

THE ROLE OF THE NATIONAL JUDGE IN THE PRELIMINARY RULING PROCEDURE OF EU LAW

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PRESENTATION OUTLINE

1. Preliminary reference procedure is a form of cooperation between national courts and the Court of Justice.

a) Legal basis: article 267 TFUE

b) Purpose: to ensure uniform interpretation and application of EU law and prevent divergent interpretations by national courts; to enable the referring court to give judgment where a question on the interpretation or validity of EU legislation is raised in a case pending before it;

c) Court of Justice alone has jurisdiction to give preliminary rulings;

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

2. In order to make effective cooperation with the Court, the task of the national judge is to provide the Court with all the relevant information about the case pending before it (for detailed practical guidance see Information Note on references from national courts for a preliminary ruling).

a) Suggested maximum of 10 pages for the order for reference;

b) The order for reference should provide the description of the facts of the case, applicable national / EU legislation, arguments of the parties, the referring judge's suggested answer to the question and the views on the legal issues which have been raised;

c) Be aware of the "lost in translation" effect - "owing to the need to translate the reference, it should be drafted simply, clearly and precisely, avoiding superfluous detail"¹.

¹ Point 21 of Information Note on references from national courts for a preliminary ruling

3. The role of the Court of Justice is to interpret EU law, **not** national law; the Court does **not** rule on validity of national legislation or legality of judgments of national courts. It is for the national court to apply the interpretation of EU law provided by the Court to the factual situation underlying the case pending before it.

4. Procedural steps of the preliminary reference procedure at the Court:

a) Notification of the national court's order for reference to all Member States / institutions of the EU²;

b) Written and oral phase;

c) Possible post-reference scenarios:

- Request for clarification?³
- Inadmissible?
- The answer can be clearly deduced from the existing case-law?⁴
- Special forms of preliminary reference procedure: accelerated procedure and urgent preliminary reference procedure⁵

5. The effects of the judgment of the Court of Justice: binding upon the referring court and all Member states' courts whenever they deal with a similar legal issue. The Court of Justice welcomes 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!

² Article 23 of the Statute, Article 104 of the Rules of Procedure

³ Article 104(5) of the Rules of Procedure

⁴ Article 104(3) of the Rules of Procedure

⁵ Article 23a of the Statute