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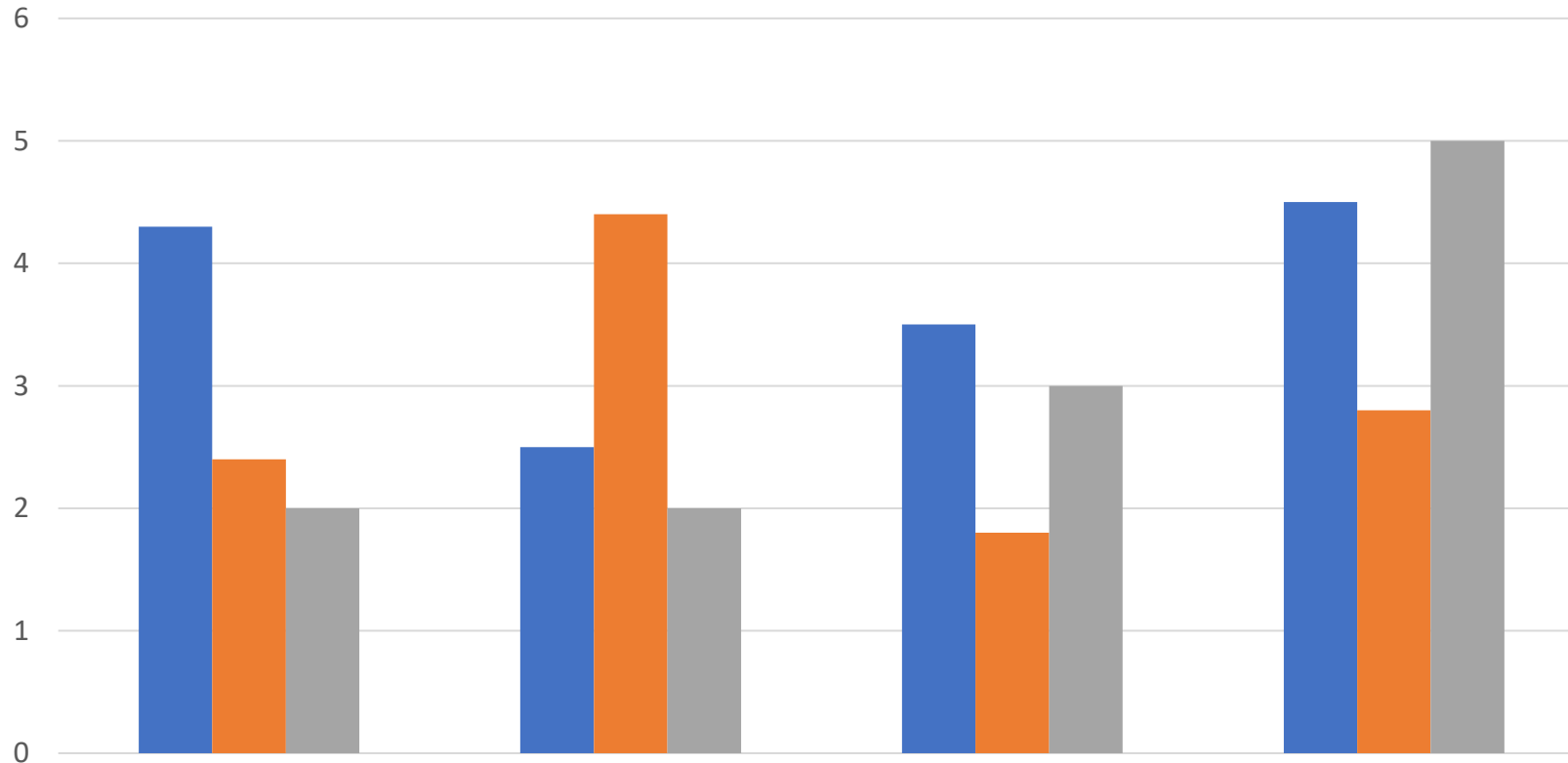
Preliminary ruling procedure as a useful tool within the national judicial system

