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(Information)

COURT OF JUSTICE

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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.
