

I

(Resolutions, recommendations and opinions)

RECOMMENDATIONS

COURT OF JUSTICE OF THE EUROPEAN UNION

Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

(2019/C 380/01)

These recommendations have been drawn up for the attention of the courts and tribunals of the Member States of the European Union and echo the provisions of Title III of the Rules of Procedure of the Court of Justice ⁽¹⁾. They serve as a reminder of the essential characteristics of the preliminary ruling procedure and the matters to be taken into account by the national courts and tribunals before a reference for a preliminary ruling is made to the Court of Justice, while providing practical guidance as to the form and content of requests for a preliminary ruling. Since such requests will be served, after having been translated, on all the interested persons referred to in Article 23 of the Protocol on the Statute of the Court of Justice of the European Union and the decisions of the Court closing the proceedings will in principle be published in all the official languages of the European Union, close attention must be paid to the presentation of requests for a preliminary ruling and, in particular, to the protection of the personal data which they contain.

⁽¹⁾ OJ L 265, 29.9.2012, p. 1.

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INTRODUCTION

1. The reference for a preliminary ruling, provided for in Article 19(3)(b) of the Treaty on European Union ('TEU') and Article 267 of the Treaty on the Functioning of the European Union ('TFEU'), is a fundamental mechanism of EU law. It is designed to ensure the uniform interpretation and application of EU law within the European Union, by offering the courts and tribunals of the Member States a means of bringing before the Court of Justice of the European Union ('the Court') for a preliminary ruling questions concerning the interpretation of EU law or the validity of acts adopted by the institutions, bodies, offices or agencies of the Union.

2. The preliminary ruling procedure is based on close cooperation between the Court and the courts and tribunals of the Member States. In order to ensure that that procedure is fully effective, it is necessary to recall its essential characteristics and to provide further information to clarify the provisions of the rules of procedure relating, in particular, to the originator, subject matter and scope of a request for a preliminary ruling, as well as to the form and content of such a request. That information — which applies to all requests for a preliminary ruling (I) — is supplemented by provisions concerning requests for a preliminary ruling requiring particularly expeditious handling (II) and by an annex which summarises, by way of a reminder, all the elements that must be included in a request for a preliminary ruling.

I. PROVISIONS WHICH APPLY TO ALL REQUESTS FOR A PRELIMINARY RULING

The originator of the request for a preliminary ruling

3. The jurisdiction of the Court to give a preliminary ruling on the interpretation or validity of EU law is exercised exclusively on the initiative of the national courts and tribunals, whether or not the parties to the main proceedings have expressed the wish that a question be referred to the Court. In so far as it is called upon to assume responsibility for the subsequent judicial decision, it is for the national court or tribunal before which a dispute has been brought — and for that court or tribunal alone — to determine, in the light of the particular circumstances of each case, both the need for a request for a preliminary ruling in order to enable it to deliver its decision and the relevance of the questions which it submits to the Court.

4. Status as a court or tribunal is interpreted by the Court as an autonomous concept of EU law. The Court takes account of a number of factors such as whether the body making the reference is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent.

5. The courts and tribunals of the Member States may refer a question to the Court on the interpretation or validity of EU law where they consider that a decision of the Court on the question is necessary to enable them to give judgment (see second paragraph of Article 267 TFEU). A reference for a preliminary ruling may, *inter alia*, prove particularly useful when a question of interpretation is raised before the national court or tribunal that is new and of general interest for the uniform application of EU law, or where the existing case-law does not appear to provide the necessary guidance in a new legal context or set of facts.

6. Where a question is raised in the context of a case that is pending before a court or tribunal against whose decisions there is no judicial remedy under national law, that court or tribunal is nonetheless required to bring a request for a preliminary ruling before the Court (see third paragraph of Article 267 TFEU), unless there is already well-established case-law on the point or unless the correct interpretation of the rule of law in question admits of no reasonable doubt.

