



WORKING SESSION: Exchange of best practice among national judges
Jan M. Passer

1) You are a judge of a court of first instance. One of the parties of the proceedings asks you for a preliminary ruling on the interpretation of EU law. The question has not yet been addressed by the case law of the Court of Justice, but you are convinced that you can answer the question yourself. However, the party has produced case law from two other Member States which shows that the question in question is not dealt with consistently. How will you proceed?

2) 2.a. You are a judge of a court of first instance. One of the parties of the proceedings demands you to initiate a preliminary reference procedure on the validity of EU law. The question has not yet been addressed in the case law of the Court of Justice. You are convinced that the party is wrong and that the provision in question is valid. How will you proceed?

2.b. Would you proceed differently if you were convinced that the provisions of EU law in question were invalid?

3) 3a A question of EU law arises in a case decided by a three-judge panel. You, as President of the Chamber, wish to ask a preliminary question to the Court, but the other two members of the Chamber are opposed to the reference for a preliminary question. How will you proceed?

3.b A question of EU law arises in a case decided by a three-judge panel. You, as President of the Chamber, wish to ask a preliminary question and the other two members of the Chamber are opposed to the reference for a preliminary question. Suppose that in this situation you ask a preliminary question only in your capacity as President of the Chamber. In your opinion, will the question be admissible?

4) You are a judge of a court of first instance. You are considering asking a preliminary question on the interpretation of EU law. The question has not yet been dealt with in the case law of the Court of Justice and the provision in question admits different interpretations. The parties, referring to the length of the proceedings before the Court of Justice and the costs of the preliminary ruling procedure, ask you not to raise the question and to decide the case without it. How will you proceed?

5) You are a judge of a court of first instance and you decide to refer a question for a preliminary ruling. Parties to the proceedings appeal against that decision. The Court of Appeal will set aside the decision to ask the question, on the understanding that the case may be decided in accordance with the existing case law of the Court of Justice. You disagree with the Court of Appeal's legal opinion; in your view, the case law of the Court of Justice does not apply to the case. How will you proceed?

6) You are a judge of a court of first instance and one of the parties of the proceedings demands you to initiate a preliminary reference procedure concerning the interpretation of EU law. The question has not yet been dealt with in the case law of the Court of Justice, but you are convinced that you can answer the question yourself. You will decide the case on the merits without referring the question. The Court of Appeal will annul your decision and refer the case back to you for further proceedings with a binding legal opinion on how to proceed on merits.



WORKING SESSION: Exchange of best practice among national judges
Jan M. Passer

In doing so, it will reach a different interpretation of EU law from yours, basing its interpretation on the case law of the Court of Justice. You are convinced that this case law does not apply to the case. How will you proceed, can you ask a preliminary question in this situation?

7) 7.a. You are a judge of a court of first instance and you are to apply EU law in the proceedings. The Constitutional Court, in other proceedings, without referring a preliminary question to the Court of Justice, has concluded that the provision of EU law in question is contrary to your Constitution. How will you proceed?

7.b Will it be relevant to your approach that the Court of Justice may have already ruled on the validity of this provision of EU law (concluding that the provision in question is valid) in another case? Will it be relevant to your procedure whether the Court of Justice has reached a conclusion on the validity of the provision in question before or after the Constitutional Court has expressed its opinion on it?

8) You are deciding on a case in which you have to apply EU law. Its interpretation appears to be beyond doubt and the provision has already been interpreted by the Court of Justice. However, you are not sure whether the subsequent provision of national law is consistent with it. How will you proceed, will you ask a preliminary question as to whether the subsequent provision of national law can be interpreted in a way that is consistent with EU law?

9) The application of EU law in the case before you depends on the establishment of disputed facts between the parties (only a certain type of factual situation will result in an application of EU law). Will you proceed with the establishment of factual circumstances and only then you will decide whether to ask a preliminary question or will you ask a preliminary question on the understanding that the answer of the Court of Justice may turn out to be unnecessary in the light of the future facts finding?

10) You are not sure whether EU law applies to the matter that you are deciding. Will you ask a preliminary question seeking an interpretation of the provisions of EU law in question?

11) You ask a preliminary question. In your decision, you explain why you consider it essential to answer the question of EU law. However, will it be sufficient to refer to the contents of the file sent to the Court of Justice together with the decision to describe the facts and the context of the national law?

12) You decide to initiate a preliminary reference procedure. Will you follow the form required by the Court of Justice or will you choose a form that complies with national procedural rules? In the latter case - are there minimum requirements of EU law that you must comply with even when using national procedural rules?

13) You are deciding a case where you are not aware of its EU dimension. One of the parties of the proceedings argues that a certain way of dealing with the case would be contrary to its fundamental rights guaranteed by the Charter of Fundamental Rights of the EU. Will you ask a preliminary question concerning the interpretation of the provisions of the Charter in question?

14) 14.a. You ask a preliminary question, but before the Court of Justice has ruled, the applicant withdraws his or her application on the merits. You believe that the question has an importance for EU law in general and you know from informal contacts with colleagues in other



WORKING SESSION: Exchange of best practice among national judges
Jan M. Passer

Member States that they are awaiting the outcome of the proceedings before the Court of Justice. How will you proceed?

14.b. Will your decision be influenced by the fact that you are dealing with several other similar cases which you have suspended until the Court's decision on the question referred for a preliminary ruling? How will you proceed?

15) You intend to initiate a preliminary reference procedure but, due to the length of the proceedings, there is a risk of, *inter alia*, environmental damage. In your opinion, the conditions for the Court of Justice to treat the case in an accelerated procedure are met. You could also resolve the problem by issuing an interim measure based on a national law before asking the question. What course of action will you take?