Judge Beatrice Ramascanu

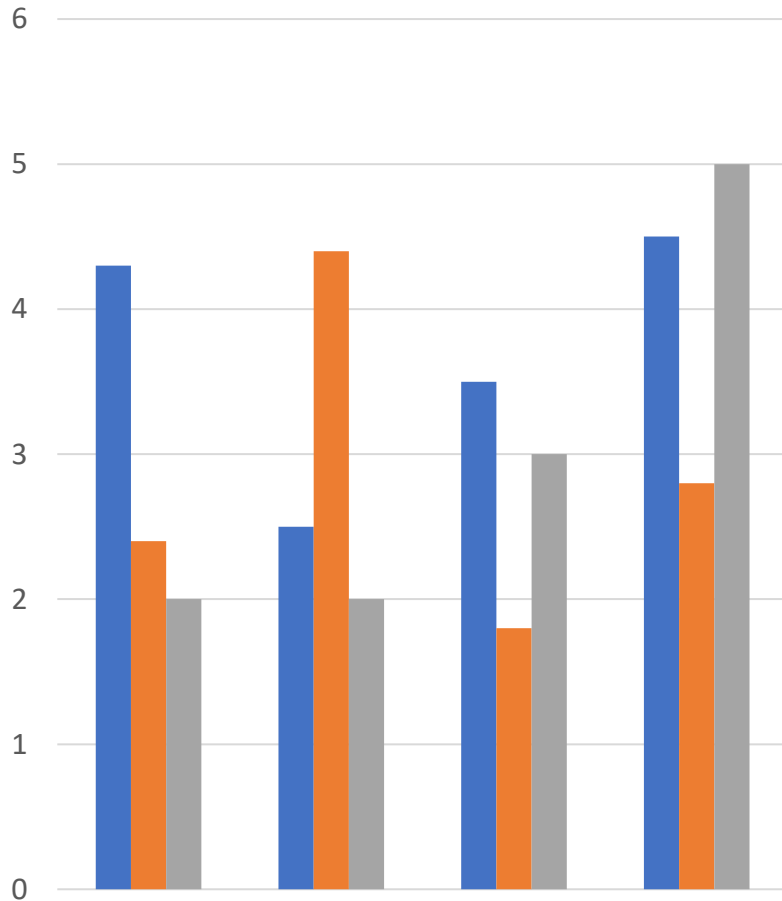
12 May 2025, Vilnius

I know what you did ...last year 2024

- 573
- 67.21%



Member States (1952-2024)



- Germany 3145
- Italy 1877
- France 1160
- Finland 160
- Latvia 135
- Lithuania 112
- Estonia 47

L'Europe des juges



Shared responsibility

National judge



European judge

Article 267 TFUE



The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:



(a) **the interpretation** of the Treaties;



(b) **the validity** and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Article 267 TFUE



Where such a question is raised before any court or tribunal of a Member State, that court or tribunal **may**, if it considers that a decision on the question is **necessary** to enable it to give judgment, request the Court to give a ruling thereon.



Article 267 TFUE

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions **there is no judicial remedy** under national law, that court or tribunal **shall bring** the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.



Rules of Procedure- Article 99

Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question **may be clearly** deduced from existing case-law or where the answer to the question referred for a preliminary ruling **admits of no reasonable doubt**, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

Preliminary ruling procedure

“the judicial system as thus conceived has as its **keystone the preliminary ruling procedure provided for in Article 267 TFEU**, which, by setting up a **dialogue** between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the object of **securing uniform interpretation of EU law** (see, to that effect, judgment in van Gend & Loos, EU:C:1963:1, p. 12), thereby serving to ensure **its consistency, its full effect and its autonomy** as well as, ultimately, the particular nature of the law established by the Treaties.

(Opinion 2/13, para 176)



Keystone

Judgement of 5 July 2016, C- 614/16, Ognyanov

- *“...the preliminary ruling procedure provided for in Article 267 TFEU constitutes the keystone of the European Union judicial system, which, by setting up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties.”*

“Triangle magique” – Objectives

Uniform
interpretation
and
application of
EU law

- **legal unity within the EU**
- **protection of individual rights**
- **development of EU law**

Judicial dialogue in the European judicial space



Shared responsibility

- When ruling on the interpretation/validity of EU law, the Court **makes every effort to give a reply which will be of assistance** in resolving the dispute in the main proceedings
- but it is for the referring court or tribunal **to draw case-specific conclusions**, if necessary by disapplying the rule of national law held incompatible with EU law.