7. It follows, moreover, from settled case-law that although national courts and tribunals may reject pleas raised before them challenging the validity of acts of an institution, body, office or agency of the Union, the Court has exclusive jurisdiction to declare such acts invalid. When it has doubts about the validity of such an act, a court or tribunal of a Member State must therefore refer the matter to the Court, stating the reasons why it has such doubts.

The subject matter and scope of the request for a preliminary ruling

8. A request for a preliminary ruling must concern the interpretation or validity of EU law, not the interpretation of rules of national law or issues of fact raised in the main proceedings.

9. *The Court can give a preliminary ruling only if EU law applies to the case in the main proceedings.* It is essential, in that respect, that the referring court or tribunal set out all the relevant matters of fact and of law that have prompted it to consider that any provisions of EU law may be applicable in the case.

10. With regard to references for a preliminary ruling concerning the interpretation of the Charter of Fundamental Rights of the European Union, it must be noted that, under Article 51(1) of the Charter, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. While the circumstances of such implementation can vary, it must nevertheless be clearly and unequivocally apparent from the request for a preliminary ruling that a rule of EU law other than the Charter is applicable to the case in the main proceedings. Since the Court has no jurisdiction to give a preliminary ruling where a legal situation does not come within the scope of EU law, any provisions of the Charter that may be relied upon by the referring court or tribunal *cannot, of themselves, form the basis for such jurisdiction.*

11. Lastly, although, in order to deliver its decision, the Court necessarily takes into account the legal and factual context of the dispute in the main proceedings, as defined by the referring court or tribunal in its request for a preliminary ruling, it does not itself apply EU law to that dispute. When ruling on the interpretation or validity of EU law, the Court makes every effort to give a reply which will be of assistance in resolving the dispute in the main proceedings, but it is for the referring court or tribunal to draw case-specific conclusions, if necessary by disapplying the rule of national law that has been held to be incompatible with EU law.

The appropriate stage at which to make a reference for a preliminary ruling

12. A national court or tribunal may submit a request for a preliminary ruling to the Court as soon as it finds that a ruling on the interpretation or validity of EU law is necessary to enable it to give judgment. It is that court or tribunal which is in fact in the best position to decide at what stage of the national proceedings such a request should be made.

13. Since, however, that request will serve as the basis of the proceedings before the Court and the Court must therefore have available to it all the information that will enable it both to assess whether it has jurisdiction to give a reply to the questions raised and, if so, to give a useful reply to those questions, it is necessary that a decision to make a reference for a preliminary ruling be taken when the national proceedings have reached a stage at which the referring court or tribunal is able to *define, in sufficient detail, the legal and factual context of the case in the main proceedings, and the legal issues which it raises*. In the interests of the proper administration of justice, it may also be appropriate for the reference to be made only after both sides have been heard.

The form and content of the request for a preliminary ruling

14. The request for a preliminary ruling may be in any form allowed by national law, but it should be borne in mind that that request serves as the basis of the proceedings before the Court and is served on all the interested persons referred to in Article 23 of the Protocol on the Statute of the Court of Justice of the European Union ('the Statute') and, in particular, on all the Member States, with a view to obtaining any observations they may wish to make. Owing to the consequential need to translate it into all the official languages of the European Union, the request for a preliminary ruling should therefore be drafted simply, clearly and precisely by the referring court or tribunal, avoiding superfluous detail. As experience has shown, about 10 pages are often sufficient to set out adequately the legal and factual context of a request for a preliminary ruling and the grounds for making the reference to the Court.

15. The content of any request for a preliminary ruling is prescribed by Article 94 of the Rules of Procedure of the Court and is summarised, by way of a reminder, in the annex hereto. In addition to the text of the questions referred to the Court for a preliminary ruling, *the request for a preliminary ruling must contain:*

- a summary of the subject matter of the dispute in the main proceedings and the relevant findings of fact as determined by the referring court or tribunal, or, at the very least, an account of the facts on which the questions referred are based,
- the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law, and
- a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings.

