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A Constructive Dialogue.
The Court of Justice of the European Union and Romanian Courts

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Abstract: *The paper draws on the academic lecture given by the author at the Faculty of Law, University of Bucharest, on March 27, 2026, on the occasion of being awarded the Doctor Honoris Causa. The paper examines the preliminary ruling mechanism under Article 267 TFEU as the keystone of the EU judicial system, highlighting Romania's significant contribution to judicial dialogue. It is divided into three parts: the mechanism's role in ensuring the uniform interpretation of EU law; the preconditions — particularly judicial independence — that referring bodies must meet in order to engage in a dialogue with the Court of Justice; and the right and obligation to refer, including the duties incumbent on courts of last instance. Drawing on landmark cases originating from Romania and other Member States, the paper supports the contention that judicial unilateralism has no place in the EU legal order, and that the proper means of resolving disagreements between the Court of Justice and national courts is judicial dialogue, which is grounded in mutual respect and sincere cooperation.*

Key words: *preliminary ruling mechanism; Article 267 TFEU; judicial dialogue; Court of Justice of the European Union; uniform interpretation; judicial independence; obligation to refer; courts of last instance; primacy of EU law; Romanian courts.*

Un dialog constructiv. Curtea de Justiție a Uniunii Europene și instanțele române

Rezumat: *Lucrarea valorifică prelegerea academică susținută de autor la Facultatea de Drept a Universității din București, la data de 27 martie 2026, cu ocazia conferirii titlului de Doctor Honoris Causa. Materialul analizează mecanismul trimiterilor preliminare, prevăzut la articolul 267 TFUE, mecanism ce reprezintă piatra de temelie a sistemului judiciar al Uniunii Europene, evidențiind contribuția semnificativă a României la dialogul judiciar. Aceasta este împărțită în trei părți: rolul mecanismului în asigurarea interpretării uniforme a dreptului Uniunii; condițiile prealabile pe care trebuie să le îndeplinească instanțele de trimitere — în special independența acestora – pentru a se putea angaja într-un dialog cu Curtea de Justiție; precum și dreptul și obligația de a sesiza Curtea, inclusiv îndatoririle care revin instanțelor a căror hotărâri nu mai pot fi supuse unei căi de atac. Pornind de la cauze de referință provenite din România și din alte state membre, lucrarea susține ideea că unilateralismul judiciar nu își are locul în ordinea juridică a Uniunii și că maniera adecvată pentru soluționarea divergențelor dintre Curtea de Justiție și instanțele naționale este dialogul judiciar, întemeiat pe respect reciproc și cooperare loială.*

Cuvinte cheie: *mecanismul trimiterilor preliminare; articolul 267 TFUE; dialog judiciar;*

[1] All opinions expressed herein are personal to the author.

Curtea de Justiție a Uniunii Europene; interpretare uniformă; independență judiciară; obligația de sesizare; instanțe de ultim grad; prioritatea dreptului Uniunii; instanțele române.

I am deeply honoured and privileged to deliver this Academic Lecture—a tradition reserved for honorary doctors on the day of the official ceremony.

As indicated by the title of this lecture, I wish to examine one key element that has played a determining role in driving the European integration process forward. I refer to the preliminary ruling mechanism, which has, for the last seventy years, operated as the 'keystone' of the EU judicial system[2].

Romanian courts have contributed significantly to the success of the preliminary ruling mechanism. From 2007 to 2025, they have made 397 references. When compared with other Member States that have joined the EU since 2004, Romania ranks third, only behind Poland and Bulgaria. Not only quantitatively, but also qualitatively, Romanian courts have engaged in a constructive and fruitful dialogue with the Court of Justice, shedding light on difficult and complex questions raised in a broad array of subject matters. It is worth mentioning the references made respectively in *Coman*, *Asociaţia "Forumul Judecătorilor din România"*, *Euro Box Promotion e.a.*, *RS (Effect of the decisions of a constitutional court)*, *Lin*, *Neves 77 Solutions*, *Mirin* and *Russmedia Digital et Inform Media Press*, to name just a few[3].

In order to explore some key elements of the preliminary ruling mechanism, I shall divide my lecture into three parts. Firstly, I shall emphasise that the preliminary ruling mechanism and the judicial dialogue it fosters is essential in ensuring the uniform interpretation and application of EU law.

