

QUESTIONARIO PORTOROSE SETTEMBRE 2021

A) Questions on general knowledge about functioning of preliminary reference procedure

1. How do you consider the knowledge that judges in your country have about the preliminary rulings procedures?

Italian administrative judges have a good knowledge about the preliminary rulings procedure.

2. Have you benefited from training courses either at national level or within the programme offered by DG Environment or ERA (Academy of European Law) about CJEU environmental case law and preliminary rulings? What is your estimation of the level of knowledge and specialisation of judges in (European) environmental law?

Yes I benefited from the above mentioned courses.

In Italy there is not a specialised judge in environmental law. Probably the level of knowledge could improve if there were a specialised judge.

3. Does your country have statistics showing in which subject-areas of EU environmental law are the majority of preliminary rulings requests? (If possible, please provide the link to such statistics.)

Could you provide a short explanation for the fact that one or more areas of EU environmental law generate more preliminary questions than others? Does this have to do with the quality / clarity of the legislation or a specific focus on individual areas due to national peculiarities?

4. Does the judiciary in your country engage in the practice of interpreting EU environmental law without asking for a preliminary ruling? (Does this practice concerns also courts of last instance?)

Recently the practice of asking for a preliminary ruling improved in order to avoid accountability.

5. Does you country have a system to control whether national courts request preliminary references? (If yes, please include a link to the system).

There is not an official system.

6. Which are the fundamental/procedural rights of citizens to ask a national court to request a preliminary reference to the CJEU?

If citizens are parts of a trial, they may ask a national court to request a preliminary reference to the CJEU.

B) Questions on examples of follow-up judgments after CJEU preliminary rulings in environmental matters in the last 10 years (2011-2021)

7. Have you judged in (a) environmental case(s) in which you received an answer to a preliminary question that **you** had posed to the Court (i.e. in a “follow-up case”)? If yes, could you provide the link to the judgment(s) or a copy thereof?

No I did not judge in such a case.

8. Did you sit in other environmental follow-up cases? If yes, could you provide the link to the follow-up judgment(s) or a copy thereof?

I provide the link to the preliminary ruling of the Court of Justice too:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=186493&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=92067>

and the follow-up judgement:

http://www.unaltrolido.com/pdf/https___www.giustizia-amministrativa.pdf

9. Are you familiar with environmental follow-up cases in your **country** other than those in which you were sitting as a judge? If yes, could you provide the link to (some of) the judgments or a copy thereof?

See the answer above

C) Questions on the answers provided by the Court of Justice

10. Did the Court of Justice consider the question(s) **admissible** and did the Court **answer** it/them?

yes

11. Did the Court of Justice **rephrase** the question(s) posed? If yes, do you consider the rephrased question(s) a **proper** representation of the question(s) originally asked?

yes

12. Do you consider the answer given by the Court of Justice to be a legally correct answer to the question posed?

yes

13. Did the Court of Justice formulate the answer by setting out **criteria** to be applied by the national court or did the Court of Justice provide a binary answer, e.g. an unconditional **affirmative/negative** answer?

The Court of Justice formulated the answer by setting out *criteria* to be applied by the national court.

14. Did the answer given by the Court of Justice **enable** to solve the national case and did the answer make it **clear** how it had to be applied? Please provide a short explanation for your answer.

The Court of Justice defined what is the meaning of "small areas at local level" for which an exclusion of the environmental assessment is possible, in accordance with the article 3 recital 3 of the Directive 2001/42/EC

D) Questions on the follow-up case

15. Was it **possible** for the national court to render a judgment after it received the answer from the Court of Justice, or did (new) elements arise that complicated this, *such as* the withdrawal of the case, the need for further clarifications from the national Constitutional Court or the Court of Justice, constitutional or factual barriers, or the political sensitivity of the subject matter?

It was possible for the national court to render a judgement after it received the answer from the Court of Justice.

16. Do you consider the follow-up judgment a case of **cooperative** or **uncooperative** administration of justice? With cooperative administration we refer to a follow-up judgment that complies with the contents of the answer received from the Court of Justice. When this is not (fully) the case we refer to uncooperative administration of justice.

