceedings of the national court in so far as they do not depend on the preliminary ruling. The report from the Netherlands explicitly states that the stay of proceedings applies only in respect of the Community law issue. In Greece the decision to submit a reference for a preliminary ruling may also be a final judgement with respect to the matters not covered by the reference for a preliminary ruling. Likewise the French Conseil d'Etat may issue a partial judgement in respect

of the claims that can be settled without reference to the preliminary ruling. This is also the situation in Luxembourg. The Scottish report stresses that submission of a reference for a preliminary ruling obviously does not prevent measures from being taken upon which the forthcoming preliminary ruling has no impact. The report from Denmark also notes that there is no impediment to continuing the proceedings in other respects. The report for England and Wales states that no automatic stay of proceedings occurs, and the national court has full discretion with respect to its proceedings while the reference for a preliminary ruling is pending before the European Court of Justice. The Swedish report notes in turn that while the administrative courts may render no partial judgement, the general courts are free to do so. Proceedings are also stayed in the administrative courts of Finland and no partial judgement may be issued.

4.11. Structure and content of the decision to submit a reference for a preliminary ruling (question 2.10)

A rather large number of national reports state or otherwise indicate that it is customary to comply with the instructions issued by the European Court of Justice concerning the content of a decision to submit a reference for a preliminary ruling. These instructions state the following:

[A reference for a preliminary ruling] must contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom the decision must be notified (the Member States, the Commission, and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings.

In particular, it must include an account of the facts which are essential for understanding the full legal significance of the main proceedings, an account of the points of law which may apply, a statement of the reasons which prompted the national court to refer the question or questions to the Court of Justice and, if need be, a summary of the arguments of the parties. The purpose of all this is to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.

The decision making the reference must also be accompanied by copies of the documents needed for a proper understanding of the case, especially the text

of the applicable national provisions. However, as the case-file or documents annexed to the decision making the reference are not always translated in full into the other official languages of the Community, the national court must make sure that its decision includes all the relevant information.

The report from the Republic of Ireland also stresses at this point that it is the task of the concerned parties to formulate the reference for a preliminary ruling.

Several national reports (Austria, Denmark, the Netherlands, Great Britain, Spain, and Finland) note that efforts are made to pay attention to translation problems when formulating decisions on references for preliminary rulings. According to the reports, this may affect the length of these decisions or the language used therein. On the other hand, some national reports state that these aspects have no effect. The briefest decisions (5-10 pages) are reported by Austria and the longest (up to 38 pages) by Greece. A length of 10-20 pages is quite normal.

4.12. Submission of an advance opinion of the national court as to the nature of the answer to be given to the reference for a preliminary ruling (question 2.10)

In the Netherlands (Raad van State) and in England and Wales the national court has, either generally or in certain cases, submitted its views of the responses to be given to the questions put.

The Belgian report states that while there is no impediment as such to submitting such advance opinions, the Conseil d'Etat has generally refrained from doing so. However, sometimes the report of the Auditeur preparing the matter also submits a view of the responses to be given and this report accompanies the reference for a preliminary ruling that is sent to the European Court of Justice.

The Austrian Verwaltungsgerichtshof does not generally offer its own views concerning a reference for a preliminary ruling. The same is true of the Republic of Ireland, Denmark and Portugal. Likewise the Scottish courts refrain at this stage from expressing their views on the response to be provided to the reference. To date, the Regeringsrätten in Sweden has not presented its own opinions of the response that should be provided to the questions posed. The Supreme Administrative Court of Finland also refrains from offering its own advance

opinion of the response to the questions put to the European Court of Justice.

The German Bundesverwaltungsgericht may offer an advance opinion on the responses expected from the European Court of Justice. However, this is not usual in practice. While the Tribunal Supremo of Spain may in principle express its own views, in practice it is content to submit various alternatives without taking a more detailed position on these.

The French Conseil d'Etat considers that it can offer no advance opinion on the responses to be given to the questions that it has put to the European Court of Justice. The Commissaire du gouvernement may, however, offer opinions in a proposal for settling the matter, but these do not bind the Conseil d'Etat.

It may therefore be held that on the whole the national courts are rather cautious with respect to presenting their own advance opinions on the expected response to the questions put to the European Court of Justice.

4.13. Effect of confidential information on a reference for a preliminary ruling (question 2.11)

According to the national reports, the issue of handling confidential documents or information has very seldom arisen. Sweden and Finland have some experience in this area in respect of references for preliminary rulings in taxation affairs (e.g. in case C-200/98, judgement of 18 November 1999, X and Y (Rec. 1999, p. I-8261)).

The following options for handling confidential information are presented in the national reports:

- Details whereby the case may be associated with a particular person are deleted from the documents, for example by replacing names with initials.
- The reference for a preliminary ruling is formulated in a manner that avoids divulging confidential information.
- Documents containing confidential information are not sent to the European Court of Justice.
- The European Court of Justice is advised that the documents provided contain confidential information.
- The concerned party who is the subject of the confidential information is asked to consent to the release thereof.

4.14. Cases for expedited consideration (question 2.12)

According to the national reports, only in the Netherlands and in England and Wales have requests been made to accelerate the processing of a reference for a preliminary ruling. Raad van State made a request of this kind in case C-81/96, judgement of 18 June 1998, *Burgemeester en wethouders van Haarlemmerliede en Spaarnwoude and others / Gedeputeerde Staten van Noord-Holland* (Rec. 1998, p. I-3923) Ruigoord According to the Dutch report, it is not known whether this request actually accelerated the matter. In a decision of 26 April 2001 *College van Beroep voor het bedrijfsleven* submitted a reference for a preliminary ruling, which reached the European Court of Justice on the following day and included a request for expedited consideration. The European Court of Justice considered the matter under the accelerated procedure specified in Article 104 a of the Rules of Procedure of the Court of Justice of the European Communities. An oral hearing was held in the matter on 20 June 2001 and the judgement was issued on 12 July 2001.