Secondly, I shall explain that the proper functioning of that mechanism is contingent upon specific pre-conditions that national courts must fulfil in order to embark on a dialogue with the Court of Justice.

Last, but not least, I shall discuss 'the right' of any court or tribunal of a Member State to make a reference for a preliminary ruling to the Court of Justice and the obligation to refer for courts of last instance.

I. THE PRELIMINARY RULING MECHANISM AND UNIFORMITY

In the judicial system of the European Union (EU), national courts and the Court of Justice constitute a single integrated system of judicial oversight. National courts are indeed not only courts of national law but also courts of EU law, or, as is said in French, national judges are « *les juges de droit commun de l'Union* », which means – translated into English – that national courts are 'the courts of general jurisdiction for EU law'.

For that reason, the dialogue that takes place between the national courts and the Court of Justice under Article 267 TFEU is an essential tool for ensuring the full and uniform

[2] Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, para. 176

[3] Judgments of 5 June 2018, Coman and Others, C-673/16, EU:C:2018:385; of 18 May 2021, Asociaţia 'Forumul Judecătorilor din România' and Others, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393; of 21 December 2021, Euro Box Promotion and Others (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034); of 22 February 2022, RS (Effect of the decisions of a constitutional court), C-430/21, EU:C:2022:99; of 24 July 2023, Lin, C-107/23 PPU, EU:C:2023:606; of 10 September 2024, Neves 77 Solutions, C-351/22, EU:C:2024:723; of 4 October 2024, Mirin, C-4/23, EU:C:2024:845, and of 2 December 2025, Russmedia Digital and Inform Media Press (C-492/23, EU:C:2025:935).

application of EU law. It also facilitates the integration of new Member States into the common legal order which the EU forms, during the period following their accession to the Union, as was the case for Romania when it joined the European family on 1 January 2007.

It is all very well for the Court of Justice to have jurisdiction to rule on all matters concerning the validity and interpretation of instruments of EU law, but it is the national courts, through their loyal and vigilant use of the preliminary ruling mechanism, that give the Court of Justice the opportunity to rule on specific questions pertaining to those matters, and thus to do its job. Whenever a national court has doubts as to how it should interpret an EU norm, it is entitled – or in certain circumstances obliged – to seek guidance from the Court of Justice; the answer has authority not only in the particular proceedings at hand but also in all other cases pending before the courts of any Member State where that same norm is to be applied. The judgments of the Court of Justice have the normative force of '*res interpretata*' in all the Member States.

As the Court explained in *Opinion 2/13* on accession to the *European Convention on Human Rights*, the preliminary ruling mechanism serves to ensure not only the consistency and full effect of EU law, but also 'its autonomy as well as, ultimately, the particular nature of the law established by the Treaties'[4]. That imperative of uniformity equally justifies the rule that, where a national court has doubts concerning the validity of an act of EU secondary law, that court should not itself review the legality of that act but should refer the matter to the Court of Justice[5].

II. ACCESS TO THE PRELIMINARY RULING MECHANISM

This dialogue between equals, from court to court by means of the preliminary ruling mechanism provided for by Article 267 TFEU, can only be successful when the Court of Justice's counterpart is a court or tribunal that is itself unswervingly committed to upholding the rule of law and is, moreover, in a position to do so from an institutional perspective.

The proper functioning of the dialogue is thus necessarily dependent on certain pre-conditions which must be met by the referring body in question. According to settled case law, in order to determine whether the body making a reference is a 'court or tribunal', within the meaning of Article 267 TFEU, which is a question governed by EU law alone, the Court takes account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent[6].

Regarding the concept of 'judicial independence', within the meaning of that mechanism, the case law reveals that there are two aspects to it, one internal and one external. The internal aspect is linked to impartiality and seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence for the judges of any interest in the outcome of the proceedings apart from the strict application of the rule

[4] Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, para. 176.
[5] Judgments of 22 October 1987, Foto-Frost, 314/85, EU:C:1987:452 and of 6 December 2005, Gaston Schul Douane-expediteur, C-461/03, EU:C:2005:742, para. 17.
[6] Judgment of 3 May 2022, CityRail, C-453/20, EU:C:2022:341, para. 41.

of law[7]. The external aspect entails that the judges are protected against external intervention or pressure liable to jeopardise their independent judgement as regards proceedings before them[8].