(RECOMMENDATIONS to national courts and tribunals in relation to the initiation of preliminary ruling proceedings)



Dialogue between courts and division of competence

- Art. 5 TEU Principle of conferral- Competences not conferred on the Union remain with the Member States (article 4 TFEU)
- **Competence ECJ**: To rule on Validity/Interpretation of EU law upon the request of a court of a MS
- **Competence of national court –**
 - establish the facts
 - Interpret and apply national law
 - Apply EU law
 - Assess the need for a preliminary question
 - Formulate the relevant questions
 - Solving the case based on the ECJ's judgement

Judicial Independence

- precondition to the Rule of Law value (Art. 2 TEU);
- Protection: national level, ECHR, EU Charter

‘Connecting factors’ between

PR mechanism as a **dialogue** between courts and the judicial independence as a guarantee that judges effectively contribute to upholding the EU rule of law by:

- autonomously deciding to refer questions when they have doubts
AND;
- are in a position to implement preliminary rulings.

Judicial Independence

- Article 4 TEU:
- Member States are obliged - to ensure, in their respective territories, the application of and respect for EU law; - to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the EU
- (Opinion 2/13 paragraph 173)



Judicial Independence

- “In order to ensure that the specific characteristics and the autonomy of that legal order are preserved, the Treaties have established a judicial system intended to ensure consistency and uniformity in the interpretation of EU law. In that context, it is for the national courts and tribunals and for the Court of Justice to ensure the full application of EU law in all Member States and to ensure judicial protection of an individual’s rights under that law.”

(Opinion 2/13, para 174 – 175)



Judgment of 27 February 2018, Associação Sindical dos Juízes Portugueses (Case 64/16, EU:C:2018:117)

- 42 The guarantee of independence, which is inherent in the task of adjudication (see, to that effect, judgments of 19 September 2006, Wilson, C-506/04, EU:C:2006:587, paragraph 49; of 14 June 2017, Online Games and Others, C-685/15, EU:C:2017:452, paragraph 60; and of 13 December 2017, El Hassani, C-403/16, EU:C:2017:960, paragraph 40), is required not only at EU level as regards the Judges of the Union and the Advocates-General of the Court of Justice, as provided for in the third subparagraph of Article 19(2) TEU, **but also at the level of the Member States as regards national courts.**

Judgment of 27 February 2018, Associação Sindical dos Juizes Portugueses (Case 64/16, EU:C:2018:117)

- 43 The independence of national courts and tribunals is, in particular, essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU, in that, in accordance with the settled case-law referred to in paragraph 38 above, that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence.

Judgment of 27 February 2018, Associação Sindical dos Juízes Portugueses (Case 64/16, EU:C:2018:117)

- 44 The concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions (see, to that effect, judgments of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraph 51, and of 16 February 2017, *Margarit Panicello*, C-503/15, EU:C:2017:126, paragraph 37 and the case-law cited).

What is a court/tribunal – Article 267 TFEU

- Factors:
- established by law,
- Permanent,
- Compulsory jurisdiction,
- whether its procedure is inter partes,
- whether it applies rules of law and
- whether it is **INDEPENDENT**



What is a court/tribunal – Article 267 TFEU

- In the context of a preliminary ruling procedure, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the order for reference was made in accordance with the rules of national law governing the organisation of the courts and their procedure.

HOWEVER

- that presumption may be rebutted where a final judicial decision handed down by a court or tribunal of a Member State or an international court or tribunal leads to the conclusion that the judge constituting the referring court is not an independent and impartial tribunal previously established by law for the purposes of the second subparagraph of Article 19(1) TEU, read in the light of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

Judgment of 21 December 2023 (Grand Chamber), Krajowa Rada Sądownictwa (C-718/21, EU:C:2023:1015)

- Judgment of ECHR Dolińska-Ficek and Ozimek v. Poland, 8 November 2021, breach of the requirement of a **‘tribunal established by law’** laid down in Article 6(1) of the due to the process which, on the basis of Resolution No 331/2018, had led to the appointment of the members of two three-judge adjudicating panels of the Chamber of Extraordinary Control.

Giving effect to

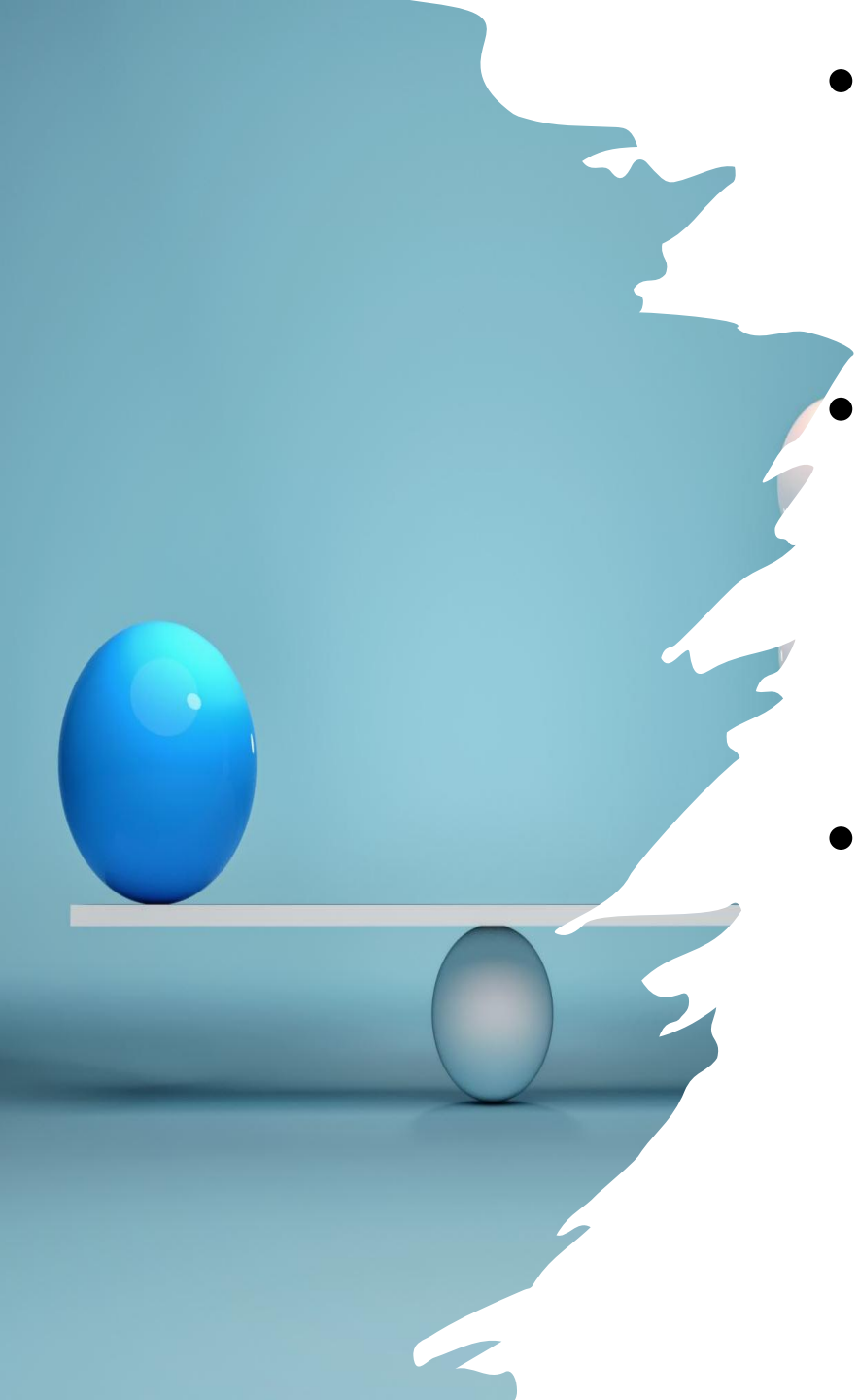
- Judgment in *Dolińska-Ficek and Ozimek v. Poland* of the ECtHR + Poland Supreme Administrative Court decision of 21 September 2021
- the appointments of the members of the adjudicating panels of the Chamber of Extraordinary Control concerned had been made in manifest breach of fundamental national rules governing the procedure for the appointment of judges.
- Even if 1 out of 6 of the adjudicating panels of the Chamber of Extraordinary Control sits within the referring body, it is nevertheless clear from the grounds the assessments made by the ECtHR apply without distinction to all the judges of the Chamber of Extraordinary Control who were appointed to that chamber in similar circumstances and, in particular, on the basis of Resolution No 331/2018.

