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By PwC Deutschland | 21 May 2023

ECJ: National main proceedings may be continued in part during pending preliminary request

The European Court of Justice (ECJ) held that a request for a preliminary ruling made to the Court of Justice does not prevent the referring court from continuing the main proceedings in part. The referring court may carry out procedural steps that it considers necessary, such as the collection of evidence, and which do not prevent it from complying with the subsequent response of the Court.

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In its judgment, the ECJ's answer to the referring Bulgarian court is that EU law does not preclude a national court which has made a request for a preliminary ruling to the Court from staying the main proceedings only with regard to the aspects of those proceedings that are likely to be affected by the Court's response to that request.

The preservation of the effectiveness of that procedure is not made impossible in practice or excessively difficult by a national rule which makes it possible, between the date on which a request for a preliminary ruling is made to the Court and that of the Court's answer, to continue the main proceedings in order to carry out procedural steps. Those are steps that the referring court considers necessary and which concern aspects unrelated to the questions referred for a preliminary ruling, namely procedural steps which are not such as to prevent the referring court from complying, in the main proceedings, with the Court's response.

Because a request for a preliminary ruling may be made to the Court even at an early stage of the main proceedings, it must be open to the referring court, pending the Court's response to that request, to continue those proceedings for such procedural steps.

Source:

ECJ judgment of 17 May 2023 C-176/22 *BK and ZhP (Partial stay of the main proceedings)*.

More detailed information to be found in the ECJ **press release No. 80/23**.

Keywords

European Court of Justice (ECJ), main proceedings