As to the external aspect of independence, Article 19 TEU requires Member States to establish remedies sufficient to ensure effective legal protection in the fields covered by EU law. However, only independent courts may provide individuals that protection. For this reason, independence is a key criterion for a body to be considered a "court or tribunal" within the meaning of Article 267 TFEU.

The notion of 'court or tribunal', within the meaning of Article 267 TFEU, may include a body which does not belong to the judiciary of a Member State, but complies with the criteria set out in EU law to that effect.

For example, in ***NV Construct***[9], the Court of Justice had to determine whether the order for reference made by the Consiliul Naţional de Soluţionare a Contestaţiilor (National Council for the Resolution of Disputes, hereinafter the 'NCRD') was admissible. Established by law in 2016, the NCRD enjoys jurisdiction over disputes in the field of public procurement. A party adversely affected by an act or omission of a contracting authority may choose either to bring proceedings before the NCRD or before a court with a section that deals with administrative disputes. It was on the criterion of independence that the Court of Justice focused its admissibility assessment[10], since there was no doubt that the other criteria were met. *Externally*, the Court observed that the NCRD exercised its functions wholly autonomously. First, the law establishing the NCRD stated that it is 'an independent tribunal with administrative and judicial functions'. Second, the appointment of the NCRD's members is subject to open competition based on professional suitability and experience. Those members are appointed by decision of the Prime Minister, upon a proposal by the President of that body, from candidates who have been declared to be admitted to such open competition. Third and last, misconduct committed by the members of the NCRD can only be found by a Disciplinary Committee established within that body, and is limited to exceptional cases reflecting legitimate and compelling grounds. Administrative sanctions, such as removal from office, are also subject to judicial review before administrative courts. Internally, the members of the NCRD are subject to a list of incompatibilities analogous to those applicable to the Romanian judiciary. In the light of the foregoing considerations, the Court of Justice came to the conclusion that the NCRD was a 'court or tribunal', within the meaning of Article 267 TFEU, holding that the order for reference made by that body was admissible.

[7] Judgments of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, para. 52 ; of 24 June 2019, Commission v Poland (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paras 72-73, and order of 16 November 2017, Air Serbia and Kondić, C-476/16, EU:C:2017:874, para. 17.

[8] Judgments of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, para. 51; of 24 June 2019, Commission v Poland (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paras 72-73, and order of 16 November 2017, Air Serbia and Kondić, C-476/16, EU:C:2017:874, para. 18.

[9] Judgment of 26 January 2023, NV Construct, C-403/21, EU:C:2023:47.

[10] The Court devoted two paragraphs to examining the criterion relating to the compulsory nature of the referring body's jurisdiction. It found that, whilst the person concerned may choose between bringing his or her case before the NCRD or before ordinary courts, the jurisdiction of the former does not depend on the parties' agreement. In addition, the rulings of the NCRD are binding on the parties. *Ibid*., para. 42.

III. THE RIGHT AND THE OBLIGATION TO REFER

A. THE RIGHT TO REFER AND THE INTEGRITY OF THE PRELIMINARY RULING MECHANISM

All courts or tribunals of the Member States, within the meaning of Article 267 TFEU, have the right and, as the case may be, the obligation to submit to the Court of Justice references for a preliminary ruling concerning the interpretation or validity of EU law. National law cannot detract from the allocation of responsibilities provided for by Article 267 TFEU.

Indeed, it is for the referring court only, subject to the control of admissibility undertaken by the Court of Justice itself, to assess the relevance and necessity of the questions referred for a preliminary ruling. Thus, it is for the referring court to infer the implications of a judgment delivered on an appeal against its decision to refer[11]. The Court will abide by the order for reference, which has its full effects so long as it has not been revoked. The Court of Justice protects the autonomous jurisdiction which Article 267 TFEU confers on lower courts to make a reference to the Court. Neither a ruling from a higher court nor national rules of procedure may prevent a lower court from seeking guidance from the Court of Justice[12].

For example, in ***RS (Effects of the decisions of a constitutional court)***[13]*,* the Court of Justice held that the right for national courts and tribunals to engage in a dialogue with the Court of Justice by means of the preliminary ruling mechanism cannot be obstructed by a judgment of a national constitutional court. In that case, RS had lodged a criminal complaint against a prosecutor and two judges who were alleged to have committed offences of abuse of process and abuse of office in criminal proceedings in Romania. RS brought an action before the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania) seeking to challenge the excessive duration of the criminal proceedings instituted in response to that complaint.

