

Tips and tricks for the preliminary ruling procedure

Marc Fierstra

Justice of the Supreme Court of the Netherlands



Co-funded by the European Union's Justice Programme (2014-2020).
The content of this publication represents the views of the author only and is his sole responsibility. The European Commission
does not accept any responsibility for use that may be made of the information it contains.]

Legal framework

Art. 267 TFEU:

- The Court of Justice of the European Union has jurisdiction to rule on
 1. Interpretation of the Treaty
 2. Validity and interpretation of acts of institutions (etc.)
- National court considers that a decision is necessary
- May request a preliminary ruling (obligation: validity)
 - Shall request if question is raised in a case before a court against whose decisions no legal remedy is available
 - Acte clair
 - Acte éclairé

Division of competences

Art. 13, paragraph 2, TFEU: Each institution shall act within the limits of the powers conferred on it in the Treaties.

ECJ:

- Rule on interpretation and/or validity of EU law

National Court:

- Necessity of question
- Dispute submitted to national court e.g.:
 - Scope of dispute
 - Determination of facts (law of evidence)
 - Decision in the dispute

Function

- Ensure uniform interpretation
- Contribute, within the it's jurisdiction, to legal protection by making a direct and complimentary contribution to the decision to be taken by the referring court

Characteristics

- Direct cooperation between ECJ and national court
- Non-contentious procedure
- Excluding any initiative of the parties (who are merely invited to be heard in the course of that procedure)

ECJ 9 December 1965, Singer, 44/65, ECLI:EU:C:1965:122

Essentials

- 1 Division of powers between referring court and ECJ (application/interpretation)
 - What to explain
 - 2 Communication
 - How to explain
- Request for a preliminary ruling
 - Understanding a preliminary ruling

Working session 1

Division of competences

- Discretionary referral – 1st instance court
- One party raises question on interpretation of a specific provision of a directive (PM: is it a necessary condition for a decision to refer?)
- Checklist (what is necessary if you decide to refer)
- Arguments pro and contra decision to refer (alternative: deciding yourself on the interpretation)

Working session 2

Communication

- Discuss whether the Repsol referral enables the ECJ to provide an adequate answer to the referring court
- Rank the flaws in order of importance

Working session 3

Division of competences & Communication

ECJ 10 May 2012, *Duomo e.a.*, C-357/10 to C-359/10

- Indicate the relevance of
 - Mentions on first page
 - Legal context (paragraphs 3 -7; 8-10)
 - Paragraphs 11 – 17
 - Paragraph 21
 - Paragraphs 40 – 45
 - Decision
- Indicate the impact of the judgment