



PRELIMINARY REFERENCES- AN IRISH PERSPECTIVE

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18 NOVEMBER 2021



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BASIC RULES- ARTICLE 267

- Court or tribunal
- Interpretation of EU law / validity of acts of institutions
- Considers that decision on question is necessary to enable it to give judgment
- Discretionary v. Mandatory
- Interpretation / application distinction
- Initiative of the Court
- No appeal

WHEN TO MAKE A REFERENCE (DISCRETIONARY)

- Court may refer as soon as it finds that ruling is necessary to enable it to give judgment
- National proceedings must have reached stage where court able to define in sufficient detail the legal and factual context and the legal issues
- Typically after having heard parties
- More typical in non-witness actions but in witness actions, may want to find facts
- Ryanair [2019] IEHC 469
- Eircom v. ComReg [2021] IEHC
- Eco-Advocacy [2021] IEHC [also relevant to amicus curiae]

WHEN MANDATORY TO REFER

- Case 283/81 CILFIT- so obvious as to leave no scope for reasonable doubt
- Case C-561/19 Consorzio- reasons for refusal to refer
- Case C-416/17 Commission v. France (Advance Payments)- failure to refer
- Case C-99/00 Lyckeskog- leave to appeal
- Sony [2018] 2 IR 623- Court of Appeal not required to refer
- Note opportunity to canvass reference in Notice of Appeal

FORM OF REFERENCE- PRINCIPLES

- Matter for the judge but frequently party input
- CJEU recommends about 10 pages
- Simplicity- clear language, short sentences (translation)
- Try to make attractive to possible interveners
- Avoid appendices or need to refer to other documents

FORM OF REFERENCE- DETAILS

- Summarise subject matter of dispute, relevant findings of fact or account of facts
- National provisions and case law
- Explanation why court inquired about EU law issue
- Precise reference of relevant national and EU law provisions
- If necessary, principal arguments of parties
- Court can express view on questions (desirable but not essential; may depend on court)

QUESTIONS

- Must be self contained and self explanatory
- Up to 2-5 questions, avoid too many internal sub-questions
- Open not leading
- Interpretation, not application
- CJEU willingness to re-interpret

EXPEDITED AND URGENT PROCEDURE

- Expedited procedure (Article 105)
 - Matter of exceptional urgency
 - Much shorter time limits for written and oral observations
 - Large number of persons affected not of itself exceptional
- Urgent procedure (Article 107)
 - Area of freedom, security and justice (including asylum)
 - Only where absolutely necessary- person in custody, children