In the absence of one or more of the above, the Court may find it necessary, notably on the basis of Article 53(2) of the Rules of Procedure, to decline jurisdiction to give a preliminary ruling on the questions referred or dismiss the request for a preliminary ruling as inadmissible.

16. In its request for a preliminary ruling, the referring court or tribunal must provide the *precise references for the national provisions applicable to the facts of the dispute in the main proceedings and for the provisions of EU law* whose interpretation is sought or whose validity is challenged. Those references must, as far as possible, include both the exact title and date of adoption of the acts containing the provisions concerned and the publication references for those acts. When referring to case-law, the referring court or tribunal is also requested to mention the European Case Law Identifier (ECLI) of the decision concerned.

17. If it considers it necessary for the purpose of understanding the case, the referring court or tribunal may briefly set out the *main arguments of the parties to the main proceedings*. It should be borne in mind in that context that only the request for a preliminary ruling will be translated, not any annexes to that request.

18. The referring court or tribunal may also briefly state *its view on the answer to be given to the questions referred for a preliminary ruling*. That information may be useful to the Court, particularly where it is called upon to give a preliminary ruling in an expedited or urgent procedure.

19. Lastly, *the questions referred* to the Court for a preliminary ruling must appear in a *separate and clearly identified section of the order for reference*, preferably at the beginning or the end. It must be possible to understand them on their own terms, without it being necessary to refer to the statement of the grounds for the request.

20. In order to make the request for a preliminary ruling easier to read, it is essential that the Court receive it in typewritten form and that the pages and paragraphs of the order for reference be numbered. Handwritten requests for a preliminary ruling will not be processed by the Court.

Protection of personal data and anonymisation of the request for a preliminary ruling

21. In order to ensure optimal protection of personal data in the Court's handling of the case, service of the request for a preliminary ruling on the interested persons referred to in Article 23 of the Statute and the subsequent dissemination, in all official languages of the European Union, of the decision closing the proceedings, *the referring court or tribunal* — which alone has full knowledge of the file submitted to the Court — is invited to *anonymise the case by replacing, for example using initials or a combination of letters, the names of individuals* referred to in the request and by *redacting information that might enable them to be identified*. Given the increasing use of new information technologies and, in particular, the use of search engines, any anonymisation effected after the request for a preliminary ruling has been served on the interested persons referred to in Article 23 of the Statute and publication of the notice relating to the case in the *Official Journal of the European Union* is likely to be less effective.

22. If the referring court or tribunal has a nominative version of the request for a preliminary ruling, containing the full names and contact details of the parties to the main proceedings, and an anonymised version of that request, it is requested to send both versions to the Court to facilitate the Court's handling of the case.

Transmission to the Court of the request for a preliminary ruling and of the case file in the national proceedings

23. The request for a preliminary ruling must be dated and signed, then sent to the Court Registry electronically or by post (Registry of the Court of Justice, Rue du Fort Niedergrünwald, L-2925 Luxembourg). For reasons connected, in particular, with the need to ensure expeditious handling of the case and optimal communication with the referring court or tribunal, the Court recommends that national courts and tribunals use the e-Curia application. The rules on access to that application, which enables procedural documents to be lodged and served electronically, and the conditions of use of e-Curia may be viewed on the institution's website (https://curia.europa.eu/jcms/jcms/P_78957/en/). In order to facilitate the Court's processing of requests for a preliminary ruling and, in particular, their translation into all the official languages of the European Union, national courts and tribunals are requested, in addition to sending the original version of the request for a preliminary ruling via e-Curia, to send an editable version (word processing software such as 'Word', 'OpenOffice' or 'LibreOffice') of that request to the following address: DDP-GrefeCour@curia.europa.eu.

