

# 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 may direct the parties to produce a draft of the reference but responsibility for the terms of the reference lies with the court making the reference 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 as a schedule to its order. The schedule must –
  - (1) give the full name of the referring court;
  - (2) identify the parties;
  - (3) summarise the nature and history of the proceedings, including the salient facts, indicating whether these are proved or admitted or assumed;
  - (4) set out the relevant rules of national law;
  - (5) summarise the relevant contentions of the parties;
  - (6) explain why a ruling of the European Court is sought;
  - (7) identify the provisions of Community law which the European Court is being requested to interpret;
  - (8) state the question on which a ruling of the European Court is sought; and
  - (9) state any opinion on the answer to the question that may have been expressed by the court in the course of delivering judgment.
- 1.4** If some of these matters are conveniently set out in a judgment, the relevant passages should be summarised succinctly. If it is not possible to produce such a summary, only those passages that contain information of the kind referred to in paragraph 1.3 should be cited.
- 1.5** The reference should not exceed 20 pages in length.

## Request to apply the urgent preliminary ruling procedure

- 1A.1** The request to the European Court to apply its urgent preliminary ruling procedure must set out –
  - (1) the matters of fact and law which establish the urgency;
  - (2) the reasons why the urgent preliminary ruling procedure applies; and
  - (3) in so far as possible, the court's view on the answer to the question referred to the European Court for a preliminary ruling.

## Transmission to the European Court

- 2.1** The order containing the reference, and where relevant any request to the European Court to apply its urgent preliminary ruling procedure, must be sent to the Senior Master, Room E101,

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 must also be sent to the Senior Master at the above address.

### **European Court Information Note**

- 3.** There are annexed to this Practice Direction –
- (1)** an Information Note issued by the European Court; and
  - (2)** a supplement to the Information Note following the implementation of the urgent ruling procedure applicable to references concerning the area of freedom, security and justice.

## I

(Information)

## COURT OF JUSTICE

### COURT OF JUSTICE

#### Notice

An information note addressed to the national courts concerning the preliminary ruling procedure before the Court of Justice was communicated to them by the competent national authorities in 1996. That note having shown itself to be of use in practice, the Court has taken steps to bring it up to date in the light of experience and now considers it appropriate to distribute it by means of publication in the Official Journal of the European Union.

#### INFORMATION NOTE

##### on references from national courts for a preliminary ruling

(2005/C 143/01)

1. The preliminary ruling system is a fundamental mechanism of European Union law aimed at enabling national courts to ensure uniform interpretation and application of that law in all the Member States.
2. The Court of Justice of the European Communities has jurisdiction to give preliminary rulings on the interpretation of the law of the European Union and on the validity of acts of secondary legislation. That general jurisdiction is conferred on it by Article 234 of the EC Treaty and, in certain specific cases, by other provisions.
3. The preliminary ruling procedure being based on cooperation between the Court and national courts, it may be helpful, in order to ensure that that cooperation is effective, to provide the national courts with the following information.
4. This practical information, which is in no way binding, is intended to provide guidance to national courts as to whether it is appropriate to make a reference for a preliminary ruling and, should they proceed, to help them formulate and submit questions to the Court.

##### The role of the Court in the preliminary ruling procedure

5. Under the preliminary ruling procedure, the Court's role is to give an interpretation of Community law or to rule on its validity, not to apply that law to the factual situation underlying the main proceedings, which is the task of the national court. It is not for the Court to decide issues of fact raised in the main proceedings or to resolve differences of opinion on the interpretation or application of rules of national law.

6. In ruling on the interpretation or validity of Community law, the Court makes every effort to give a reply which will be of assistance in resolving the dispute, but it is for the referring court to draw the appropriate conclusions from that reply, if necessary by disapplying the rule of national law in question.

#### **The decision to submit a question to the Court**

##### ***The originator of the question***

7. Under Article 234 of the EC Treaty and Article 150 of the EAEC Treaty, any court or tribunal of a Member State, in so far as it is called upon to give a ruling in proceedings intended to arrive at a decision of a judicial nature, may as a rule refer a question to the Court for a preliminary ruling. The status of that court or tribunal is interpreted by the Court as a self-standing concept of Community law.

8. However, in the specific sphere of acts of the institutions in Title IV of Part Three of the EC Treaty on visa, asylum, immigration and other policies related to free movement of persons — in particular jurisdiction and the recognition and enforcement of judicial decisions — a reference may be made only by courts or tribunals against the decisions of which there is no appeal, in accordance with Article 68 of the EC Treaty.