The report for England and Wales states that in one case the High Court requested accelerated consideration in view of the advanced age of a concerned party. However, there is no evidence that the case was considered in a manner more rapid than usual. In the *Factortame I* case the House of Lords requested accelerated consideration at the European Court of Justice. The matter then took one year to process at the European Court of Justice.

The Swedish report refers to a taxation case pertaining to future taxation in which observations were made to the European Court of Justice on this point. The procedure before the European Court of Justice took 19 months.

Rather many reports state clearly that the delay arising from the procedure for submitting a reference for a preliminary ruling had no impact on considering whether to submit the said reference. Some national courts (Denmark, the Netherlands, Sweden, Finland and Spain) conceded that delays have had or could have significance in such considerations. Certain national courts refer in particular to precautionary measures as a class of matters in which delays might constitute an impediment to submitting references for preliminary rulings.

4.15. Submission of documents to the European Court of Justice (question 2.14)

A memorandum published by the European Court of Justice on submission of references for preliminary rulings suggests that

such a reference should be accompanied by copies of the documents necessary to understand the disputed point of law and particularly the applicable national provisions. The national court must send the reference for a preliminary ruling and important documents pertaining to the case directly to the European Court of Justice by registered post.

The national reports indicate that the foregoing procedure has not yet become established in all respects, and a wide variety of procedures arise in practice. Some national courts standardly send the entire case documentation (Austria, the Netherlands, Sweden, Germany, and Belgium), while others select the materials to be provided according to need (Greece, Portugal, Spain, and Finland). In the Republic of Ireland the materials sent are decided by Counsel for the concerned parties. In England and Wales, and in Scotland the entire national documentation is not, as a rule, appended to a reference for a preliminary ruling (the general practice is to send the court order and reference for a preliminary ruling together with the statements of the concerned parties).

5. MEASURES TAKEN BY THE NATIONAL COURT AFTER HAVING SUBMITTED A REFERENCE FOR A PRELIMINARY RULING

5.1. Withdrawal of a reference for a preliminary ruling (question 3.1.)

Not all of the courts referred to in the national reports have encountered situations in which a reference for a preliminary ruling has been withdrawn. Most courts, however, have experience of this in a few such cases. The two clearly most common reasons for withdrawing a reference for a preliminary ruling are a lapse of proceedings in the national court on account of a settlement, withdrawal of appeal etc. and a judgement issued by the European Court of Justice in a similar case.

The report from Austria explains that withdrawal of a reference for a preliminary ruling has arisen in several cases after the registrar of the European Court of Justice has provided copies of judgements indicating that the questions of interpretation submitted may be considered clear. One withdrawal arose because the administrative authority whose decision was subject to appeal subsequently annulled the said decision.

Centrale Raad van Beroep in the Netherlands withdrew its reference for a preliminary ruling in case no. C-255/99 after the European Court of Justice had issued a judgement in case no. C-179/98, judgement of 11 November 1999, Belgian State / Mesbah (Rec. 1999, p. I-7955) and the European Court of Justice had asked whether the national court wished to withdraw its reference for a preliminary ruling. In case no. C-102/00, Welthgrove, Hoge Raad withdrew one question in a reference for a preliminary ruling after the European Court of Justice had enquired after the withdrawal of the said reference. On the other hand, in case no. C-181/97, judgement of 28 January 1999, van der Kooy (Rec. 1999, p. I-483) Hoge Raad did not withdraw its reference even though the European Court of Justice had suggested this. There have been no cases before Raad van State in which it has been necessary to withdraw a reference for a preliminary ruling.

The withdrawals made by the French Conseil d'Etat in cases C-388/97 and C-389/97 also exemplify a situation in which the grounds for withdrawal was a preliminary ruling subsequently issued by the European Court of Justice in another, similar case: C-129/97, judgement of 9 June 1998, Criminal proceedings against Chiciak and Fol (Rec. 1998, p. I-3315), in which the reference for a preliminary ruling was submitted by another court (Tribunal de grande instance de Dijon). The Conseil

d'Etat may have relied on the preliminary ruling issued in the latter case without waiting for a response to its own reference for a preliminary ruling.

The German Bundesverwaltungsgericht has withdrawn one question after the European Court of Justice gave an answer to a similar question in another case. The report from England and Wales also refers to a case in which a reference for a preliminary ruling was withdrawn for the same reason.

The Scottish report refers to a case in which a reference for a preliminary ruling was submitted concerning interpretation of the 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters pertaining to implementation of a judgement of a French court of first instance. A French appeal court subsequently cancelled the judgement of the lower court and so the reference for a preliminary ruling lost its significance.

The Conseil d'Etat of Greece withdrew one reference for a preliminary ruling (concerning use of the term "feta" for Danish cheese) after a subsequent European Community Regulation rendered the issue insignificant.

5.2. Correction, augmentation or other amendment of a reference for a preliminary ruling (question 3.2)

According to the national reports, situations have arisen in the Netherlands and in England and Wales in which a reference for a preliminary ruling has been amended after submission.

In case no. C-311/94, judgement of 15 October 1996, IJssel-Vliet Combinatie / Minister van Economische Zaken (Rec. 1996, p. I-5023), Raad van State reformulated one of the questions that it had submitted. After its judgement of 12 July 2001, Smits and Peerbooms (Rec. 2001, p. I-5473) the European Court of Justice enquired as to whether Raad van State would withdraw its reference for a preliminary ruling in case C-385/99, Müller-Fauré en Van Riet, and as a result of this enquiry a further question was appended to the reference. This also occurred in case no. C-156/01, Van der Duin en Van Wegberg-Van Brederode.