24. The request for a preliminary ruling must reach the Registry together with all the relevant documents and documents useful for the Court's handling of the case and, in particular, the precise contact details for the parties to the main proceedings and their representatives, if any, as well as the file of the case in the main proceedings or a copy of it. The file (or copy file) — which may be sent electronically or by post — will be retained at the Registry throughout the proceedings before the Court where, unless otherwise indicated by the referring court or tribunal, it may be consulted by the interested persons referred to in Article 23 of the Statute.

Interaction between the reference for a preliminary ruling and the national proceedings

25. Although the referring court or tribunal may still order protective measures, particularly in connection with a reference on determination of validity, the lodging of a request for a preliminary ruling nevertheless calls for the national proceedings to be stayed until the Court has given its ruling.

26. While the Court, in principle, remains seised of a request for a preliminary ruling for so long as that request is not withdrawn by the referring court or tribunal, it must nevertheless be borne in mind that the Court's role in the preliminary ruling procedure is to contribute to the effective administration of justice in the Member States, and not to give opinions on general or hypothetical questions. Since the preliminary ruling procedure is predicated on there being proceedings actually pending before the referring court or tribunal, it is incumbent on that court or tribunal to inform the Court of any procedural step that may affect the referral and, in particular, of any discontinuance or withdrawal or of any amicable settlement of the dispute in the main proceedings, and of any other event leading to the termination of the proceedings. The referring court or tribunal must also inform the Court of any decision delivered in the context of an appeal against the order for reference and of the consequences of that decision for the request for a preliminary ruling. In the interests of the proper conduct of the preliminary ruling proceedings before the Court and, in particular, to ensure that the Court does not devote time and resources to a case that is likely to be withdrawn or become devoid of purpose, it is important that such information is communicated to the Court with the minimum of delay.

27. National courts and tribunals should also note that the withdrawal of a request for a preliminary ruling may have an impact on the management of similar cases by the referring court or tribunal. Where the outcome of a number of cases pending before the referring court or tribunal depends on the reply to be given by the Court to the questions submitted by that court or tribunal, it is appropriate for that court or tribunal to join those cases before submitting to the Court its request for a preliminary ruling in order to enable the Court to reply to the questions referred notwithstanding any withdrawal of one or more cases.

Costs and legal aid

28. Preliminary ruling proceedings before the Court are free of charge and the Court does not rule on the costs of the parties to the proceedings pending before the referring court or tribunal. It is for the referring court or tribunal to rule on those costs.

29. If a party to the main proceedings has insufficient means, the Court may grant that party legal aid to cover the costs, particularly those in respect of its representation, which it incurs before the Court. That aid can, however, be granted only if the party in question is not already in receipt of aid under national rules or to the extent to which that aid does not cover, or covers only partly, costs incurred before the Court. That party is requested in any event to send to the Court all information and supporting documents that will enable his or her true financial situation to be assessed.

Conduct of the proceedings before the Court and the action taken by the referring court or tribunal upon the Court's decision

30. The Court Registry will remain in contact with the referring court or tribunal throughout the proceedings, and will send it copies of all procedural documents and any requests for information or clarification deemed necessary in order for a useful reply to be given to the questions referred by that court or tribunal.

31. At the end of the proceedings which, as a rule, comprise a written part and an oral part, the Court gives its ruling in the form of a judgment on the questions put by the referring court or tribunal. In some cases, however, the Court may find it necessary to rule on those questions without an oral part of the procedure, or even without seeking the written observations of the interested persons referred to in Article 23 of the Statute. That is the case, in particular, when the question referred for a preliminary ruling is identical to a question on which the Court has already ruled, or where the answer to such a question may be clearly deduced from existing case-law or admits of no reasonable doubt. In such cases, the Court will, on the basis of Article 99 of its Rules of Procedure, rule expeditiously on the question put, by a reasoned order which has the same scope and the same binding force as a judgment.