In order to rule on that action, the Court of Appeal considered that it had to assess the compatibility with EU law of the national legislation establishing a specialised section of the Public Prosecutor's Office responsible for investigations of offences committed within the juridical system. References of other Courts of Appeal on this subject had already been addressed to the Court of Justice which led to the judgement of 18 May 2021 in *Asociația 'Forumul Judecătorilor din România' and Others*[14]. Only three weeks later, on 8 June 2021, the Romanian Constitutional Court (Curtea Constituțională) refused to give effect to the preliminary ruling given by the Court of Justice, on the basis of the national identity of the Member State concerned and of the contention that the Court of Justice had exceeded its jurisdiction. In its judgement[15], the Romanian Constitutional Court rejected as unfounded the plea of unconstitutionality raised in the respect of several provisions of the already mentioned legislation, while emphasising that, when that Court declares national legislation consistent with the provision of the Constitution that requires compliance with the principle of primacy

[11] *Ibid*, para. 96.
[12] Judgment of 23 November 2021, IS (Illegality of the order for reference), C-564/19, EU:C:2021:949.
[13] Judgment of 22 February 2022, RS (Effects of the decisions of a constitutional court), C-430/21, EU:C:2022:99.
[14] Judgment of 18 May 2021, Asociaţia 'Forumul Judecătorilor din România' and Others, C 83/19, C 127/19, C 195/19, C 291/19, C 355/19 and C 397/19, EU:C:2021:393.
[15] Judgment No 390/2021 of 8 June 2021.

of EU law, an ordinary court has no jurisdiction to examine the conformity of that national legislation with EU law.

Following that judgment of the Constitutional Court, the Court of Appeal, Craiova, made a reference for a preliminary ruling to the Court of Justice. The question raised was in substance as follows: can and must a national court – the referring court – set aside the case law of its own constitutional court to ensure the full effectiveness of EU law provisions having direct effect?

In *RS*, the Court gave a clear answer to these questions which are of paramount importance for the very nature of EU law.

The Court of Justice pointed out that EU law does not preclude constitutional courts from ruling that national legislation is compatible with the constitution and that its rulings are binding upon ordinary courts. However, that binding force cannot go so far as to prevent a national court from examining, on its own or in cooperation with the Court of Justice through the preliminary ruling mechanism, the compatibility of national legislation with EU law. That is so, even if a constitutional court has issued a ruling establishing the constitutionality of the national legislation at issue in the light of a constitutional provision which enshrines the primacy of EU law.

In order to safeguard the full effectiveness of EU law provisions having direct effect, the national court must be able not only to refer a preliminary question to the Court of Justice so that it can assess the compatibility of the national legislation with such provisions of EU law but also to set aside the national legislation at issue. If this were not the case, the primacy of EU law would be undermined. Primacy is a *conditio sine qua non* for ensuring the equality of the Member States before the Treaties, equality which is expressly recognised and protected by Article 4(2) TEU.

The Court of Justice thus ruled that a constitutional court may not prevent national courts from examining the compatibility of national legislation with EU law in the light of a judgment of the Court of Justice, even if the constitutional court has declared that national legislation in conformity with the constitution after having found that EU law as interpreted by the Court of Justice does not respect the national identity of the Member State concerned and that the ruling of the Court of Justice is *ultra vires*.

Since it is for the Court of Justice alone to declare an EU law act invalid and to provide the definitive and binding interpretation of EU law, 'the constitutional court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, including Article 267 TFEU, validly hold that the Court of Justice has delivered a judgment exceeding its jurisdiction and, therefore, refuse to give effect to a preliminary ruling from that Court'[16].

In ***Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law)***[17], the Court of Justice explained those findings further. In that case, the Court upheld an infringement action brought by the Commission against Poland because of two judgments of the Polish Constitutional Court that had declared *ultra vires* the Court of Justice's interpretation of Article 19(1) TEU on the principle of judicial independence. Those two judgments also ran counter to the principles of autonomy, primacy, effectiveness and the

[16] Judgment of 22 February 2022, RS (Effects of the decisions of a constitutional court), C-430/21, EU:C:2022:99, para. 72.

[17] Judgment of 18 December 2025, Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law), C-448/23, EU:C:2025:975.

uniform interpretation of EU law, as well as to the principle of the binding effect of the case law of the Court of Justice.

