

Preliminary ruling references

Tips and recommendations

[EUR-Lex - 62008CJ0334 - EN - EUR-Lex
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When to refer

- 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.
- Since the Court must 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 the referring court or tribunal is already 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.
- What about criminal proceedings ? See Cases C-269/22 *IP* and 14/86 *Pretoire di Salò*

What to refer

- Questions on the interpretation or validity of EU, not national law
- An answer to which is necessary in order to give judgment in the national proceedings
- The questions referred 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.
- 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.

How to refer

- 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 is served on all the interested persons referred to in Article 23 of the CJEU Statute and, in particular, on all the Member States. Owing to the consequential need to translate it into all the official languages of the European Union, the request should 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.

What must be in the request

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 to decline jurisdiction to give a preliminary ruling on the questions referred or dismiss the request for a preliminary ruling as inadmissible.

What else needs to be in the request

- 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.

What may be in the request

- 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.
- 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.

How to protect parties' data

- In order to ensure optimal protection of personal data in the Court's handling and service of the case, the referring court or tribunal 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. Any later anonymisation is likely to be less effective.
- 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.

How to lodge the request

- 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.
(https://curia.europa.eu/jcms/jcms/P_78957/en/)

What the Court needs to know later

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 needs 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.

Cost and legal aid

- 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.
- 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.

To sum up

- 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;
 - 2. the precise identity of the parties to the main proceedings and of anyone representing them before the referring court or tribunal (save for data protection needs);
 - 3. the subject matter of the dispute in the main proceedings and the relevant facts;
 - 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 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.
- 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.

Helpful links

- https://curia.europa.eu/jcms/jcms/p1_2170157/en/
- Judicia Network of the EU: direct access to **preliminary rulings** (by means of pre-defined search criteria in the search engine) and, in particular, an opportunity to consult **references for a preliminary ruling** submitted from 1 July 2018, in the language of the case, but also in all available languages;
- <https://curia.europa.eu/juris/recherche.jsf>

Example

Case C-340/19, Request for a Preliminary Ruling

Date lodged: 29 April 2019

Referring court: Augstākā tiesa (Senāts) (Supreme Court, (Latvia)

Date of the decision to refer: 18 April 2019

Appellant in the appeal on a point of law: Valsts ieņēmumu dienests

Respondent in the appeal on a point of law: SIA ‘Hydro Energo’

Latvijas Republikas Senāts (The Supreme Court of the Republic of Latvia)

DECISION

Riga, 18 April 2019 The Court [...] [composition of the referring court]

has examined, in the written procedure, the administrative proceedings initiated by the action brought by SIA ‘Hydro Energo’ seeking the annulment of the decision of 10 September 2014 adopted by the Valsts ieņēmumu dienests (State Tax Authority), and which now concern the appeal on a point of law brought by the State Tax Authority challenging the judgement of the Administratīvā apgabaltiesa (Regional Administrative Court) of 13 April 2017.

Background

Factual circumstances

[1] In April 2012, the applicant at first instance, SIA ‘Hydro Energo’ applied for the release for free circulation of goods, which were declared under subheading 7403

21 00 of the Combined Nomenclature as: refined copper and copper alloys,

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