5.3. Reaction to the report of the Judge-Rapporteur or opinion of the Advocate General (question 3.3)

The Judge-Rapporteur at the European Court of Justice prepares a report explaining the facts of the case, the relevant national and Community law, and the written observations addressed to the European Court of Justice. This report is sent to the parties concerned with the principal claim and to other parties that have issued statements before the oral hearing (or when no oral hearing is arranged, before the opinion of the Advocate General is sought). These parties may submit their observations on any inaccuracies remaining in the report. Such requests to specify the matter are sometimes submitted and are considered where they prove to be justified.

The report of the Judge-Rapporteur is also sent to the national court (however, it seems that this communication is not a constant practice since some national courts have indicated that they have not received the report). The national courts have submitted no requests for revisions of such reports. It is obviously the view of both the national courts and the European Court of Justice that it is not the function of a national court to check the accuracy of the statement. The reports from England and Wales, and the Scottish report even state explicitly that this is the exclusive business of the concerned parties, which indeed may generally pertain to the division of functions between the concerned parties and the court in examining the matter.

The national courts have also not consulted the European Court of Justice with respect to the opinion of the Advocate General¹⁹.

5.4. Requests for clarification submitted to the national court by the European Court of Justice (question 3.5)

According to Article 104(5) of the Rules of Procedure of the Court of Justice of the European Communities, which took effect at the beginning of July 2000, the Court of Justice may, after hearing the Advocate General, request clarification from the national court. The reports indicate that no need to modify national procedural rules has arisen on account of this new regulation.

¹⁹ For the opportunities of concerned parties to submit their observations on the opinions see the order of 4 February 2000, C-17/98, Emesa Sugar (Rec. 2000, p. I-665) and judgement of 19 February 2002, C-309/99, Wouters and others.

6. PROCEDURE IN NATIONAL COURTS FOLLOWING THE PRELIMINARY RULING

6.1. Continuation of proceedings in the national court. Hearing of concerned parties (question 4.1)

The preliminary ruling procedure is an interim stage in the national proceedings, which are normally stayed until the preliminary ruling has been received. This means that after the preliminary ruling has been issued the national proceedings continue, having regard to the solution received concerning the interpretation or validity of the European Community norm in question.

After issuing its judgement on a preliminary ruling, the European Court of Justice sends this to the national court that submitted the reference for the preliminary ruling. There are no provisions of Community law governing the subsequent continuation of proceedings in the national court, nor have any special provisions been enacted at national level, and procedures are governed by general national procedural provisions.

It is up to the competent court to decide on reopening the national proceedings. One exception to this, however, arises in Italy, where a concerned party must request that the proceedings be continued within a time limit following the issuing of the preliminary ruling. On the other hand, for example, the reports from Belgium, France and Germany indicate that the plaintiff may in practice withdraw the action after the preliminary ruling has been issued, whereupon no formal judgement is issued on the principal claim.

The concerned parties have an opportunity to submit statements on the effect of the preliminary ruling on the case. The report from Austria states, however, that the concerned parties are not generally heard on the preliminary ruling.

The judgement on the principal claim may sometimes be a nearly automatic consequence of the preliminary ruling, whereupon the national proceedings may be very brief. The stage reached in the national proceedings after receiving the preliminary ruling depends on the particular matter in hand. Obviously references for preliminary rulings are normally submitted at such a late stage in the national proceedings that judgement in the principal claim is generally ready for issue soon after the preliminary ruling has been received.

6.2. Difficulties in utilising the preliminary ruling (questions 4.2 and 4.3)

The legal effect of a preliminary ruling issued by the European Court of Justice is not explicitly stipulated in Article 234 of the EC Treaty or otherwise in Community law provisions²⁰, and this matter has been left for case law to specify. One point that the European Court of Justice has made is that the interpretation of Community law or the view of its validity expressed in a preliminary ruling binds the court that submitted the reference for a preliminary ruling²¹.

The competence of the European Court of Justice in the preliminary ruling procedure concerns the provision of a response to the questions submitted thereto by the national court. The common reformulation of a question submitted for a preliminary ruling and certain other aspects may, however, result in a situation in which the European Court of Justice provides no response that is strictly limited to the question posed. As the report from France notes, the issuing of a preliminary ruling that goes beyond the question posed may cause problems in its binding effect²².

The issue of a preliminary ruling concludes consideration of the case before the European Court of Justice, and so this matter cannot be reopened, for example at the behest of the national court. The Statutes and Rules of Procedure of the European Court of Justice do contain regulations on certain exceptional remedies that may be used to intervene in a judgement by the European Court of Justice. These include third-party proceedings²³, construal of a judgement of dubious meaning or scope²⁴, revision of judgement²⁵, rectification of

²⁰ Article 65 of the Rules of Procedure of the Court of Justice of the European Communities prescribes in general that "the judgement shall be binding from the date of its delivery".

²¹ Judgement of 24 June 1969, 29/68, *Milch-, Fett- und Eierkontor / Hauptzollamt Saarbrücken* (Rec. 1969, p. 165), judgement of 3 February 1977, 52/76, *Benedetti / Munari* (Rec. 1977, p. 163) and order of 5 March 1986, 69/85, *Wünsche / Germany* (Rec. 1986, p. 947). A national court may, however, submit a new reference for a preliminary ruling.

²² *Conseil d'Etat* of France 26 July 1985, *Office nationale interprofessionnel des céréales/Soc. Maïseries de la Beauce*. The question concerned the temporal effects of invalidity of a European Community statute, upon which the European Court of Justice issued a statement even though the national court had submitted no question on this issue.

²³ Article 39 of the Statutes and Article 97 of the Rules of Procedure of the Court of Justice of the European Communities.

²⁴ Article 40 of the Statutes of the Court of Justice of the European Communities.

²⁵ Article 41 of the Statutes and Articles 98 – 100 of the Rules of Procedure of the Court of Justice of the European Communities.

clerical mistakes, errors in calculation and obvious slips²⁶, and supplementing of the judgement²⁷. Of these obviously only the rectification of clerical mistakes, errors in calculation and obvious slips could apply to the preliminary ruling procedure²⁸. It follows from this that, on encountering difficulties in applying a preliminary ruling, the only course of action open to the national court in order to consult the European Court of Justice is to return to the said Court with a new reference for a preliminary ruling.

