

PRACTICE DIRECTION – REFERENCES TO THE EUROPEAN COURT

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 68

WORDING OF REFERENCES

- 1.1 Where the court intends to refer a question to the European Court it will welcome suggestions from the parties for the wording of the reference. However the responsibility for settling the terms of the reference lies with the English court and not with the parties.
- 1.2 The reference should identify as clearly and succinctly as possible the question on which the court seeks the ruling of the European Court. In choosing the wording of the reference, it should be remembered that it will need to be translated into many other languages.
- 1.3 The court will incorporate the reference in its order. Scheduled to the order should be a document –
 - (1) giving the full name of the referring court;
 - (2) identifying the parties;
 - (3) summarising the nature and history of the proceedings, including the salient facts, indicating whether these are proved or admitted or assumed;
 - (4) setting out the relevant rules of national law;
 - (5) summarising the relevant contentions of the parties;
 - (6) explaining why a ruling of the European Court is sought; and
 - (7) identifying the provisions of Community law which it is being requested to interpret.
- 1.4 Where, as will often be convenient, some of these matters are in the form of a judgment, passages of the judgment not relevant to the reference should be omitted.

TRANSMISSION TO THE EUROPEAN COURT

- 2.1 The order containing the reference, and the document scheduled to it, should be sent to The Senior Master, Room E115, Queen's Bench Division, Royal Courts of Justice, Strand, London WC2A 2LL, for onward transmission to the European Court.
- 2.2 The relevant court file should also be sent to the Senior Master at the above address.

European Court Information Note

3. There is annexed to this Practice Direction an Information Note issued by the European Court. The reference in the opening passage to Article 177 of the E.C. Treaty should now be read as a reference to Article 234.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

INFORMATION NOTE ON REFERENCES BY NATIONAL COURTS FOR PRELIMINARY RULINGS

The development of the Community legal order is largely the result of cooperation established between the Court of Justice of the European Communities and the national courts and tribunals through the preliminary ruling procedure provided for in Article 177 of the EC Treaty and the corresponding provisions of the ECSC and Euratom Treaties.¹

In order to make this cooperation more effective, and thus to enable the Court of Justice to meet the expectations of national courts more suitably by providing answers to preliminary questions which are of assistance to them, this Note provides information for all interested parties, in particular the national courts.

The Note is for information only and does not have any regulatory or interpretative effect in relation to the provisions which govern the preliminary ruling procedure. It merely contains practical information which, in the light of experience accumulated in the application of the preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.

1. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that that is necessary for it to give judgment in a case pending before it.

Courts against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious.²

¹— A preliminary ruling procedure is also provided for by the protocols to several conventions concluded by the Member States, in particular the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

²— Judgment in Case 283/81 *CILFIT v Ministry of Health* [1982] ECR 3415.

2. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts may reject a pleas challenging the validity of an act. All national courts – even those whose decisions are still open to appeal – raising the question of the validity of a Community act must refer that question to the Court of Justice.³

However, if a national court has serious doubts about the validity of a Community act on which a national measure is based, it may exceptionally suspend application of that measure temporarily or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers that the Community act is not valid.

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3. Questions referred for a preliminary ruling must concern the interpretation or validity of a provision of Community law only, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court to apply the relevant provision of Community law in the specific case pending before it.

4. The decision by which a national court or tribunal refers a question to the Court of Justice for a preliminary ruling may be in any form allowed by national law as regards procedural steps. The reference of a question or questions to the Court of Justice generally causes the national proceedings to be stayed until the Court gives its ruling, but the decision to stay proceedings is one which the national court alone must take in accordance with its own national law.

5. The decision making the reference and containing the question or questions referred to the Court will have to be translated by the Court's translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is therefore desirable that the decision making the reference should be drafted as clearly and precisely as possible.

³ – Judgment in Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* [1987] ECR 4199.

⁴ – Judgments in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415 and in Case C-465/93 *Atlanta Fruchthandelsgesellschaft* [1995] ECR I-3761.

6. It 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.⁵

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.

7. 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 judgment. 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.⁶

⁵ – Judgment in Joined Cases C-320/90, C-321/90 and C-322/90 *Telemarsicabruzzo* [1993] ECR I-393.

⁶ – Judgment in Case 70/77 *Simmenthal v Amministrazione delle Finanze dello Stato* [1978] ECR 1453.

8. The decision making the reference and the relevant documents are to be sent by the national court directly to the Court of Justice, by registered post (addressed to the Registry of the Court of Justice of the European Communities, L-2925 Luxembourg, telephone 352-43031). The Court Registry will stay in contact with the national court until judgment is given, and will send it copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. It would be grateful to receive word that its judgment has been applied in the national proceedings and a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs.