

# CJEU Confirms CILFIT Criteria and Clarifies Case Law on Preliminary References



On 6 October 2021, the Grand Chamber of the Court of Justice of the European Union (the **CJEU**) delivered a judgment clarifying the obligation of national courts to refer questions on the interpretation of EU law to the CJEU ([Case C-561/19, \*Conorzio Italian Management and Catania Multiservizi SpA v. Rete Ferroviaria Italiana SpA\*](#)).

In the case at hand, the referring court asked whether a national court against whose decisions there is no remedy must refer a question on the interpretation of EU law to the CJEU when that question is raised at an advanced stage of the proceedings, after the case has been set down for judgment for the first time or when a request for a preliminary ruling has already been made to the CJEU in the same case.

In its judgment of 6 October 2021, the CJEU first referred to its CILFIT judgment according to which national courts of last instance are only relieved from their obligation to make a reference for a preliminary ruling when (i) the question raised is irrelevant; (ii) the question has already been interpreted by the CJEU; or when (iii) the correct application

of EU law is so obvious as to leave no reasonable doubt (the *CILFIT criteria*).

Second, the CJEU confirmed that if national courts of last instance decide not to refer a question to the CJEU, they must specify the reasons for that decision and these must be based on one of the three CILFIT criteria.

Accordingly, the CJEU found that a national court cannot be relieved of the obligation to refer a question to the CJEU merely because it has already made a reference to the CJEU for a preliminary ruling in the same proceedings.

Third, the CJEU reaffirmed that it is for national courts to assess whether and at what stage of the national procedure it would be relevant and appropriate to make a preliminary reference. However, a national court against whose decisions there is no remedy may refrain from referring a preliminary question to the CJEU on grounds of inadmissibility applicable under their national procedural rules, provided that such rules comply with the EU law principles of equivalence and effectiveness.

Lastly, the CJEU held that the “*absence of reasonable doubt*” (i.e., the third CILFIT criterion) must be assessed based on the characteristic features of EU law, the particular difficulties to which the interpretation of EU law gives rise and the risk of divergences in judgments within the EU. In particular, the CJEU indicated that, before concluding that there is no reasonable doubt as to the correct application of EU law, national courts must be convinced that the matter would be equally obvious to the courts of other Member States and to the CJEU.