It would not really be surprising for problems to arise in the preliminary ruling procedure, for example in the form of misunderstandings or breakdowns in communication. The assignment of questions of law from a national court to an international court, in practice partly in another language, and the subsequent resumption of proceedings in the national court requires very great care and precision in exchanging correct and intelligible information. Problems may already arise through deficiencies in the reference for a preliminary ruling - for example on receiving the preliminary ruling the national court may notice that it should have submitted a question in a different formulation or that it should have submitted a supplementary question. Despite all checks, the possibility cannot be excluded that the European Court of Justice will fail to comprehend correctly some aspect of the national procedure that might be significant from the point of view of issuing a serviceable preliminary ruling. The national court may have difficulties in correctly understanding the preliminary ruling.

In spite of all of the potential pitfalls, the national reports indicate that rather few problems have arisen in practice for the national courts. Aside from a few rare exceptions, it has been possible to take preliminary rulings into account effectively when deciding the principal claim.

As the report from Greece explains with respect to judgement C-398/95 of 5 June 1997, *Syndesmos ton en Elladi Touristikon kai Taxidiotikon Grafeion / Ypourgos Ergasias* (Rec. 1997, p. I-3091)²⁹, a national court that has submitted a reference for a preliminary ruling may only after receiving the said ruling

²⁶ Article 66 of the Rules of Procedure of the Court of Justice of the European Communities.

²⁷ Article 67 of the Rules of Procedure of the Court of Justice of the European Communities.

²⁸ See the order of 5 March 1986, 69/85, *Wünsche / Germany* (Rec. 1986, p. 947) and the order of 16 May 1968, 13/67, *Becher / Hauptzollamt München* (Rec. 1968, p. 289 – French language version – p. 196 – English language edition).

²⁹ The case concerned the free movement of services.

decide to hold that the case has no connection with Community law (or that the reference for a preliminary ruling that was submitted is otherwise of no consequence from the point of view of resolving the principal claim). Under such circumstances the binding character of the preliminary ruling naturally cannot force its application in the matter concerned.

In this connection the report from Austria calls attention, in particular, to the following case. In judgement C-65/98 of 22 June 2000, *Eyüp* (Rec. 2000, p. I-4747) the European Court of Justice did not respond to a question regarding the order of an interim precautionary measure (the case concerned the Treaty of Association between the European Economic Area and Turkey)³⁰.

The report from the Netherlands refers to three cases. In the judgement of 27 November 1997, C-57/96, *Meints / Minister van Landbouw, Natuurbeheer en Visserij* (Rec. 1997, p. I-6689) the European Court of Justice added a point to a reference for a preliminary ruling submitted by Raad van State (the matter concerned the application of Council Regulation 1408/71/EEC on the application of social security schemes to employed persons and their families moving within the Community). After the judgement of 13 December 1989, C-102/88, *Ruzius-Wilbrink / Bedrijfsvereniging voor Overheidsdiensten* (Rec. 1989, p. 4311) issued in response to a reference for a preliminary ruling submitted by the Raad van Beroep court, Centrale Raad van Beroep held that it was not possible to use the preliminary ruling because it had not been based on consideration of all of the relevant details. In its judgement of 21 September 1999, C-106/97, *DADI and Douane-Agenten* (Rec. 1999, p. I-5983) one of the findings of the European Court of Justice was that the Commission Decision 94/70/EC of 31 January 1994 drawing up a provisional list of third countries from which Member States authorise imports of raw milk, heat treated milk and milk-based products was invalid, but the Court offered no opinion as to certain consequences of this finding.

There may also be problems in applying the interpretation stated in a judgement of the European Court of Justice due to certain features of the national legal system. As an example of this the Belgian report refers to the judgement of 18 December 1997 in case C-129/96, *Inter-Environnement Wallonie / Région wallonne* (Rec. 1997, p. I-7411) notifying the practical difficulty of applying the principle that a Member State must refrain from issuing provisions within the time limit allowed

³⁰ The European Court of Justice considered that no response was necessary, having regard to the responses given to other questions.

for implementation of a Directive that would tend seriously to jeopardise realisation of the objective prescribed in the Directive. This proved to be difficult to assess at the Belgian Conseil d'Etat, having regard in part to the fact that it would be necessary to investigate the intentions of the Belgian administration in relation to supranational co-operation and to allow for the principle that the legality of a decision should be assessed at the time when the decision is made.

The report from the Netherlands refers to two cases in which Centrale van Beroep submitted a new reference for a preliminary ruling in one and the same case because the first preliminary ruling did not provide enough assistance in resolving the principal claim (judgements of 14 March 1978, Schaap, C-98/77 (Rec. 1978, p. 707) and 5 April 1979, Schaap, C-176/78 (Rec. 1979, p. 1673), and judgements of 16 March 1978, Bestuur van het algemeen Ziekenfonds Drenthe-Platteland / Pierik, C-117/77 (Rec. 1978, p. 825) and 31 May 1979, Pierik, C-182/78, (Rec. 1979, p. 1977)).

The Belgian Conseil d'Etat has also submitted two references for a preliminary ruling in the same case: judgements of 14 April 1994, Ballast Nedam Groep / Belgische Staat, C-389/92 (Rec. 1994, p. I-1289) and 18 December 1997, Ballast Nedam Groep / Belgische Staat, C-5/97 (Rec. 1997, p. I-7549). The reason for submitting a new reference for a preliminary ruling was the difficulty of interpreting the precise scope of the first preliminary ruling.