32. After the judgment has been delivered or the order closing the proceedings has been signed, the Registry will send the Court's decision to the referring court or tribunal, which is requested to inform the Court of the action taken upon that decision in the case in the main proceedings. The final decision of the referring court or tribunal must be sent, with an express reference to the case number of the case before the Court, to the following address: Follow-up-DDP@curia.europa.eu.

II. PROVISIONS APPLICABLE TO REQUESTS FOR A PRELIMINARY RULING REQUIRING PARTICULARLY EXPEDITIOUS HANDLING

33. As provided in Article 23a of the Statute and Articles 105 to 114 of the Rules of Procedure, a reference for a preliminary ruling may, in certain circumstances, be determined pursuant to an expedited procedure or an urgent procedure. The Court will decide whether these procedures are to be applied, either on submission by the referring court or tribunal of a separate, duly reasoned, request setting out the matters of fact or of law which justify the application of such procedure(s), or, exceptionally, of its own motion, where that appears to be required by the nature or the particular circumstances of the case.

Conditions for the application of the expedited procedure and the urgent procedure

34. Article 105 of the Rules of Procedure provides that a reference for a preliminary ruling may thus be determined pursuant to an expedited procedure, derogating from the provisions of those rules, where the nature of the case requires that it be dealt with within a short time. Since that procedure imposes significant constraints on all those involved in it, and, in particular, on all the Member States called upon to lodge observations, whether written or oral, within much shorter time limits than would ordinarily apply, its application must be sought only when particular circumstances create an emergency that warrants the Court ruling quickly on the questions referred. That may be the case, *inter alia*, if there is a serious and immediate danger to public health or to the environment which a prompt decision by the Court might help to avert, or if particular circumstances require uncertainties concerning fundamental issues of national constitutional law and of EU law to be resolved within a very short time. According to settled case-law, the large number of persons or legal situations potentially affected by the decision that the referring court or tribunal has to deliver after bringing the matter before the Court for a preliminary ruling, the fact that there may be important economic issues at stake or that the referring court or tribunal is obliged to rule expeditiously do not, however, in themselves constitute exceptional circumstances that would justify the use of the expedited procedure.

35. The same applies *a fortiori* to the urgent preliminary ruling procedure, provided for in Article 107 of the Rules of Procedure. That procedure, which applies only in the areas covered by Title V of Part Three of the TFEU, relating to the area of freedom, security and justice, imposes even greater constraints on those concerned, since it limits the number of parties authorised to lodge written observations and, in cases of extreme urgency, allows the written part of the procedure before the Court to be omitted altogether. The application of the urgent procedure must therefore be requested only where it is absolutely necessary for the Court to give its ruling very quickly on the questions submitted by the referring court or tribunal.

36. Although it is not possible to provide an exhaustive list of such circumstances, particularly because of the varied and evolving nature of the rules of EU law governing the area of freedom, security and justice, a national court or tribunal may, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody or deprived of his or her 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 young children, in so far, in particular, as the outcome of the dispute in the main proceedings depends on the answer to the question referred for a preliminary ruling and the use of the ordinary procedure could cause serious, and perhaps irreparable, harm to the relationship between a child and (one of) that child's parents or to the child's development and integration into his or her family and social environment. By contrast, mere economic interests, however substantial and legitimate they may be, the legal uncertainty affecting the parties to the main proceedings or other parties to similar disputes, the large number of persons or legal situations potentially affected by the decision that a referring court has to deliver after bringing a matter before the Court for a preliminary ruling, or the large number of cases that may be affected by the decision of the Court do not constitute, as such, circumstances that would justify the application of the urgent preliminary ruling procedure.

The request for application of the expedited procedure or the urgent procedure

37. To enable the Court to decide quickly whether the expedited procedure or the urgent preliminary ruling procedure should be applied, the request must *set out precisely the matters of fact and law which establish the urgency* and, in particular, the risks involved in following the ordinary procedure. In so far as it is possible to do so, the referring court or tribunal must also briefly state its view on the answer to be given to the questions referred. Such a statement makes it easier for the parties to the main proceedings and the other interested persons participating in the procedure to define their positions, and therefore contributes to the rapidity of the procedure.