In one of the key passages of the judgment, the Court of Justice held –and I quote— that 'to recognise that national courts have jurisdiction enabling them to rule definitively on the extent of the competences conferred on the [EU] and on compliance with the limits of those competences would be incompatible with the nature of EU law in several respects'[18]. First, the question of competences necessarily involves interpreting the Treaties. However, the Treaties do not confer on national courts the power to declare acts of the EU invalid or to give the definitive interpretation of EU law. That power falls within the exclusive jurisdiction of the Court of Justice. Second, the principles of autonomy and effectiveness preclude any external review of the decisions of the Court of Justice in the exercise of its exclusive jurisdiction. Third, if national courts were to rule on questions of competences, there is a risk that they would reach different interpretations of the same EU law provisions. '[Such] [d]ifferences between [national courts] would be liable to jeopardise the very unity of the EU legal order, compromise the attainment of the objectives of the Treaties and undermine the fundamental requirement of legal certainty and equality of Member States and their nationals before EU law'[19].

In the same way, the Court ruled that 'Article 4(2) TEU cannot be interpreted in such a way as to confer on [the courts of a Member State] the power to derogate unilaterally from the provisions of EU law by relying on that [Member State's] national identity'[20]. Instead, referring to its previous findings in *RS*, the Court recalled that judicial dialogue is the pathway to be followed by a constitutional court, where it considers that a provision of secondary EU law does not comply with the obligation to respect the national identity of the Member State concerned. In such a case, and I quote, 'that constitutional court must stay the proceedings and make a reference to the Court [of Justice] for a preliminary ruling under Article 267 TFEU, in order to assess the validity of that provision in the light of Article 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid'[21].

In *Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law)*, the Court held that the same pathway is to be followed in relation to primary EU law: 'where a [national court] considers that the interpretation of a provision of primary [EU] law, made in a decision of the Court, fails to comply with the requirements arising from Article 4 (2) TEU, … it must, if necessary, make a request for a preliminary ruling to the Court in order to enable it to assess any effect on that interpretation of the need to take into account the national identity of the Member State concerned, inherent in its fundamental structures, both political and constitutional'[22].

Judicial unilateralism has simply no room within the EU legal order. Instead, national courts must engage in a constructive dialogue with the Court of Justice, a dialogue which is based on mutual respect and comity, giving rise to mutual trust. There must be mutual trust in the development of EU law. There is nothing wrong with a national court expressing the

[18] Ibid., para. 214.
[19] *Ibid*., paras 215 to 217.
[20] *Ibid*., para. 227.
[21] Judgment of 22 February 2022, RS (Effects of the decisions of a constitutional court), C-430/21, EU:C:2022:99, para. 71.
[22] Judgment of 18 December 2025, Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law), C 448/23, EU:C:2025:975, para. 232.

view, in good faith, that it has a problem with a judgment of the Court of Justice. That has happened several times in the history of the Court of Justice, giving rise to important judgments such as *Taricco I and II*[23], and more recently *Conti I and II*[24]. However, such a national court must explain its concerns transparently in a new reference for a preliminary ruling, and thereby allowing all the other Member States to have their say on the matter in the new procedure before the Court of Justice. It is only after a fully deliberative process that the Court of Justice will come to a synthesis of all the points of view that are expressed before it. That synthesis will take due account of the concerns expressed by the referring court whilst maintaining the unity of EU law and thus the equality of the Member States before that law.

B. THE OBLIGATION TO REFER ON COURTS OF LAST INSTANCE

So, a national court – and especially a constitutional or supreme court – should never depart unilaterally from the Court of Justice's case law. Constitutional and supreme courts are the ultimate guardians of the rule of law within their own national legal order and therefore also of the correct application of EU law within their respective Member State. Precisely for this reason, Article 267 TFEU imposes an obligation to refer on all courts of last instance whenever they are faced in litigation before them with a question concerning the interpretation of EU law. That obligation 'is the *corollary* of the exclusive jurisdiction of the Court to rule on the validity of EU acts and to provide the definitive and binding interpretation of EU law'[25].