See also

- Judgment of 5 June 2023 (Grand Chamber), Commission v Poland (Independence and private life of judges) (C-204/21, EU:C:2023:442)
- Judgment of 13 July 2023 (Grand Chamber), YP and Others (Lifting of a judge's immunity and his or her suspension from duties) (C-615/20 and C-671/20, EU:C:2023:562)

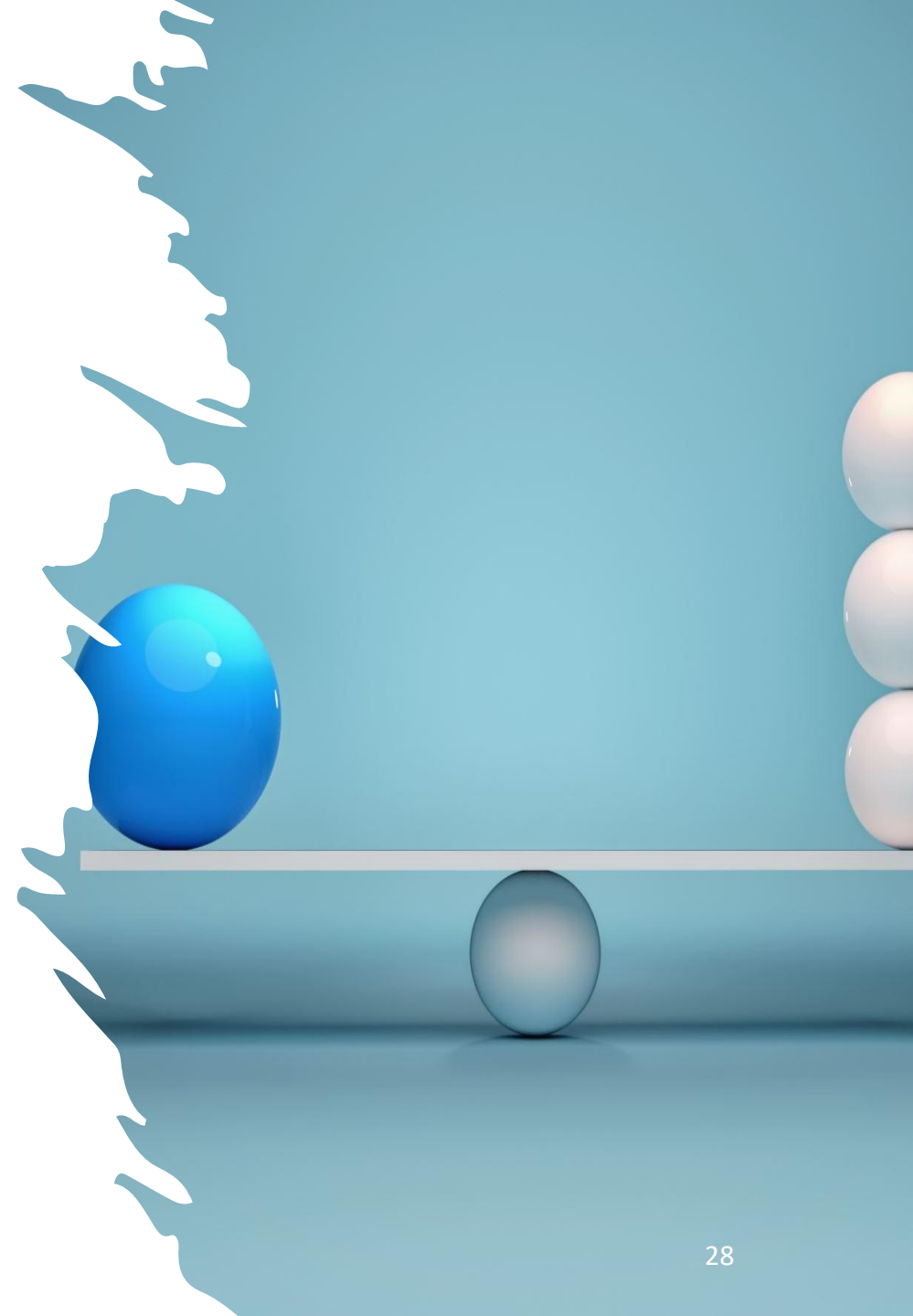
REFORM!!! 1 october 2024

- Transfer of the competence to the General Court to issue preliminary rulings in six specific domains:
 - 1. The common system of value added tax (VAT)
 - 2. Excise duties
 - 3. The Customs Code
 - 4. Tariff classification of goods under the combined nomenclature
 - 5. Compensation and assistance for passengers in cases of denied boarding, delay, or cancellation of transport services
 - 6. The scheme for greenhouse gas emission allowance trading



- to reduce the workload of the Court of Justice in the sphere of preliminary rulings
- to allow it to continue to fulfil, within a reasonable period, its mission of safeguarding and strengthening the unity and consistency of Union law.
- The domains- approximately 20% of PRR- already benefit from an extensive body of case-law of the Court of Justice, which should enable the General Court to draw on judgments delivered previously.

- The Court of Justice retain jurisdiction to adjudicate on PRR that, although connected to the specific areas mentioned above, also concern other areas or are raising independent questions of interpretation of:
- (1) primary law, including the Charter of Fundamental Rights of the European Union;
- (2) public international law;
- (3) general principles of Union law.
- In addition, the General Court will also be able to refer to the Court of Justice a case that falls within the General Court's jurisdiction but requires a decision of principle likely to affect the unity or consistency of Union law.



Message to the national judges

- PRR must be submitted to the Court of Justice
- The court will determine, in accordance with the detailed rules set out in its Rules of Procedure, whether the request falls exclusively within one or several specific defined areas and, accordingly, whether that request is to be transmitted to the General Court.
- the Court of Justice or the General Court will briefly provide reasons, in its ruling on a preliminary reference, as to why it is competent to hear and determine the question referred for a preliminary ruling.



