

Tips and recommendations on a preliminary reference

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Preliminary reference procedure

■ Article 267 TFEU

- The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:
 - (a) the **interpretation** of the Treaties;
 - (b) the **validity and interpretation** of acts of the institutions, bodies, offices or agencies of the Union;
- Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
- Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal **shall** bring the matter before the Court.
- If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Preliminary reference procedure

- **All** documents of procedure translated into
 - Language of procedure (i.e. language of the RPR)
 - French (i.e. working language of CJEU)

Request for a preliminary ruling

- Request for a preliminary ruling (RPR)
- Demande de décision préjudicielle (DDP)
- Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, C/2024/6008, 9 October 2024

Article 23 Statute

- RPR notified by the Registrar of the Court to
 - the parties
 - the Member States (MS)
 - the Commission
 - the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute
 - the EEA MS
 - the EFTA surveillance authority

Article 23 Statute

- Within two months of this notification
 - the above are entitled to submit statements of case or written observations to the Court.
- Details governed by Article 98 ROP

RPR – inside CJEU

- RPR lodged with Registry
- Immediate transmittal to
 - Directorate General of Multilingualism
 - Translation into all official languages
 - Directorate of Research and Documentation (DRD)
 - Establishment of pre-exam document (“fiche de préexamen”)
 - By a lawyer specialised in the national law of the MS where the RPR originates from

RPR – inside CJEU

- Once translation received
 - Notification under Article 23 of the Statute
- Once pre-exam document received
 - Transmittal of RPR to
 - President
 - First Advocate General
- President
 - Attributes to judge-rapporteur (JR)

RPR – inside CJEU

- First Advocate General
 - Attributes to Advocate General
- Written procedure
- Observations translated
- JR establishes **preliminary report**
 - Description of facts of case, legal framework, key legal issues
 - Proposals on all procedural decisions to be taken

RPR – inside CJEU

■ Preliminary report

- Description of facts of case, legal framework, key legal issues
- Proposals on all procedural decisions to be taken
- Submitted to Advocate General
- Then: submitted to General Meeting (‘réunion générale), i.e. all Members (judges and Advocates General)
- General Meeting takes decision on procedure

RPR – inside CJEU

- Oral procedure (hearing)
- Advocate General Opinion
- Draft judgment by JR
- Deliberation
- Judgment

RPR – special case of Article 50b Statute

- (a) the common system of value added tax
- (b) excise duties
- (c) the Customs Code
- (d) the tariff classification of goods under the Combined Nomenclature
- (e) compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services

RPR – special case of Article 50b Statute

- (f) the system for greenhouse gas emission allowance trading.
- One-stop shop – ‘guichet unique’

RPR – essential elements

■ RPR 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
- (2) the precise identity of the parties to the main proceedings and of anyone representing them before the referring court or tribunal
- (3) the subject matter of the dispute in the main proceedings and the relevant facts

RPR – essential elements

■ RPR must mention

- (4) the relevant provisions of national law and of EU law
- (5) the reasons that prompted the referring court or tribunal to inquire about the interpretation or validity of EU law
- (6) the questions referred for a preliminary ruling (see paragraph 19) and, if applicable,

RPR – essential elements

- RPR must mention
 - (7) the possible need for specific treatment of the request, related, for example, to the particularly expeditious way in which the request should be dealt with.
- Form, RPRs must be typewritten, dated and signed and must be received at the Registry of the Court of Justice, preferably electronically, together with all the documents that are relevant and useful for the handling of the case.

Further reading

- Texts governing procedure
- ECJ case-law database
- National case-law database
- ECJ press releases
- ECJ annual reports
- ECA report on ECJ case management