The report concerning England and Wales refers to a case in which the Court of Appeal refused to submit a new reference for a preliminary ruling following the judgement of 5 July 1994, The Queen / Minister of Agriculture, Fisheries and Food, ex parte Anastasiou, C-432/92 (Rec. 1994, p. I-3087), because it considered such a renewed reference to be unnecessary. After the case had passed to the House of Lords, however, the latter organ decided that a new preliminary ruling was indeed necessary (judgement of 4 July 2000, Anastasiou and others, C-219/98 (Rec. 2000, p. I-5241)).

The German report notes that the need to submit a new reference for a preliminary ruling has arisen on one occasion.

6.3. Explanation of and reference to a preliminary ruling in the final judgement of the national court (question 4.4)

The judgements of the European Court of Justice state the judgement and its grounds separately. The judgement must be

understood in the light of its grounds (judgement of 16 March 1978, 135/77, Bosch / Hauptzollamt Hildesheim (Rec. 1978, p. 855)).

The national reports indicate that the statement of judgement of the European Court of Justice is explained in the final judgement of the national court in a case in which a reference for a preliminary ruling has been submitted. The grounds for the judgement of the European Court of Justice are also stated or referred to either regularly or when necessary at least in Finland, Belgium, Scotland, England and Wales, Greece, Portugal and Germany.

6.4. Submission of the judgement of the national court to the European Court of Justice for information (question 4.5)

The memorandum of the European Court of Justice concerning references for preliminary rulings express the wish that the national courts should notify the European Court of Justice of how they apply the judgement of the said Court after receiving the preliminary ruling in the case pending, and should send their final judgements to the European Court of Justice. The European Court of Justice also maintains a database of judgements of national courts in the sphere of Community law³¹.

Most of the national reports (Belgium, the Netherlands, Greece, Portugal, England and Wales, Scotland, Luxembourg, Finland, Sweden, Germany and Spain) indicate that the national court sends a copy of its final judgement to the European Court of Justice in cases where a reference for a preliminary ruling has been submitted. It is thus not the case that the final judgement is sent to the European Court of Justice from all countries of the Community.

Other national judgements of significance for Community law are sent to the European Court of Justice only in very exceptional cases (the national reports indicate that only the Dutch College van Beroep voor het bedrijfsleven does this).

³¹ It may be noted in this connection that the EC EFTA Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters done at Lugano on 16 September 1988 includes a mutual system of the contracting States to submit the judgements of their national courts to the European Court of Justice, which serves as a central authority. A system of this kind is likewise included in the European Economic Area agreement (Article 106).

ANNEX I QUESTIONNAIRE

Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

18th colloquium in Helsinki, 20 and 21 May 2002

**THE PRELIMINARY REFERENCE TO THE COURT OF JUSTICE OF
THE EUROPEAN COMMUNITIES**

Questionnaire (16 August 2001)

Introduction

Article 234 of the Treaty establishing the European Community (hereinafter "the EC Treaty") lays down the possibility and in certain cases even the obligation of courts of law of the Member States to request a preliminary ruling from the Court of Justice of the European Communities (hereinafter "the Court of Justice").³² Moreover, a corresponding procedure for preliminary rulings is provided for in the Treaty establishing the European Coal and Steel Community (Article 150) and in the Treaty establishing the European Atomic Energy Community (Article 41).

Certain international agreements concluded by the Member States also contain procedures for preliminary rulings. In practice, the most important of these agreements is the so-called Brussels Convention of 1968 (Convention on jurisdiction and the enforcement of judgments in civil and commercial matters).

The present questionnaire concentrates on the procedure for preliminary rulings referred to in Article 234 of the EC Treaty.

³²Article 68 of the EC Treaty contains certain provisions for derogation from the reference procedure in cases concerning policies related to visas, asylum and immigration, as provided for in Title IV of the Treaty. Article 35 of the Treaty on European Union authorises the Court of Justice, subject to the conditions laid down in that article, to give preliminary rulings within the framework of the so-called third pillar (police and judicial cooperation in criminal matters); a Member State can, by making a declaration when signing the Treaty of Amsterdam or later, acknowledge the jurisdiction of the Court of Justice to give preliminary rulings as specified above.

This questionnaire has been drawn up in view of the legal situation prevailing in the spring of 2001. Accordingly, no account is taken here of the Treaty of Nice, providing for the Court of First Instance to have jurisdiction in questions referred for a preliminary ruling in specific areas laid down by the Statute of the Court of Justice (Paragraph 3 of Article 225 of the EC Treaty as modified by the Treaty of Nice).

The Rules of Procedure of the Court of Justice were recently amended, among others for the purpose of a more expeditious and effective procedure for preliminary rulings. The amendment, which entered into force in early July 2000, established the possibility of handling requests for a preliminary ruling under a so-called accelerated procedure in cases where the national court in question has requested an urgent ruling (Article 104 a of the Rules of Procedure). At the same time, a scheme was introduced enabling the Court of Justice to request clarifications from the national courts (Paragraph 5 of Article 104). Moreover, the procedure has been simplified in situations where the answer to a question referred for a preliminary ruling is manifestly clear (Paragraph 3 of Article 104).

This questionnaire has been drawn up particularly with a view to compiling information and experience from the national courts of last instance. The procedure for preliminary rulings is a form of cooperation between the Court of Justice and the national courts. It is therefore of vital importance to acquire a more intimate acquaintance with its practices within the courts of the Member States as well as the Court of Justice. The Court of Justice will be asked to give, as far as possible, its considerations on the elements arising from this questionnaire from the point of view of its own activities.³³

Answers to this questionnaire are requested to be drawn up using the same subdivision, where possible.

The questionnaire consists of four principal parts. The first part contains questions of a general character, followed by questions grouped into three parts, basically according to the temporal course of the procedure.

1. GENERAL QUESTIONS

³³ A copy of the national reports will be forwarded to the Court of Justice to enable it to take account of the information contained in them before giving its own report.

1.1. Does the internal legal system of your country provide for a procedure resembling the procedure for preliminary rulings established in Article 234 of the EC Treaty? Can a court of law refer a question relating to a pending case to another court of law (a special court, a court of a different branch of law, a court of higher instance), and receive an answer which is binding (or not binding)? What are the principal differences between such national arrangements and the procedure referred to in Article 234?

1.2. Is your country bound by other international arrangements outside the EU involving the possibility of referring questions for a preliminary ruling to an international court of law?

1.3. Are there any supplementary provisions issued in your country concerning the procedure referred to in Article 234 of the EC Treaty, or is the procedure solely and directly based on Community law? What is the level of such national norms, and what questions do they involve?

1.4. If appeal to a court of higher instance has been restricted (e.g. leave to appeal is required), has this been deemed to have the effect of treating courts of lower instance as being in the position of a court or tribunal of last instance referred to in Article 234(3)? Which of the national courts in your country are, in general or in certain circumstances, courts or tribunals as referred to in Article 234(3)?

1.5. If the legal order of your country provides for a particular judicial remedy before a constitutional court, how might this have affected the application of Article 234?

1.6. Is it possible to lodge a separate appeal to a court of higher instance against a decision of a court of lower instance to refer a question to the Court of Justice for a preliminary ruling? Do these kinds of appeals occur in practice, and what criteria does the court of higher instance use when judging the legality of the decision by the court of lower instance to make a reference to the Court of Justice?

Correspondingly, have there been appeals lodged against the fact that a court of lower instance has not referred for a preliminary ruling?

Can an appeal be lodged on some specific grounds (for instance on the grounds of a violation against the Constitution) against a decision not to refer for a preliminary ruling made by a court or tribunal referred to in Article 234(3)?

1.7. If your country has a Constitutional Court, has it made a reference to the Court of Justice? If, on principle, it does not make references for preliminary rulings, what are the reasons for that refusal?

1.8. What is the proportion of cases brought before your court, where it is essential to apply or take into account Community law?

1.9. Does application of Community law often come up in the work of your court ex officio?

1.10. Does the internal work of your court involve specific measures for the preparation and hearing of cases dealing with the application of Community law?

What means do you have, on the whole, to seek necessary information about Community law?

- Can the judges deciding the matter and the staff assisting them procure information (e.g. about the pertinent case law of the Court of Justice) from a particular unit within the internal organisation of your court, from a service assisting courts in general or from a similar service? Do you consult the research and documentation unit of the Court of Justice? Does your court have a research and documentation department?
- How do you undertake to guarantee that you will have access to up to date information on the case law of the Court of Justice (court reports, legal literature, data bases, etc.)?
- What means do you have to keep informed about the kind of cases pending before the Court of Justice and their stage of proceedings?
- Your experience of using the Internet site of the Court of Justice.

Is there an organised exchange of information on questions concerning Community law between the courts in your Member State?

In complicated questions of Community law, do you attempt to ascertain the contents of the legislation and case law of other Member States?

Have you heard or otherwise asked the Commission, for example, for information on points of fact, for acts preparatory to Community legislation or for its opinion? Has your court contacted the Commission in matters related to competition or state aid?

1.11. In situations where the legality of a Community act is contested, has your court decided to prohibit the enforcement of a national administrative decision based on the contested Community act (see judgment of 21 February 1991 in joined cases C-143/88 and C-92/89 Zuckerfabrik)? Has your court applied any of the principles (so-called positive interim measures) arising from the judgment in the Atlanta case (9 November 1995, case C-465/93 Atlanta Fruchthandelsgesellschaft)?

1.12. When dealing with questions concerning the illegality of a Community act (and especially as regards suspension of a national act adopted on the basis of a Community act), has your court heard the Commission (or other representatives of the Union)?

1.13. Statistical data concerning references for a preliminary ruling made by your court

- Total number of references for a preliminary ruling made by your court.
- Development of the annual number of references for a preliminary ruling made by your court, and particularly the numbers during the period 1995-2000.
- Are the questions referred by your court for a preliminary ruling related mainly to a certain domain or to certain domains of cases?
- How long has the handling time been in recent years as regards the cases referred by your court for a preliminary ruling? If possible, please present facts or an estimate of how the total handling time has been distributed: the handling time from the moment the proceedings were started until the reference for a preliminary ruling was sent to the Court of Justice; the handling time at the Court of Justice; the handling time after the preliminary ruling was given.

If your court hears also cases other than administrative judicial matters, please specify the above facts, if possible, according to whether or not they concerned administrative judicial matters.

2. THE PROCEDURE OF A DECISION TO REQUEST A PRELIMINARY RULING

2.1. Please estimate how often and particularly in which categories of cases the parties have asked your court to request a preliminary ruling.

If the request is turned down, are the reasons always stated in the ruling? Does the statement of reasons contain a reference, where necessary, to the case law of the Court of Justice? Do you make a separate interim decision in case of a negative decision, or is the answer generally given only in the final decision?

Have you requested a preliminary ruling although it had not been demanded by the parties?

2.2. As the annual number of requests for a preliminary ruling, even made by courts of last instance, for obvious reasons, is not very high, is it possible for you to make a general estimate of the annual number of cases where a request for a preliminary ruling has been seriously considered (on a party's initiative or ex officio) although the request was finally never sent to Luxembourg?

2.3. In its practices, has your court developed criteria to be taken into account when applying the obligation to request a preliminary ruling under Article 234(3) in the light of the case law of the Court of Justice (in particular, the CILFIT case)?

2.4. Given the fact that a matter is pending before your own court and a matter concerning the same question of law is pending before the Court of Justice, which factors then determine whether

- a) the matter will be settled immediately without considering the fact that the same question of law remains to be answered by the Court of Justice in a pending reference procedure
- b) the matter will be settled after the ruling of the Court of Justice, or
- c) a preliminary ruling should be requested on the same question?

