



***Perspectives on the Reformed EU Judicial Architecture***  
***edited by Lorenzo Grossio and Davor Petrić***

## **The 2024 Reform of the EU Judicial System and the Transformation of the Court of Justice into a Constitutional Court**

*Tanja Hilpold\**

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ABSTRACT: The 2024 reform of the Statute of the Court of Justice of the European Union does not entail merely technical adjustments but will bring about groundbreaking consequences for the structure of the EU judicial system. This contribution shows how these procedural amendments can significantly affect the constitutional role of the Court of Justice. While there is no unanimous understanding of the term ‘constitutional court’ in the EU legal order, a broad consensus has emerged as to the core elements of this concept. This article analyses several novelties introduced by the 2024 reform that may pave the way for the Court of Justice’s transformation into a fully-fledged constitutional court. It also situates the 2024 reform within the broader trajectory of EU judicial reforms, showing that it forms part of a decades-long trial-and-error process that is far from concluded. Finally, it offers an outlook on the possible future development of the EU judicial system, emphasising the need for a long-term vision of the Union’s judicial architecture and, in particular, of the respective roles of the Court of Justice and the General Court.

KEYWORDS: Court of Justice – constitutional court – preliminary reference procedure – Statute of the Court of Justice of the EU – 2024 reform – future architecture of the EU judicial system.

\* Doctoral Researcher, University of Luxembourg, Department of Law, [tanja.hilpold@uni.lu](mailto:tanja.hilpold@uni.lu).



## 1. Introduction

Much praise has been lavished on the 2024 reform of the Statute of the Court of Justice of the European Union (2024 reform).<sup>1</sup> At the same time, however, a number of concerns have been raised regarding the far-reaching changes it has brought about in the EU's judicial architecture. In many respects, the ensuing discussion has reignited the longstanding question of whether, and to what extent, the Court of Justice (CJ) can be qualified as a constitutional court. As will be shown, this is not a fruitless or merely abstract discussion. While at first glance the issue may appear to revolve around terminological classifications of merely technical relevance, in reality, these classifications help to structure the main traits of the 2024 reform and to provide clarity as to the direction in which future reforms may evolve.

Couching the debate in established terminology further helps to contextualise the reform within a longstanding tradition from which valuable suggestions can be drawn to address present-day dogmatic questions. By contrast, ignoring these precedents risks portraying the 2024 reform as haphazard and piecemeal. Adopting a broader perspective, however, allows us to identify the recent reform steps as cornerstones of a well-marked trajectory. Following this line, it becomes evident that many of the challenges we are now facing in assessing the 2024 reform and determining its future direction have a long pedigree reaching deep into the history of EU procedural law.

By engaging in dialogue with the contribution published by Jacopo Alberti<sup>2</sup> in this Special Section, this article advances a distinct interpretation of the 2024 reform's implications. It shows that the 2024 reform has the potential to significantly shape the development of the CJ's constitutional role. Moreover, it argues that the adoption of a constitutional perspective helps to better grasp the actual scope of the 2024 reform and to discern the possible trajectory of the ongoing reform process of the EU procedural system.

In particular, this contribution is structured as follows. It will, first, discuss the concept of a 'constitutional court' and clarify how this notion can be applied to the CJ (2). It will then analyse the elements of the 2024 reform that strengthen the constitutional role of the CJ and that may set the stage for its transformation into a fully-fledged constitutional court (3). Afterwards, it will turn to problematising the concept of constitutionalisation, engaging with critical perspectives that highlight possible countervailing dynamics of the 2024 reform process (4). Finally, the article will provide an outlook on the broader evolution of the EU judicial system, emphasising the continuing trial-and-error nature of EU judicial reforms and the

<sup>1</sup> Regulation (EU, Euratom) 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

<sup>2</sup> J Alberti, 'O Tell Me the Truth About the Transfer of Preliminary Rulings to the General Court' (2025) 10 *European Papers* 333.

need for a long-term vision of the respective roles of the CJ and the General Court (GC) (5). While the 2024 reform also introduced measures concerning the transparency and participation in preliminary reference proceedings,<sup>3</sup> as well as an extension of the filtering mechanism for appeals,<sup>4</sup> this contribution focuses on the novelties relating to the partial transfer of preliminary ruling jurisdiction to the GC.

