

SCHEDULE 2

Paragraph 2(7).

REFERENCES TO THE EUROPEAN COURT: GUIDANCE

“ANNEX

NOTES FOR COMPLETION OF FORM 65.3

Guidance of the Court of Justice of the European Communities

The development of the Community legal order is largely the result of co-operation between the Court of Justice of the European Communities and national courts and tribunals through the preliminary ruling procedure under Article 177 of the EC Treaty and the corresponding provisions of the ECSC and Euratom Treaties.¹

In order to make this co-operation more effective, and so enable the Court of Justice better to meet the requirements of national courts by providing helpful answers to preliminary questions, this Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals.

It must be emphasised that the Note is for information only and has no binding or interpretative effect in relation to the provisions governing the preliminary ruling procedure. It merely contains practical information which, in the light of experience in applying the preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.

1. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.

Courts or tribunals against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious.²

2. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts or tribunals may reject a plea challenging the validity of such an act. But where a national court (even one whose decision is still subject to appeal) intends to question the validity of a Community act, it must refer that question to the Court of Justice.³

Where, however, a national court or tribunal has serious doubts about the validity of a Community act on which a national measure is based, it may, in exceptional cases, temporarily suspend application of the latter measure or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers that the Community act is not valid.⁴

3. Questions referred for a preliminary ruling must be limited to the interpretation or validity of a provision of Community law, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court or tribunal to apply the relevant rule of Community law in the specific case pending before it.

4. The order of the national court or tribunal referring a question to the Court of Justice for a preliminary ruling may be in any form allowed by national procedural law. Reference of a question or questions to the Court of Justice generally involves stay of the national proceedings until the Court has given its ruling, but the decision to stay proceedings is one which it is for the national court alone to take in accordance with its own national law.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

5. The order for reference containing the question or questions referred to the Court will have to be translated by the Court's translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is therefore desirable that the reference should be drafted as clearly and precisely as possible.

6. The order for reference should contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom it must be notified (the Member States, the Commission and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings.⁵

In particular, it should include a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings, an exposition of the national law which may be applicable, a statement of the reasons which have prompted the national court to refer the question or questions to the Court of Justice and, where appropriate, a summary of the arguments of the parties. The aim should be to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.

The order for reference should also be accompanied by copies of any documents needed for a proper understanding of the case, especially the text of the applicable national provisions. However, as the case-file or documents annexed to the order for reference are not always translated in full into the other official languages of the Community, the national court should ensure that the order for reference itself includes all the relevant information.

7. A national court or tribunal may refer a question to the Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define, if only as a working hypothesis, the factual and legal context of the question; on any view, the administration of justice is likely to be best served if the reference is not made until both sides have been heard.

8. The order for reference and the relevant documents should be sent by the national court directly to the Court of Justice, by registered post (addressed to the Registry of the Court of Justice of the European Communities, L-2925 Luxembourg, telephone (352) 43031). The Court Registry will remain in contact with the national court until judgment is given, and will send copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. The Court would appreciate being informed about the application of its judgment in the national proceedings and being sent a copy of the national court's final decision.

9. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs."