

## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COURT OF JUSTICE

## INFORMATION NOTE

**on references from national courts for a preliminary ruling**

## SUPPLEMENT

**following the implementation of the urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice**

(2008/C 64/01)

1. This note is supplementary to the existing information note on references from national courts for a preliminary ruling <sup>(1)</sup>, and provides practical information on the new urgent preliminary ruling procedure applicable to references concerning the area of freedom, security and justice. The procedure is governed by Article 23a of the Protocol on the Statute of the Court of Justice and Article 104b of its Rules of Procedure <sup>(2)</sup>.

2. This information is intended to assist national courts proposing to request the application of the urgent preliminary ruling procedure, and to facilitate the Court's handling of that request. In common with the existing information note, it is in no way binding.

**Conditions for the application of the urgent preliminary ruling procedure**

3. The urgent preliminary ruling procedure is applicable only in the areas covered by Title VI (Articles 29 to 42) of the Treaty on European Union concerning police and judicial cooperation in criminal matters, and Title IV (Articles 61 to 69) of Part Three of the EC Treaty concerning visas, asylum, immigration and other policies related to free movement of persons, including judicial cooperation in civil matters.

4. Although a reference for a preliminary ruling generally calls for the national proceedings to be stayed until the Court has given its ruling, the referring court may still order protective measures to safeguard the interests of the parties pending the judgment of the Court, particularly as regards a national administrative measure based on a Community act which is the subject of a reference for a preliminary ruling on validity.

5. The Court decides whether the urgent procedure is to be applied. Such a decision is generally taken only on a reasoned request from the referring court. Exceptionally, the Court may decide of its own motion to deal with a reference under the urgent preliminary ruling procedure, where that appears to be required.

6. The urgent procedure simplifies the various stages of the proceedings before the Court, but its application entails significant constraints for the Court and for the parties and other interested persons participating in the procedure, particularly the Member States.

<sup>(1)</sup> See OJ 2005 C 143, pp. 1 to 4.

<sup>(2)</sup> See OJ 2008 L 24, pp. 39 to 43.

7. It should therefore be requested only where it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Although it is not possible to provide an exhaustive list of such situations, particularly because of the varied and evolving nature of Community rules governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent procedure to be applied in the following situations: in the case of a person detained or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under Community law depends on the answer to the question referred for a preliminary ruling.

#### **The request for application of the urgent preliminary ruling procedure**

8. To enable the Court to decide quickly whether the urgent preliminary ruling procedure should be applied, the request must set out the matters of fact and law which establish the urgency and, in particular, the risks involved in following the normal preliminary ruling procedure.

9. In so far as it is able to do so, the referring court should briefly state its view on the answer to be given to the question(s) referred. Such a statement makes it easier for the parties and other interested persons participating in the procedure to define their positions and facilitates the Court's decision, thereby contributing to the rapidity of the procedure.

10. The request for the urgent preliminary ruling procedure must be submitted in a form that enables the Registry of the Court to establish immediately that the file must be dealt with in a particular way. Accordingly, the request should be submitted in a document separate from the order for reference itself, or in a covering letter expressly setting out the request.

11. As regards the order for reference itself, it should be noted that relevant information is already contained in points 20 to 24 of the information note on references from national courts for a preliminary ruling. It is particularly important in an urgent situation that the order for reference should be succinct, as it helps to ensure the rapidity of the procedure.

#### **Communication between the Court of Justice, the national court and the parties**

12. As regards communication with the national court or tribunal and the parties before it, national courts or tribunals which submit a request for an urgent preliminary ruling procedure are requested to state the e-mail address or any fax number which may be used by the Court, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

13. A copy of the signed order for reference together with a request for the urgent preliminary ruling procedure can initially be sent to the Court by e-mail (ECJ-Registry@curia.europa.eu) or by fax (+352 43 37 66). Processing of the reference and of the request can then begin upon receipt of the e-mailed or faxed copy. The originals of those documents must, however, be sent to the Registry of the Court as soon as possible.

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