## 2. Approaching constitutionalisation

One might argue that any analysis of the constitutional role of the CJ must first address the definitional question. Yet, while a deductive approach – starting from a precise definition of a constitutional court and applying this definition to the Court’s activities – might at first glance appear to be the royal road, a closer look reveals that such an approach is hardly feasible. This is, first, because there is no consensus on a precise definition of a ‘constitutional court’.<sup>5</sup> Second, the long-lasting qualification of the EU legal order as a ‘sui generis’ legal order cannot be overlooked.<sup>6</sup> This characterisation necessarily implies that the CJ can only be regarded as a ‘sui generis’ constitutional

<sup>3</sup> See the new Art 23 of the Statute of the CJEU. Requests for a preliminary ruling shall be now notified also to the European Parliament, the Council and the European Central Bank. Where they consider that they have a particular interest in an issue raised by a request for a preliminary ruling, they are entitled to submit statements of case or written observations to the CJ. Furthermore, the new Art 23(5) of the Statute of the CJEU foresees the publication on the CJEU’s website of statements of case or written observations submitted by an interested person pursuant to Art 23 of the Statute after the closing of the proceedings, unless that person raises objections to the publication of its own written submissions.

<sup>4</sup> The 2024 reform also provides for an extension of the filtering mechanism for appeals against decisions of the GC which have been already previously heard by an independent board of appeal of a Union body, office or agency. This mechanism was introduced in 2019, with the entry into force of Art 58a of the Statute of the CJEU and was extended in 2024 to six additional independent boards of appeal. Furthermore, this mechanism also applies to independent boards of appeal established after 1 May 2019 within any other body, office or agency of the Union and to disputes relating to the performance of contracts containing an arbitration clause.

<sup>5</sup> See, for example, JHH Weiler, ‘The Reformation of European Constitutionalism’ (1997) 35 *Journal of Common Market Studies* 97, 99; B Vesterdorf, ‘A constitutional court for the EU?’ (2006) 4 *International Journal of Constitutional Law* 607, 607: ‘There is no single accepted definition of what a “constitutional court” is, but everyone would probably agree that, at a minimum, it requires, first, a “constitution” (or any other “supreme law of the land” or Magna Carta) and, second, a court defending and interpreting this basic charter’. See also A Dashwood and AC Johnston, ‘Synthesis of the Debate’ in A Dashwood and AC Johnston (eds), *The Future of the Judicial System of the European Union* (Hart Publishing 2001) 55, 62. The latter provided a synthesis of the discussions which, in 1999, resulted in the adoption of the Court’s paper entitled ‘The Future of the Judicial System of the European Union (Proposals and Reflections)’.

<sup>6</sup> See already, at that time with reference to the ECSC, R Schuman, ‘Préface’ in P Reuter (ed), *La Communauté Européenne de Charbon et de l’Acier* (Pichon et Durand-Auzias 1953), 7. Famously, Case 26/62 *Van Gend & Loos*, EU:C:1963:1, p 12 (‘new legal order of international law’). See also G Itzcovich, ‘The European Court of Justice as a Constitutional Court. Legal Reasoning in a Comparative Perspective’ (2014) 4 *STALS Research Paper* 1, 4–11.

court.<sup>7</sup> Any assessment of the CJ's constitutional functions must be undertaken from the perspective of EU law itself, with its specific aims, goals, and imperfections.<sup>8</sup>

To overcome the definitional conundrum, one might follow the approach devised by Ole Due, who referred to the old saying that 'an elephant may be hard to define, but that it is relatively easy to recognize the animal when you see it.'<sup>9</sup> Trivial as this picture may appear, it is nonetheless helpful to grasp the rationale underlying the indirect recommendation to abandon overambitious attempts to arrive at a comprehensive definition of an EU constitutional court. Instead, some substantive elements can allow us to 'spot the elephant', that is, to identify the constitutional role of the CJ.<sup>10</sup> These include, in particular, the power to rule on the allocation of competences between the Member States and the EU or between the different EU institutions; the protection of fundamental rights; decisions on the constitutionality of secondary law; and the development of new approaches which are important for the EU legal order as a whole.<sup>11</sup>

It is therefore advisable to adopt an inductive perspective: there is a broad consensus that the tasks mentioned above can be regarded as constitutional in nature;<sup>12</sup> and by analysing whether the 2024 reform strengthens or weakens these responsibilities, one may ultimately determine whether the reform reinforces the CJ's constitutional role.

In this regard, some preliminary caveats must be noted. First, this article does not engage with the constitutionalisation process of EU law in general, which is inherently linked to the evolution of the constitutional role of the CJ. Nor does it analyse whether the CJ fulfils a constitutional role in substantive terms. Accordingly, issues such as the strengthening of the rule of law, the CJEU's increasing positioning as the Union's fundamental rights court, and the unlocking of the potential of Article 2 TEU are not examined here. While they undoubtedly play an important role in strengthening the

<sup>7</sup> Dashwood and Johnston (n 5) 62.

<sup>8</sup> Similarly, already Mertens de Wilmars in 1987: see Centre d'études internationales et européennes, *Le Parlement européen et la Cour de justice des Communautés européenne: table ronde, Strasbourg, 10 avril 1987* (Université R Schuman 1987) 54.

<sup>9</sup> O Due, 'A Constitutional Court for the European Communities?' in DM Curtin and DO'Keeffe (eds), *Constitutional Adjudication in European Community & National Law: Essays for the Hon. Mr. Justice T. F. O'Higgins* (Butterworths 1992) 3, 4.

<sup>10</sup> Ibid.

<sup>11</sup> See, inter alia, GCR Iglesias, 'Der Gerichtshof der Europäischen Gemeinschaften als Verfassungsgericht' (1992) 3 *EuR* 225, 226; Dashwood and Johnston (n 5) 60; K Lenaerts, 'The Rule of Law and the Coherence of the Judicial System of the European Union' (2007) 44 *Common Market Law Review* 1625, 1651–1652; MT Kotzur, 'Funktionen und funktionelle Zuständigkeit der europäischen Gerichte' in U Karpenstein, MT Kotzur and JJ Vasel (eds), *Handbuch Rechtsschutz in der Europäischen Union* (Beck 2024) 49, 62; A Arnall, 'A Constitutional Court for Europe?' (2003–2004) 6 *Cambridge Yearbook of European Legal Studies* 1, 2–4; E Sharpston and G de Baere, 'The Court of Justice as a Constitutional Adjudicator' in A Arnall, C Bernard, M Dougan and E Spaventa (eds), *A Constitutional Order of States? Essays in EU Law in Honour of Alan Dashwood* (Hart Publishing 2011) 123, 124–125.

<sup>12</sup> Ibid.

CJ's constitutional role, the focus of this article lies on the procedural side of the CJ's constitutionalisation process. It should be noted that also present members of the CJEU have explicitly referred to the CJ's constitutional role and, in some instances, even to the CJ as the Union's 'constitutional court'.<sup>13</sup> The question examined here is whether the 2024 reform further strengthens this role and whether it sets the stage for the transformation of the CJ into a fully-fledged constitutional court.

Second, it is not argued here that the CJ exercises a role fully identical to national constitutional courts. As mentioned above, due to the nature of EU law as an autonomous legal system,<sup>14</sup> a differentiated approach is required. Many areas in which the CJ has a strong interest would never be regarded by national constitutional courts as crucial to their constitutional function.<sup>15</sup> However, areas such as the uniform development of EU law are clearly of pivotal importance for the EU constitutional order.<sup>16</sup> Thus, caution is advisable against a comparative approach relying all too enthusiastically on national constitutional theory, although such references cannot be entirely renounced. The challenge, therefore, is to assess the widely recognised constitutional role of the CJ by making measured reference to qualification elements developed in national constitutional theory and adapting them to the particularities of the EU legal order, which is characterised by a series of elements that cannot be found in any other national order or international organisation.

Third, this contribution does not claim that the CJ exercises exclusively a constitutional role, nor is it contended here that the CJ constitutes a specialised constitutional court.<sup>17</sup> While its constitutional role has become increasingly pronounced, the CJ continues to perform a variety of other judicial functions. The mere fact that the CJ exercises also competences that are not, strictly speaking, constitutional in nature does not, however, preclude its qualification as a constitutional court, or as a court moving in that direction. Similar considerations have been made, *mutatis mutandis*, with regard to the U.S. Supreme Court, which can carry out constitutional review and thus exercise a constitutional role, but also decides as a court of appeal on matters that are not of a constitutional nature.<sup>18</sup>

<sup>13</sup> See, for example, Lenaerts (n 11) 1651–1652; J Kokott, 'Der EuGH auf dem Weg zum Verfassungsgericht' (2025) 80 *JuristenZeitung* 278; Opinion of AG Ćapeta in Joined Cases C-29/22 and C-44/22 *KS and KD*, EU:C:2023:901, paras 117, 133 and 155; Opinion of AG Ćapeta in Case C-769/22 *Commission v Hungary*, EU:C:2025:408, para 215: 'The Court of Justice is a constitutional court [...]'.  
<sup>14</sup> As famously referred to in *Van Gend & Loos* (n 6) p 13; Case 6/64 *Costa v ENEL*, EU:C:1964:66, p 593.

<sup>15</sup> See Dashwood and Johnston (n 5) 60.  
<sup>16</sup> *Ibid.*

<sup>17</sup> See also, for example, Iglesias (n 11) 226; FG Jacobs, 'Is the Court of Justice of the European Communities a Constitutional Court?' in DM Curtin and DO'Keeffe (eds), *Constitutional Adjudication in European Community & National Law: Essays for the Hon. Mr. Justice T. F. O'Higgins* (Butterworths 1992) 25.  
<sup>18</sup> *Ibid.*

On a more general note, the dividing line between a supreme court and a constitutional court is porous. While it may be argued that the key task of an EU supreme court is to ensure the uniform interpretation and application of Union law, such a task can also be seen as indicative of the Court's constitutional role, especially if the interpretation of EU constitutional law, in itself often not clearly separable from 'ordinary' EU law, is at stake.<sup>19</sup> Given the enormous dynamics inherent in EU law, guaranteeing unity and consistency of the EU legal order is in itself a condition for the preservation of this legal order, and therefore for its constitutional nature, regardless of the specific content of the norm at issue in a single case.

### **3. Elements of the 2024 reform strengthening the Court of Justice's constitutional role**

#### **3.1. Aims of the reform**

At first glance, Regulation (EU, Euratom) 2024/2019 amending Protocol No 3 of the Statute of the CJEU does not seem to place particular emphasis on the strengthening of the CJ's constitutional role. Indeed, the term 'constitutional' is mentioned only in Recital 4 of the Regulation, which justifies the introduction of new transparency measures by noting that the CJ 'is increasingly required, in preliminary ruling cases, to rule on matters of a constitutional nature or related to human rights and the Charter'.<sup>20</sup> The Preamble specifically mentions two key objectives that guided the 2024 reform process – aims that are, however, both underpinned by the ambition to enable the CJ to focus on constitutional questions.