9. Likewise, under Article 35 of the Treaty on European Union, acts of the institutions in the area of police and judicial cooperation in criminal matters may be the subject of a reference for a preliminary ruling only from courts in the Member States which have accepted the jurisdiction of the Court, each Member State specifying whether that right of referral to the Court applies to any court or tribunal of that State or only to those against the decisions of which there is no appeal.

10. It is not necessary for the parties in the case to raise the question; the national court may do so of its own motion.

##### ***References on interpretation***

11. Any court or tribunal **may** refer a question to the Court on the interpretation of a rule of Community law if it considers it necessary to do so in order to resolve a dispute brought before it.

12. However, courts or tribunals against whose decisions there is no judicial remedy under national law **must**, as a rule, refer such a question to the Court, unless the Court has already ruled on the point (and there is no new context that raises any serious doubt as to whether that case-law may be applied), or unless the correct interpretation of the rule of Community law is obvious.

13. Thus, a court or tribunal against whose decisions there is a judicial remedy may, in particular when it considers that sufficient clarification is given by the case-law of the Court, itself decide on the correct interpretation of Community law and its application to the factual situation before it. However, a reference for a preliminary ruling may prove particularly useful, at an appropriate stage of the proceedings, when there is a new question of interpretation of general interest for the uniform application of Community law throughout the Union, or where the existing case-law does not appear to be applicable to a new set of facts.

14. It is for the national court to explain why the interpretation sought is necessary to enable it to give judgment.

**References on determination of validity**

15. Although national courts may reject pleas raised before them challenging the validity of Community acts, the Court has exclusive jurisdiction to declare such acts invalid.

16. All national courts **must** therefore refer a question to the Court when they have doubts about the validity of a Community act, stating the reasons for which they consider that the Community act may be invalid.

17. 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 the Community act to be invalid.

**The stage at which to submit a question for a preliminary ruling**

18. 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 is the national court which is in the best position to decide at what stage of the proceedings such a question should be referred.

19. It is, however, desirable that a decision to seek a preliminary ruling should be taken when the proceedings have reached a stage at which the national court is able to define the factual and legal context of the question, so that the Court has available to it all the information necessary to check, where appropriate, that Community law applies to the main proceedings. It may also be in the interests of justice to refer a question for a preliminary ruling only after both sides have been heard.

**The form of the reference for a preliminary ruling**

20. 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. It must however be borne in mind that it is that document which serves as the basis of the proceedings before the Court and that it must therefore contain such information as will enable the latter to give a reply which is of assistance to the national court. Moreover, it is only the actual reference for a preliminary ruling which is notified to the parties entitled to submit observations to the Court, in particular the Member States and the institutions, and which is translated.

21. Owing to the need to translate the reference, it should be drafted simply, clearly and precisely, avoiding superfluous detail.

22. A maximum of about ten pages is often sufficient to set out in a proper manner the context of a reference for a preliminary ruling. The order for reference must be succinct but sufficiently complete and must contain all the relevant information to give the Court and the parties entitled to submit observations a clear understanding of the factual and legal context of the main proceedings. In particular, the order for reference must:

- include a brief account of the subject-matter of the dispute and the relevant findings of fact, or, at least, set out the factual situation on which the question referred is based;
- set out the tenor of any applicable national provisions and identify, where necessary, the relevant national case-law, giving in each case precise references (e.g. page of an official journal or specific law report, with any internet reference);

- identify the Community provisions relevant to the case as accurately as possible;
- explain the reasons which prompted the national court to raise the question of the interpretation or validity of the Community provisions, and the relationship between those provisions and the national provisions applicable to the main proceedings;
- include, where appropriate, a summary of the main arguments of the parties.

In order to make it easier to read and refer to the document, it is helpful if the different points or paragraphs of the order for reference are numbered.

23. Finally, the referring court may, if it considers itself to be in a position to do so, briefly state its view on the answer to be given to the questions referred for a preliminary ruling.

24. The question or questions themselves should appear in a separate and clearly identified section of the order for reference, generally at the beginning or the end. It must be possible to understand them without referring to the statement of the grounds for the reference, which however provides the necessary background for a proper assessment.

#### **The effects of the reference for a preliminary ruling on the national proceedings**

25. A reference for a preliminary ruling in general calls for the national proceedings to be stayed until the Court has given its ruling.

26. However, the national court may still order protective measures, particularly in a reference on determination of validity (see point 17 above).

#### **Costs and legal aid**

27. Proceedings for a preliminary ruling before the Court are free of charge and the Court does not rule on the costs of the parties to the main proceedings; it is for the national court to rule on those costs.