2.5. What is the procedure in a situation where a question requiring preliminary ruling appears in several cases pending at the same time? Generally speaking, does your court in its decision to request a preliminary ruling pay attention to the consequences of that reference for other cases, for example the paralysing effect suspension of the case referred may have on the handling of other cases?

If there are several cases pending before courts of lower instance, similar to the one subject to a request for a preliminary ruling made by your court, do the courts of lower instance wait until the Court of Justice has ruled on the question referred?

2.6. Has your court requested a preliminary ruling in connection with a procedure concerning precautionary measures or other similar summary procedures?

2.7. Has your court referred for a preliminary ruling on the grounds of the cases C-28/95, Leur-Bloem, and C-130/95, Giloy, i.e. regarding the interpretation of a concept of Community law or of Community origin which has been transposed into national law where the situation in question is not governed directly by Community law?

2.8. At which stage of the proceedings is the request for a preliminary ruling normally made?

Will the parties be heard before making the request for a preliminary ruling? Will they be submitted a draft of the order for reference for comments? What, all things considered, is the role of the parties in practice, when a request for a preliminary ruling is considered and the questions are formulated?

2.9. What form does your court follow when referring a case for preliminary ruling? Is it possible to give an interim judgment or do you have to apply another kind of judgment?

Are the decisions concerning requests for preliminary ruling and their formulations made by a normally constituted court?

2.10. Has your court developed any established practices as regards the manner of drafting the order for reference (description of the facts, the national law, arguments of the parties and the justification of the questions in the light of Community law)?

Does the order for reference contain an advance opinion of the national court as to the nature of the answer to be given to the question referred?

How long are the orders for reference in general? When drafting the decision, do you endeavour to keep in mind that it will be translated into the other official languages of the Union? Please attach to your report one or more typical decisions made by your court requesting a preliminary ruling.

2.11. If the case referred involves documents containing information which is confidential under national law, how is this taken into account when drafting the request for a preliminary ruling? Is the Court of Justice informed of the fact that the case contains documents which are confidential under national law?

2.12. Has your court in any of its references for preliminary rulings requested the Court of Justice to proceed urgently for specific reasons? To what extent has such a request speeded up the proceedings? Have there been situations where a request for a preliminary ruling has come up in a case which, according to a provision of national law, should be treated urgently or within a determined time limit?

Is it possible that the foreseeable handling time of the preliminary reference procedure could constitute, in fact and in practice, a reason not to refer a matter?

2.13. When you have decided to request a preliminary ruling, will the main proceedings be automatically stayed pending the preliminary ruling or can the proceedings exceptionally be continued (e.g. a certain part of the case) while the matter is pending in Luxembourg?

2.14. The national courts are required to place the documents of the main proceedings at the disposal of the Court of Justice. Has practice led to different lines of action in this respect (for instance: has the entire material been submitted in cases involving an exceptionally large number of documents)?

3. MEASURES TAKEN BY THE NATIONAL COURT OR TRIBUNAL DURING THE PROCEEDINGS BEFORE THE COURT OF JUSTICE

3.1. Has your court withdrawn a request for preliminary ruling already referred? In the affirmative, why did it happen?

3.2. Have you, in practice, faced situations where a request for a preliminary ruling already referred has had to be corrected, supplemented or otherwise amended?

3.3. Have you met with any particular situations where a need to clarify a particular detail to the Court of Justice has occurred after the report of the Judge-Rapporteur and the opinion of the Advocate General (for instance the description of the facts of the main proceedings, the national provisions or the questions)?

3.4. Should a similar case become pending before your court after the request for preliminary ruling has been submitted, will there be an official decision to stay the proceedings? Will the parties be heard before the decision for postponement is made?

3.5. By virtue of Article 104(5) of the Rules of Procedure of the Court of Justice, the Court may now request clarification from the national court. Has there been a need to modify the national procedural rules in order to be able to answer to such a request for clarification (e.g. hearing of the parties)?

4. PROCEEDINGS AFTER THE PRELIMINARY RULING IS OBTAINED

4.1. In what way is the national procedure continued when the preliminary ruling has been given? Are the parties always heard on the preliminary ruling?

4.2. Have there been situations where it has finally been impossible to make use of the preliminary ruling, because of the following:

- The formulation of the preliminary question has finally proven not to be expedient?
- The question referred to the Court of Justice for preliminary ruling has to be formulated in a general way and thus the preliminary ruling provided for the national court will also be of a general nature?
- The Court of Justice has not answered the question referred (the Court of Justice has for instance misinterpreted the question)? Have there been other kinds of problems due to the fact that the answer of the Court of Justice has not been sufficiently precise for the purpose of settling the main proceedings?
- The question referred has later been found unnecessary for the purpose of settling the main proceedings?

4.3. Have you had to request a second preliminary ruling in the same case (for instance due to the fact that the answer to the first preliminary ruling was not satisfactory)?

4.4. In what way and to what extent does the decision of your court, for which a preliminary ruling was requested, give an account of and otherwise refer to the judgment of the Court of Justice?

4.5. Is the Court of Justice informed of the final decision by the national court having made the reference?

How has your country organised the other judgments relevant to Community law to be forwarded for information to the Court of Justice?

ANNEX II PROPORTION OF COMMUNITY LAW CASES IN JUDICIAL PROCEEDINGS

The table shows details from national reports concerning the number of Community law cases in relation to all matters processed. Certain types of business in which Community law plays an important role are also shown.