Case T-534/24, Gotek

- The first reference for a preliminary ruling transferred to the Tribunal on October 17
- submitted by the Administrative Court in Osijek – Croatia
- *Must Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, (2) in particular Articles 7 and 8 thereof, and/or Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), (3) be interpreted as precluding national practice (and legislation) which provides for an obligation to pay excise duty on energy products where the excise goods have not been used and an excise duty liability has been established in respect of goods stated in falsified invoices for the purchase of energy products which, precisely because they have been falsified, do not give rise to the right to deduct input VAT because there are fictitious supplies of energy products, as has also been finally established in criminal proceedings?*

Points of discussion

- Preliminary ruling of asking for an Advisory Opinion based on Protocol 16 to ECHR?
- PPT and other domestic mechanism for uniform interpretation of assessment of the conformity with the Constitution?
- Judgment of 22 February 2022, RS (Effect of the decisions of a constitutional court) (C-430/21, EU:C:2022:99, paragraph 53)

Conductor of European Orchestra

Just as a conductor ensures that diverse instruments play in harmony according to a unified score, the CJEU coordinates the application of EU law across all member states.

Each national legal system is like a unique instrument with its own timbre and technique, but the Court ensures they all interpret and apply EU treaties and legislation consistently.

When discordant notes arise—when national courts encounter questions about EU law—they can refer these questions to the conductor for clarity. The Court's preliminary rulings then guide all musicians to maintain the same interpretation, preserving the harmony of the legal performance.

The conductor doesn't create the music (legislation) but has final authority on how it should be played, much as the CJEU doesn't create laws but provides the definitive interpretation of EU law for all member states.

- Like a respected maestro whose interpretations become standard, the CJEU's decisions establish precedents that shape future performances of EU law across the continent*



Thank you for your attention!

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