17. Do you (still) **agree** with the manner in which the follow-up judgment applied the preliminary ruling?

I consider the follow-up judgment a case of *cooperative* administration of justice.

Questions on the environmental law background of the disputes

18. Did the national environmental legal framework applicable to the follow-up judgment represented a **one-on-one transposition** of the EU law framework at stake? If no, in which manner (a brief explanation will suffice)? Please provide a link to the relevant regulatory framework.

Yes the follow-up judgement represented a one-on-one transposition of the EU law framework at stake.

19. In your subjective opinion, do you consider that environmental law in your country has its own **identity** or do you see it as a mere

representation/implementation? of EU environmental law? A mixture of the two is possible, of course.

The environmental law in my country is a mixture of European and national law.

20. Is there any *remedy/monitoring* in case the judges do not ask the CJEU (ruling as last instance) or on how they follow up on preliminary rulings of CJEU (possibly also in other cases, not only in their own, since clarifications given by CJEU are valid in all similar cases)? Could you provide a link to any such regime, if present?

Considering that there is not a national remedy against the rulings of last instance, the mistakes remain.

The remedy is that in other cases the CJEU would be asked and that, once the clarification is given by the CJUE, this decision would be kept in mind by other judges, since clarifications given by CJEU are valid in all similar cases.

E) Case

Consider the following situation and provide an answer about how it would be solved in your country. When doing so please provide reference to the normative framework relevant for answering the question.

Article 13 of Directive 2008/50 sets limit values for nitrogen dioxide (NO₂) which must be respected throughout the territory of the Member States. In case the limit values are not respected to an extent that exceeds the margin of tolerance set out under the Directive, Article 23 of the Directive requires that Member States set up an Air Quality Plan ensuring that exceedances are ended in the shortest time possible.

Assume that in an agglomeration in your country the limit values are trespassed and that scientific evidence shows that **this is due to the emissions coming from Euro 0-4 diesel vehicles**. The cumulative level of NO₂ from all other sources of NO₂ in the agglomeration does not lead to an exceedance of the EU limit values. **The authorities competent for adopting the plan** under Article 23 of the Directive, as transposed into national law, **announce the adoption of a series of restrictions to the use of diesel vehicles** in the agglomeration. However, at the same time, an already existing 'low emission zone' prohibiting the use of whichever vehicle in the centre of the agglomeration is withdrawn on request of a diesel vehicles auto club (so-called "withdrawal decision"). **The use of diesel vehicles in this zone surely leads to a further worsening of air quality in the agglomeration on the short term. The**

restrictions to the use of Euro 0-4 diesel vehicles in the Air Quality Plan are estimated to bring about compliance with the limit values in one year from the moment of adoption of the restrictions.

An environmental non-governmental organization starts proceedings **against the withdrawal decision of the competent authority.**

The national court hearing the case has doubts about whether the adoption of restrictions to the use of Euro 0-4 diesel vehicles in the Air Quality Plan is enough to ensure compliance with the Directive or whether Article 13 of the Directive requires the annulment of the withdrawal decision. It therefore poses, among others, the following question to the Court of Justice of the European Union:

3. To what extent (if at all) are the obligations of a Member State which has failed to comply with Article 13 of Directive 2008/50 affected by Article 23 (in particular its second paragraph)?

The Court of Justice answers this question in the following manner:

The third question

*36 By its third question, the referring court asks, in essence, whether, where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that **Member State has not applied for postponement of that deadline** under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up permits the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.*

37 At the outset, it should be recalled that the second subparagraph of Article 23(1) of Directive 2008/50 specifies that it applies when the limit values for pollutants are exceeded after the deadline laid down for attainment of those limit values.

38 In addition, as regards nitrogen dioxide, application of that provision is not made conditional on the Member State having previously attempted to obtain postponement of the deadline under Article 22(1) of Directive 2008/50.

39 Consequently, the second subparagraph of Article 23(1) of Directive 2008/50 also applies in circumstances such as those arising in the main proceedings, in which conformity with the limit values for nitrogen dioxide

established in Annex XI to the directive is not achieved by 1 January 2010, the date specified in that annex, in zones or agglomerations of a Member State and that Member State has not applied for postponement of that date under Article 22(1) of the directive.