In the recent ***CILFIT II***[26] judgment, the Court of Justice confirmed that the fact a court of last instance has already made a reference to the Court of Justice for a preliminary ruling in the same national proceedings does not affect that obligation when a question concerning the interpretation of EU law remains[27]. This is because there are only three exceptions to the obligation to refer. First, a court of last instance is not obliged to make a reference, where it finds that the interpretation of EU law is not relevant for solving the case. Second, that obligation does not apply where the provision of EU law in question has already been interpreted by the Court of Justice. Last but not least, the court of last instance may also derogate from its obligation to refer where the interpretation of EU law is so obvious as to leave no scope for any reasonable doubt.

Before concluding that there is no reasonable doubt, the national court of last instance must be convinced that the matter would be equally obvious to the other courts or tribunals of last instance of the Member States and to the Court of Justice. Furthermore, when a national court or tribunal of last instance takes the view that it is relieved of its obligation to make a reference to the Court of Justice under Article 267 TFEU, the statement of reasons for its decision must show that one of the exceptions to that obligation apply[28].

[23] See e.g. judgments of 8 September 2015, Taricco and Others, C-105/14, EU:C:2015:555, and of 5 December 2017, M.A.S. and M.B., C-42/17, EU:C:2017:936.
[24] See judgments of 16 May 2019, Conti 11. Container Schiffahrt, C-689/17, EU:C:2019:420, and of judgment of 21 January 2025, Conti 11. Container Schiffahrt (Convention de Bâle), C-188/23, EU:C:2025:26.
[25] Judgment of 18 December 2025, Commission v Poland (Ultra vires review of the Court's case-law – Primacy of EU law), C-448/23, EU:C:2025:975, para. 206 (emphasis added).
[26] Judgment of 6 October 2021, Consorzio Italian Management and Catania Multiservizi,C-561/19, EU:C:2021:799, para. 59.
[27] *Ibid.*, para. 66.
[28] *Ibid.*, para. 51.

In ***KUBERA*** and ***Remling***, the Court has continued to develop that line of case law further, by looking at two of the so-called 'docket-management' measures, that are often put in place in order for national courts of last instance to cope with an ever-increasing workload. In *KUBERA*, it was a filtering mechanism, whilst in *Remling* it was the possibility of deciding cases by summary reasoning.

In ***KUBERA***[29], the Court of Justice was asked to examine the compatibility with Article 267 TFEU of a filtering system for bringing matters before the national supreme courts. It concerned proceedings relating to the examination of an application for leave to appeal on a point of law brought before the Slovenian Supreme Court. According to the case law of that national court, granting leave for appeal depended on the significance of the legal issue raised by one of the parties to the dispute with respect to legal certainty, the uniform application of the law or its development. The problem was that in interpreting those three criteria, the Slovenian Supreme Court had adopted an exclusively national law perspective that focused on a departure from, the absence of, or a lack of uniformity of its own case law. In assessing the application for leave to appeal, the Slovenian Supreme Court did not, however, examine whether it was, as a court of last instance, under the obligation to make a reference to the Court of Justice.

First, the Court observed that, while EU law does not preclude the Member States from establishing 'filtering' systems for bringing matters before the national supreme courts, those systems must meet the requirements deriving from that law and, in particular, Article 267 TFEU[30]. Second, the establishment of those filtering systems does not deprive the national supreme courts of their status of 'courts of last instance', remaining bound by the obligation to refer[31]. Third, the filtering system at issue in the main proceedings, as applied by the Slovenian Supreme Court, was incompatible with Article 267 TFEU. This was because the filtering system could lead to a situation in which a question concerning the interpretation or validity of a provision of EU law would not be submitted to the Court of Justice, despite the fact that such a question had been raised in the application for leave to appeal, either directly or in connection with another legal issue. This was contrary to the obligation to refer, and could give rise to a body of national case law that was incompatible with EU law[32]. Fourth, the Court of Justice recalled that 'the requirement to interpret national law in conformity with EU law entails, in particular, the obligation for national courts and tribunals to change established case law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of EU law'[33]. That change seemed possible, as the Slovenian Constitutional Court had found that the provision of national law at issue in the main proceedings could be interpreted in a way that enabled the Slovenian Supreme Court to fulfil its obligations under Article 267 TFEU[34]. Fifth and last, drawing on its previous findings in *CILFIT II*, the Court held that, where the Slovenian Supreme Court rejects an application for leave to appeal on a point of law containing a request that a question concerning the interpretation or validity of a provision of EU law be referred to the Court of Justice, that

[29] Judgment of 15 October 2024, KUBERA, C-144/23, EU:C:2024:881.
[30] *Ibid.*, para. 32.
[31] *Ibid.*, para. 39.
[32] *Ibid.*, paras 45 and 46.
[33] *Ibid.*, para. 52.
[34] *Ibid.*, para. 54.

national court must state the reasons for its decision, which must be grounded in one of the three exceptions to the obligation to refer.