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| Belgium (Conseil d'Etat) | Since 1991: 2,560 judgements in a total of 68,100 have concerned Community law, i.e. 3.8 per cent (this small proportion is explained by the large number of asylum cases). |
| Denmark (Supreme Court) | No statistics available. |
| Germany (Bundesverwaltungsgericht) | 5-20 per cent, depending on the division. |
| Greece (Conseil d'Etat) | Often concerning national law implementing European Community Directives, especially in relation to public procurement and environmental affairs. Annually, however, only some 15 cases out of 4,500 – 5,000 are such that they immediately involve issues pertaining to the interpretation or application of Community law norms. |
| Spain (Tribunal Supremo) | Some 5 per cent of all business. |
| France (Conseil d'Etat) | The proportion of Community law cases is increasing. These arise particularly in the following areas: public procurement, taxation (especially value-added tax), environmental affairs (hunting), agriculture, civil service issues (free movement of persons), health care and social welfare. |
| Republic of Ireland (Supreme Court) | The proportion of Community law cases is very small. |
| Italy (Consiglio di Stato) | Cases in which Community law is highly significant comprise about 5 per cent of business. |
| Luxembourg (Cour administrative) | The proportion is small. Such matters arise in particular in the following fields: taxation, freedom of movement, recognition of degrees. |
| The Netherlands | Raad van State: 5 per cent. Centrale Raad van Beroep: 5 per cent. College van Beroep voor het bedrijfsleven: 20 per cent. |
| Austria | The proportion depends on the type of business (the |

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| (Verwaltungsgerichtshof) | <p>21 divisions of the court are specialised by type of business):</p> <ul style="list-style-type: none"> - often concerning taxation or customs. - also quite often concerning social security questions. - may also arise in such matters as environmental affairs, road traffic regulation and free movement of workers (the Treaty of Association between the European Economic Area and Turkey is especially important) and food affairs. |
| Portugal (Supremo Tribunal Administrativo) | Some 20 – 40 cases out of approximately 3,500 annually. |
| Finland (Supreme Administrative Court) | About one-third of an annual total of approximately 4,000 cases, allowing for all cases upon which Community law has even the slightest impact. |
| Sweden (Regeringsrätten) | Significance of Community law considerable particularly in taxation affairs (constituting 25 per cent of all business). |
| United Kingdom | <p>England and Wales: The House of Lords considers some 70 cases a year, of which about 8 per cent directly concern Community law. The Court of Appeal considers some 7,000 cases, of which some 5 per cent concern Community law.</p> <p>Scotland: no statistics available; volumes vary in the Scottish courts.</p> |

ANNEX III

DETAILS OF REFERENCES FOR PRELIMINARY RULINGS SUBMITTED³⁴

| | Total volume 1995-2001 | Annual number 1995-2001 | Principal types of case in which a reference has been submitted |
|--|------------------------|---------------------------------|--|
| Belgium (Conseil d'Etat) | 20 | 4, 3, 0, 0, 1, 0, 1 | - free movement of persons (6) - free movement of goods (4) - free movement of services (3) - environmental protection (2) - public procurement (2) - agriculture (1) - right of establishment (1) |
| Denmark (Supreme Court) (including non-administrative cases) | 16 (since 1973) | A total of 6 | Gender equality, taxation, reclaiming of aid, establishment of corporations and product liability |
| Germany (Bundesverwaltungsgericht) | about 45 | 5, 3, 2, 0, 1, 4 (1995-2000) | Agriculture, migration, judicial procedure |
| Greece (Conseil d'Etat) | 7 (since 1981) | 2, 0, 0, 1, 0, 0, 2 | Company law, free movement of goods and services, customs, treaty of accession |
| Spain (Tribunal Supremo) | 6 (since 1986) | 0, 0, 0, 0, 3, 0, 2 | Discrimination on grounds of nationality, telecommunications, public transportation services, sugar market |
| France (Conseil d'Etat) | 24 | 0, 0, 3, 1, 3, 2, 3 | - agriculture (9), - taxation (5) - competition (2) - free movement of services (2) - environment and consumer protection (2) - free movement of persons, free movement of capital and social security (1 each) |

³⁴The annual reports of the European Court of Justice were also used as a source.

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| Republic of Ireland (Supreme Court) | 16 (since 1973) | 1, 0, 0, 3, 1, 0, 0 | Mostly concerning agriculture |
| Italy (Consiglio di Stato) | 39 | 2, 2, 0, 9, 1, 3, 4 | Public procurement, European Community subsidies, telecommunications, free movement of services, right of establishment |
| Luxembourg ³⁵ (Cour administrative) | 1 | 1 in 1998 | Recognition of degrees |
| The Netherlands (Raad van State) | 38 ³⁶ | 2, 4, 4, 2, 3, 5, 1 | Mostly environmental protection. Also competition, free movement of persons and goods, media law |
| Austria (Verwaltungsgerichts hof) | 38 (since 1995) | 0, 2, 10, 3, 7, 5, 12 | Taxation, social security, transportation of livestock, telecommunications, free movement of persons, goods and services |
| Portugal (Supremo Tribunal Administrativo) | 28 (since 1986) | 6, 6, 1, 5, 4, 5, 1 | Taxation, free movement of goods, customs, social affairs |
| Finland (Supreme Administrative Court) | 7 (since 1995) | 0, 1, 1, 0, 1, 2, 2 | - Personal transport licence (Regulation 1893/91/EEC) - Consumer protection (Council Directive 90/314/EEC) - Public procurement - Indirect taxation - Definition of waste (Council Directive 75/442/EEC) - Parallel import of medicines |
| Sweden (Regeringsrätten) | 10 (since 1995) | 0, 0, 2, 1, 3, 2, 2 | Company law, agriculture, taxation, social security, parallel import of medicines, free movement of services |
| England and Wales ³⁷ | 50 (since 1973) | 5, 3, 3, 7, 3, 3, 10 | Gender equality, migration, patents and trade marks, taxation, agriculture and |

³⁵The Cour administrative of Luxembourg began operating in 1997.

³⁶The College van Beroep voor het bedrijfsleven has submitted a total of 100 references for preliminary rulings.

³⁷House of Lords and Court of Appeal combined.

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| Scotland (Scottish courts in general) | | A total of 3 between 1995 and 2000 | environment One case concerned the 1968 Brussels Convention and two others concerned general principles of Community law |
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