38. The request for the application of the expedited procedure or the urgent procedure must in any event be submitted in an unambiguous form that enables the Registry to establish immediately that the file has to be dealt with in a particular way. Accordingly, the referring court or tribunal is requested to specify which of the two procedures is required in the particular case, and to mention in its request the relevant article of the Rules of Procedure (Article 105 for the expedited procedure or Article 107 for the urgent procedure). That mention must be included in a clearly identifiable place in its order for reference or in a separate letter from the referring court or tribunal.

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

Communication between the Court, the referring court or tribunal and the parties to the main proceedings

40. A court or tribunal submitting a request for the expedited procedure or the urgent procedure to be applied is requested to send that request and the order for reference itself — together with the text of the latter in an editable format (word processing software such as 'Word', 'Open Office' or 'LibreOffice') — by means of the e-Curia application or by email (DDP-GrefeCour@curia.europa.eu).

41. In order to facilitate subsequent communication by the Court with the referring court or tribunal and with the parties to the main proceedings, the referring court or tribunal is also requested to state its email address and any fax number which may be used by the Court, together with the email addresses and any fax numbers of the representatives of the parties to the main proceedings.

ANNEX

The essential elements of a request for a preliminary ruling

This annex summarises, by way of a reminder, the main elements that must be included in a request for a preliminary ruling. These are followed by an indication of the paragraphs in the present recommendations in which those elements are discussed in more detail.

Whether transmitted electronically or by post, all requests for a preliminary ruling must mention:

1. the identity of the court or tribunal making the reference and, where appropriate, the chamber or formation of the court or tribunal having jurisdiction (see, in that respect, paragraphs 3 to 7);
2. the precise identity of the parties to the main proceedings and of anyone representing them before the referring court or tribunal (with regard to the parties to the main proceedings, see, however, paragraphs 21 and 22 of the present recommendations, in relation to the protection of personal data);
3. the subject matter of the dispute in the main proceedings and the relevant facts (see paragraph 15);
4. the relevant provisions of national law and of EU law (see paragraphs 15 and 16);
5. the reasons that prompted the referring court or tribunal to inquire about the interpretation or validity of EU law (see paragraphs 8 to 11 and 15 to 18);
6. the questions referred for a preliminary ruling (see paragraph 19) and, if applicable,
7. the possible need for specific treatment of the request, related, for example, to the need to preserve the anonymity of individuals concerned by the dispute or to the particularly expeditious way in which the request should be dealt with by the Court (see paragraph 33 et seq.).

As regards form, requests for a preliminary ruling must be typewritten, dated and signed and must be received at the Court Registry, preferably electronically, together with all the documents that are relevant and useful for the handling of the case (see, in that respect, paragraphs 20 to 24 of the present recommendations and, with regard to requests requiring particularly expeditious treatment, paragraphs 40 and 41).

Transmission channels recommended by the Court

In order to ensure the best possible communication with courts and tribunals that have referred questions to the Court for a preliminary ruling, the Court recommends the use of the following transmission channels:

- (1) Lodging of the request for a preliminary ruling (or of other relevant documents linked to that request):
 - Signed original of the request for a preliminary ruling (or of the other documents linked to that request): to be sent via the e-Curia application. The rules on access to that application, which is free of charge and secure, and the conditions of use of e-Curia, are available here: https://curia.europa.eu/jcms/jcms/P_78957/en/
 - Editable version of the request for a preliminary ruling (or of the other documents linked to it): DDP-GrefeCour@curia.europa.eu
 - (2) Transmission of the final decision of the referring court or tribunal (anonymised, if necessary, including for the purposes of being placed online), following the Court's decision on the request for a preliminary ruling: Follow-up-DDP@curia.europa.eu
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