Summary of the findings of a jurisprudence-analyzing working group that was set up to examine the initiation of preliminary ruling proceedings

[1] On 3 May 2021, the President of the Curia set up a jurisprudence-analyzing working group with the objective of examining the Hungarian judicial practice of initiating preliminary ruling proceedings under Article 267 of the Treaty on the Functioning of the European Union (TFEU) in all adjudicatory areas of law after 1 May 2004. Our group included judges from all three chambers of the Curia and from lower courts. In addition, lawyers and university professors were also members of the group.

[2] The group was aware of the fact that, in 2013, one of the Curia's previous jurisprudence-analyzing workings groups had already examined the experience of initiating preliminary ruling proceedings and published a summary opinion. In comparison, our jurisprudence-analyzing working group partly focused on other procedural issues and partly "followed up" the recommendations made at that time.

[3] There were two main groups of questions under examination: Cases in which the Hungarian courts initiated a preliminary ruling proceeding and cases in which the preliminary ruling proceeding was not initiated despite the party's request. In the former case, the team examined the files, for which it standardized the examination criteria by developing a questionnaire: the wording of the questions in the operative part of the order, the details of the reasons given, whether the initiating judge expressed his own opinion on the questions he had asked, and whether the initiative was taken on request or *ex officio*. Members of the jurisprudence-analyzing working group also attempted to find out what the aftermath of each Hungarian preliminary ruling was: Was it followed by the referring court or did it have any impact on subsequent Hungarian legislation or case-law?

[4] As another part of the study, the jurisprudence-analyzing working group sought to explore the practice of rejecting requests for preliminary rulings by lower courts: It aimed to find out why these courts had not considered it necessary to refer the case to the CJEU despite the request, how often they encountered such requests in their own case-law, and what would constitute professional assistance to them in the future. This was

done by means of a questionnaire survey that was completed by nearly five hundred judges.

[5] The study concluded that the number of preliminary rulings was high by regional standards and could be rated as balanced between the different areas of law in light of their relation to EU law. This positive picture was overshadowed by the fact that the geographical distribution of initiations varied considerably, with several jurisdictions not having initiated any such proceedings at all over the course of the last two decades.

[6] The relationship between Hungarian courts and the CJEU could also be regarded as favorable in several respects. The proportion of non-substantive decisions (rejections) was negligible compared to substantive decisions, and the complete rewording of the questions asked was not a frequent phenomenon, either. However, the CJEU only followed the legal position explained by the Hungarian court in a minority of cases, which suggested that judges had not always been able to formulate their questions and arguments in line with the CJEU's interpretation of the law.

[7] A higher proportion of judges initiated these types of proceedings *ex officio* rather than on request, which suggested that, in most cases, they recognized the EU law implications of the given legal dispute. However, it would be necessary to improve the practice of drafting the operative part and the reasons of the order that initiated the proceedings.

[8] Stating reasons for rejection is a matter of guarantee, and there were significant differences in both form and content between administrative and civil cases. The rejection should also appear in the operative part of the decision on the merits of the case at the latest.

[9] A uniform set of criteria should be developed as a "guideline" to justify the rejection. This could include, for example: (i) a presentation of the EU provisions relied upon by the parties or otherwise applied or not considered applicable by the lower courts, but considered as such, in light of the facts of the case; (ii) a presentation of any questions of interpretation that might arise and their implications for the relevance of EU law in light of the facts of the case; (iii) based on all this, an overview and assessment of the applicability of the CILFIT exception rules; and (iv) finally, a conclusion as to whether there would be an obligation to refer the case to the CJEU. It would be useful to refer to the CILFIT exceptions in a consistent manner.