In ***Remling***, the referring court, the Dutch Council of State, asked whether it could, as a court of last instance, decide a case by summary judgment when confronted with questions of EU law, *without* expressly indicating any of the three *CILFIT* exceptions that would apply to such a case[35].

The Court noted that a court of last instance may, by virtue of national law, decide cases by summary reasoning as a means of improving the administration of justice, since such reasoning contributes to reducing the length of proceedings and allows courts of last instance to focus on complex questions that deserve their full attention. However, in so doing, it must, when confronted with questions of EU law, specifically and concretely state the reasons for applying any of the three *CILFIT* exceptions, in the light of the facts and legal context of the case at hand[36].

The obligation to state reasons applies where a party in the main proceedings relies on EU law or where, by virtue of national or EU law, a national court may – or must – raise on its own motion a question of EU law. However, whether one of the parties in the main proceedings has expressly asked the court of last instance to make a reference, is of no relevance, since 'the system of references for a preliminary ruling is based on a dialogue between one court and another, the initiation of which depends entirely on the national court's assessment as to whether a reference is appropriate and necessary'[37].

Next, the Court of Justice went on to explain the level of specificity that applies to the obligation to state reasons, which may vary according to the *CILFIT* exception applied by the court of last instance. For example, the obligation to state reasons is complied with where the court of last instance simply endorses the reasoning put forward by lower courts, in so far as that reasoning covers one of the three *CILFIT* exceptions[38]. In the same way, the specific grounds explaining that the interpretation of EU law is not relevant for solving the case at hand (first *CILFIT* exception) may be stated succinctly[39]. Similarly, a succinct reasoning is also valid, where the questions of EU law at issue are strictly identical to those already solved by existing case law (second *CILFIT* exception)[40]. By contrast, a more thorough reasoning must, in principle, be provided by the court of last instance, where the interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (third *CILFIT* exception). In particular, the court of last instance must indicate why the matter would be equally obvious to the other courts or tribunals of last instance of the Member States and to the Court of Justice[41].

CILFIT II, KUBERA and *Remling* thus confirm that a 'unilateral breakaway' by a court of last instance cannot be reconciled with the unity of EU law. Indeed, as the Court of Justice made clear in *Commission v. France* in 2018, a Member State will be in breach of its EU law obligations under Article 267 TFEU where a court of last instance within its judicial system

[35] Judgment of 24 March 2026, Remling, C-767/23, EU:C:2026:243.
[36] *Ibid*., para. 32.
[37] *Ibid*., paras 29 and 30.
[38] *Ibid*., para. 33.
[39] *Ibid*., para. 35.
[40] That said, if the questions referred are not strictly identical to those already solved by existing case law but rather similar, a more thorough reasoning must be provided. *Ibid*., para. 36.
[41] *Ibid*., paras 37 and 38.

omits to make a reference, despite the fact that the interpretation of provisions of EU law that are relevant to the main proceedings is *not* so obvious as to leave no scope for any reasonable doubt[42].

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The preliminary ruling mechanism constitutes the very keystone of the EU judicial system. By establishing a dialogue between the Court of Justice and the national courts, it aims to ensure the unity of interpretation of Union law and thus its consistency and full effect[43]. It ensures that every citizen of the Union derives the same rights from Union law in all Member States and thus guarantees the equality of all before the law. By requiring certain pre-conditions to be fulfilled by the national courts and its judges, the preliminary ruling mechanism ensures that this dialogue remains independent from political influence.

This preliminary dialogue must be seen as an expression of judicial 'solidarity' and not as a form of control of one level of jurisdiction over another. This solidarity, this sincere cooperation in mutual respect and trust, is the only way forward to safeguarding the unity of EU law and equality before the law, or, in other words, the very foundations of European integration.

I thank you for your attention.

[42] Judgment of 4 October 2018, Commission v France (Advance payment), C-416/17, EU:C:2018:811, paras 105 to 114.
[43] Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, para. 176.