28. If a party has insufficient means and where possible under national rules, the national court may grant that party legal aid to cover the costs, including those of lawyers' fees, which it incurs before the Court. The Court itself may also grant legal aid.

#### **Communication between the national court and the Court of Justice**

29. The order for reference and the relevant documents (including, where applicable, the case file or a copy of the case file) 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 + 352-4303-1).

30. The Court Registry will stay in contact with the national court until a ruling is given, and will send it copies of the procedural documents.

31. The Court will send its ruling to the national court. It would welcome information from the national court on the action taken upon its ruling in the national proceedings and, where appropriate, a copy of the national court's final decision.

## IV

(Notices)

### NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COURT OF JUSTICE

### INFORMATION NOTE

**on references from national courts for a preliminary ruling**

### SUPPLEMENT

**following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice**

(2008/C 64/01)

1. This note is supplementary to the existing information note on references from national courts for a preliminary ruling <sup>(1)</sup>, and provides practical information on the new urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice. The procedure is governed by Article 23a of the Protocol on the Statute of the Court of Justice and Article 104b of its Rules of Procedure <sup>(2)</sup>.

2. This information is intended to assist national courts proposing to request the application of the urgent preliminary ruling procedure, and to facilitate the Court's handling of that request. In common with the existing information note, it is in no way binding.

### Conditions for the application of the urgent preliminary ruling procedure

3. The urgent preliminary ruling procedure is applicable only in the areas covered by Title VI (Articles 29 to 42) of the Treaty on European Union concerning police and judicial cooperation in criminal matters, and Title IV (Articles 61 to 69) of Part Three of the EC Treaty concerning visas, asylum, immigration and other policies related to free movement of persons, including judicial cooperation in civil matters.

4. Although a reference for a preliminary ruling generally calls for the national proceedings to be stayed until the Court has given its ruling, the referring court may still order protective measures to safeguard the interests of the parties pending the judgment of the Court, particularly as regards a national administrative measure based on a Community act which is the subject of a reference for a preliminary ruling on validity.

5. The Court decides whether the urgent procedure is to be applied. Such a decision is generally taken only on a reasoned request from the referring court. Exceptionally, the Court may decide of its own motion to deal with a reference under the urgent preliminary ruling procedure, where that appears to be required.

6. The urgent procedure simplifies the various stages of the proceedings before the Court, but its application entails significant constraints for the Court and for the parties and other interested persons participating in the procedure, particularly the Member States.

<sup>(1)</sup> See OJ 2005 C 143, pp. 1 to 4.

<sup>(2)</sup> See OJ 2008 L 24, pp. 39 to 43.

7. It should therefore be requested only where it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Although it is not possible to provide an exhaustive list of such situations, particularly because of the varied and evolving nature of Community rules governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent procedure to be applied in the following situations: in the case of a person detained or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under Community law depends on the answer to the question referred for a preliminary ruling.

#### **The request for application of the urgent preliminary ruling procedure**

8. To enable the Court to decide quickly whether the urgent preliminary ruling procedure should be applied, the request must set out the matters of fact and law which establish the urgency and, in particular, the risks involved in following the normal preliminary ruling procedure.

9. In so far as it is able to do so, the referring court should briefly state its view on the answer to be given to the question(s) referred. Such a statement makes it easier for the parties and other interested persons participating in the procedure to define their positions and facilitates the Court's decision, thereby contributing to the rapidity of the procedure.

10. The request for the urgent preliminary ruling procedure must be submitted in a form that enables the Registry of the Court to establish immediately that the file must be dealt with in a particular way. Accordingly, the request should be submitted in a document separate from the order for reference itself, or in a covering letter expressly setting out the request.

11. As regards the order for reference itself, it should be noted that relevant information is already contained in points 20 to 24 of the information note on references from national courts for a preliminary ruling. It is particularly important in an urgent situation that the order for reference should be succinct, as it helps to ensure the rapidity of the procedure.

#### **Communication between the Court of Justice, the national court and the parties**

12. As regards communication with the national court or tribunal and the parties before it, national courts or tribunals which submit a request for an urgent preliminary ruling procedure are requested to state the e-mail address or any fax number which may be used by the Court, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

13. A copy of the signed order for reference together with a request for the urgent preliminary ruling procedure can initially be sent to the Court by e-mail (ECJ-Registry@curia.europa.eu) or by fax (+352 43 37 66). Processing of the reference and of the request can then begin upon receipt of the e-mailed or faxed copy. The originals of those documents must, however, be sent to the Registry of the Court as soon as possible.

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