

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

Following the entry into force of the Treaty of Lisbon, this note replaces the information note published in OJ 2005 C 143, p. 1 and the supplement to that note published in OJ 2008 C 64.

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

(2009/C 297/01)

I. General

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 Union has jurisdiction to give preliminary rulings on the interpretation of European Union law and on the validity of acts of the institutions, bodies, offices or agencies of the Union. That general jurisdiction is conferred on it by Article 19(3)(b) of the Treaty on European Union (OJEU 2008 C 115, p. 13) ('the TEU') and Article 267 of the Treaty on the Functioning of the European Union (OJEU 2008 C 115, p. 47) ('the TFEU').
3. Article 256(3) TFEU provides that the General Court is to have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by the Statute. Since no provisions have been introduced into the Statute in that regard, the Court of Justice alone has jurisdiction to give preliminary rulings.
4. While Article 267 TFEU confers on the Court of Justice a general jurisdiction, a number of provisions exist which lay down exceptions to or restrictions on that jurisdiction. This is true in particular of Articles 275 and 276 TFEU and Article 10 of Protocol (No 36) on Transitional Provisions of the Treaty of Lisbon (OJEU 2008 C 115, p. 322).
5. The preliminary ruling procedure being based on cooperation between the Court of Justice 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.
6. 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 of Justice in the preliminary ruling procedure

7. Under the preliminary ruling procedure, the Court's role is to give an interpretation of European Union 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 either 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.

8. In ruling on the interpretation or validity of European Union 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

9. Under Article 267 TFEU, 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 of Justice for a preliminary ruling⁽¹⁾. Status as a court or tribunal is interpreted by the Court of Justice as a self-standing concept of European Union law.

10. It is for the national court alone to decide whether to refer a question to the Court of Justice for a preliminary ruling, whether or not the parties to the main proceedings have requested it to do so.

References on interpretation

11. Any court or tribunal **may** refer a question to the Court of Justice on the interpretation of a rule of European Union 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 law in question is obvious.

13. Thus, a court or tribunal against whose decisions there is a judicial remedy may, in particular when it considers that sufficient guidance is given by the case-law of the Court of Justice, itself decide on the correct interpretation of European Union 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 European Union law in all the Member States, 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.

⁽¹⁾ Article 10(1) to (3) of Protocol No 36 provides that the powers of the Court of Justice in relation to acts adopted before the entry into force of the Treaty of Lisbon (OJ 2007 C 306, p. 1) under Title VI of the TEU, in the field of police cooperation and judicial cooperation in criminal matters, and which have not since been amended, are, however, to remain the same for a maximum period of five years from the date of entry into force of the Treaty of Lisbon (1 December 2009). During that period, such acts may, therefore, form the subject-matter of a reference for a preliminary ruling only where the order for reference is made by a court of a Member State which has accepted the jurisdiction of the Court of Justice, it being a matter for each State to determine whether the right to refer a question to the Court is to be available to all of its national courts or is to be reserved to the courts of last instance.

References on determination of validity

15. Although national courts may reject pleas raised before them challenging the validity of acts of an institution, body, office or agency of the Union, the Court of Justice has exclusive jurisdiction to declare such an act invalid.

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

17. However, if a national court has serious doubts about the validity of an act of an institution, body, office or agency of the Union 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 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 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 national 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 of Justice has available to it all the information necessary to check, where appropriate, that European Union 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 interested persons 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 10 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 interested persons 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 (for example, a page of an official journal or specific law report, with any internet reference);

- identify the European Union law 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 European Union law provisions, and the relationship between those provisions and the national provisions applicable to the main proceedings;
- include, if need be, a summary of the main relevant arguments of the parties to the main proceedings.

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 able, 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 will however provide 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 calls for the national proceedings to be stayed until the Court of Justice has given its ruling.

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

Costs and legal aid

27. Preliminary ruling proceedings before the Court of Justice 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 it is 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 where the party in question is not already in receipt of legal aid under national rules or to the extent to which that aid does not cover, or covers only partly, costs incurred before the Court.

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, 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 of Justice 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.

II. The Urgent preliminary ruling procedure (PPU)

32. This part of the note provides practical information on the urgent preliminary ruling procedure applicable to references relating to the area of freedom, security and justice. The procedure is governed by Article 23a of Protocol (No 3) on the Statute of the Court of Justice of the European Union (OJEU 2008 C 115, p. 210) and Article 104b of the Rules of Procedure of the Court of Justice. National courts may request that this procedure be applied or request the application of the accelerated procedure under the conditions laid down in Article 23a of the Protocol and Article 104a of the Rules of Procedure.

Conditions for the application of the urgent preliminary ruling procedure

33. The urgent preliminary ruling procedure is applicable only in the areas covered by Title V of Part Three of the TFEU, which relates to the area of freedom, security and justice.

34. The Court of Justice decides whether this 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.

35. The urgent preliminary ruling 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.

36. 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 the rules of European Union law governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the following situations: in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody 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 European Union law depends on the answer to the question referred for a preliminary ruling.

The request for application of the urgent preliminary ruling procedure

37. 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.

38. 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.

39. The request for the urgent preliminary ruling procedure must be submitted in a form that enables the Court Registry 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.

40. As regards the order for reference itself, it is particularly important that it should be succinct where the matter is urgent, as this will help to ensure the rapidity of the procedure.

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

41. 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 of Justice, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

42. 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 Court Registry as soon as possible.

(2009/C 297/02)

Last publication of the Court of Justice in the *Official Journal of the European Union*

OJ C 282, 21.11.2009

Past publications

OJ C 267, 7.11.2009

OJ C 256, 24.10.2009

OJ C 244, 10.10.2009

OJ C 233, 26.9.2009

OJ C 220, 12.9.2009

OJ C 205, 29.8.2009

These texts are available on:
EUR-Lex: <http://eur-lex.europa.eu>