40 It follows, next, from the second subparagraph of Article 23(1) of Directive 2008/50 that where the limit values for nitrogen dioxide are exceeded after the deadline laid down for their attainment, the Member State concerned is required to **establish an air quality plan that meets certain requirements.**

41 **Thus, that plan must set out appropriate measures so that the period during which the limit values are exceeded can be kept as short as possible and may also include specific measures aimed at protecting sensitive population groups, including children.** Furthermore, under the third subparagraph of Article 23(1) of Directive 2008/50, that plan is to incorporate at least the information listed in Section A of Annex XV to the directive, may also include measures pursuant to Article 24 of the directive and must be communicated to the Commission without delay, and no later than two years after the end of the year in which the first breach of the limit values was observed.

42 However, an analysis which proposes that a Member State would, in circumstances such as those in the main proceedings, have entirely satisfied its obligations under the second subparagraph of Article 13(1) of Directive 2008/50 merely because such a plan has been established, cannot be accepted.

43 First, it must be observed that only Article 22(1) of Directive 2008/50 expressly provides for the possibility of a Member State postponing the deadline laid down in Annex XI to the directive for achieving conformity with the limit values for nitrogen dioxide established in that annex.

44 Second, such an analysis would be liable to impair the effectiveness of Articles 13 and 22 of Directive 2008/50 because it would allow a Member State to disregard the deadline imposed by Article 13 under less stringent conditions than those imposed by Article 22.

45 Article 22(1) of Directive 2008/50 requires that the air quality plan contains not only the information that must be provided under Article 23 of the directive, which is listed in Section A of Annex XV thereto, but also the information listed in Section B of Annex XV, concerning the status of implementation of a number of directives and on all air pollution abatement measures that have been considered at the appropriate local, regional or national level for implementation in connection with the attainment of air quality objectives. That plan must,

furthermore, demonstrate how conformity with the limit values will be achieved before the new deadline.

46 Finally, this interpretation is also supported by the fact that Articles 22 and 23 of Directive 2008/50 are, in principle, to apply in different situations and are different in scope.

47 Article 22(1) of the directive applies where conformity with the limit values of certain pollutants 'cannot' be achieved by the deadline initially laid down by Directive 2008/50, account being taken, as is clear from recital 16 in the preamble to the directive, of a particularly high level of pollution. Moreover, that provision allows the deadline to be postponed only where the Member State is able to demonstrate that it will be able to comply with the limit values within a further period of a maximum of five years. **Article 22(1) has, therefore, only limited temporal scope.**

48 **By contrast, Article 23(1) of Directive 2008/50 has a more general scope because it applies, without being limited in time, to breaches of any pollutant limit value established by that directive, after the deadline fixed for its application, whether that deadline is fixed by Directive 2008/50 or by the Commission under Article 22(1) of the directive.**

49 In the light of the foregoing, the answer to the third question is that, where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, **the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.**

Imagine that you are the judge in the follow-up case that has to apply the answer provided by the Court of Justice. How would you judge about the request of annulment of the withdrawal decision? Please provide reference to the normative framework relevant for answering the question.

I would decide in the following manner:

Although the restrictions to the use of Euro 0-4 diesel vehicles in the Air Quality Plan are estimated to bring about compliance with the limit values in one year from the

moment of adoption of the restrictions, this is not enough, because Article 23 paragraph 2 states that the exceedance period must be kept as short as possible.

Therefore the period of one year is not the shortest period, because the annulment of the withdrawal decision would be able to cease immediately the breach of the limit values.

Once the limit values have been respected, the authority could reintroduce the withdrawal decision only if it would be proved that the general restrictions to the use of Euro 0-4 diesel vehicles in the Air Quality Plan would be able to maintain the respect of the limit values.

In Italy the Directive 2008/50 has been transposed into National law due to the Legislative Decree n. 155/2010.

F) Conclusion

In your view, does the preliminary ruling procedure support national judges to achieve uniform application of EU environmental law and does it contribute to effective environmental justice on the ground? If not, which changes should be considered internally or at EU level?

Yes, the preliminary ruling procedure supports national judges to achieve uniform application of EU environmental law and contributes to effective environmental justice on the ground.

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