First, the reform is presented from an efficiency-enhancing perspective, seeking to reduce the ever-growing workload of the CJ by delegating part of its preliminary ruling jurisdiction to the GC.<sup>21</sup> In particular, the 2024 reform provides for the transfer of preliminary ruling jurisdiction in six 'specific areas',<sup>22</sup> a possibility already foreseen in Article 256(3) TFEU. The Regulation amending Protocol No 3 notes that the number of pending preliminary ruling cases and the time taken to deal with those

<sup>19</sup> M Claes and M de Visser, 'The Court of Justice as a Federal Constitutional Court: A Comparative Perspective', in E Cloots, G de Baere and S Sottiaux (eds), *Federalism in the European Union* (Bloomsbury Publishing 2012) 122.

<sup>20</sup> Regulation (EU, Euratom) 2024/2019 (n 1) recital 4.

<sup>21</sup> According to the statistics presented by the Court, requests for a preliminary ruling account for around 62% of the caseload of the CJ, and the six selected areas transferred to the GC encompass approximately 20% of all preliminary references reaching the CJEU. See Court of Justice of the European Union, 'Annual Report 2024 – Statistics concerning the judicial activity of the Court of Justice', at [curia.europa.eu](http://curia.europa.eu), 5.

<sup>22</sup> These are: the standard system of value added tax; excise duties; the Customs Code; the tariff classification of goods under the Combined Nomenclature; compensation and assistance to passengers in the event of denied boarding or of delay or cancellation of transport services; the system for greenhouse gas emission allowance trading.

cases are increasing, also due to the particularly complex and sensitive nature of many questions.<sup>23</sup> While some authors argued that ‘what was needed was not to reduce the CJ’s workload, but rather to increase that of the GC, following the doubling of its members’<sup>24</sup> and that the reform only solves the problem of ‘finding some additional work for the not so busy GC’,<sup>25</sup> this contribution takes a different view. It is precisely the reduction of the CJ’s workload that is essential for a restructuring of the EU judicial system along the lines originally envisaged at its inception, paving the way for the CJ’s transformation into a fully-fledged constitutional court. This necessarily entails relieving the CJ, as far as possible, of cases of secondary importance, in particular those raising less complex and less sensitive questions.<sup>26</sup> It is probably true, as pointed out in literature,<sup>27</sup> that the 2024 reform will not immediately lead to a significant decrease in the CJ’s workload.<sup>28</sup> Nevertheless, some early signs are encouraging: the GC delivered its first preliminary ruling judgment, *Grotek*,<sup>29</sup> less than nine months after the CJ had transmitted the case, whereas the average duration of preliminary ruling proceedings in 2024 was 17,2 months.<sup>30</sup> The 2024 reform has delineated a testing ground that can pave the way for a more far-reaching delegation of preliminary ruling competences to the GC. Decisive for ensuring that the reform will be efficiency-enhancing in the long run, and that the CJ can concentrate on its constitutional role, will be the resolve to continue along this reform path.

The objective of reducing the CJ’s workload is intrinsically linked to the second aim explicitly articulated in the reform text: to allow the CJ ‘to continue to fulfil its mission of safeguarding and strengthening the unity and consistency of Union law, and to ensure that the decisions of the Court of Justice are of the highest quality’.<sup>31</sup> As will be explained below, the specific task of safeguarding and strengthening the unity and consistency of Union law, which is clearly assigned to the CJ, further constitutionalises the EU procedural order and, on an institutional level, strengthens the constitutional role of the CJ.

<sup>23</sup> Regulation (EU, Euratom) 2024/2019 (n 1) recital 2.

<sup>24</sup> Alberti (n 2) 339.

<sup>25</sup> M Bobek, ‘Preliminary rulings before the General Court: What judicial architecture for the European Union?’ (2023) 60 *Common Market Law Review* 1515, 1517.

<sup>26</sup> See also the Court’s Paper on ‘The Future of the Judicial System of the European Union (Proposals and Reflections)’ printed in Dashwood and Johnston (eds) (n 5) 133. See also Vesterdorf (n 5) 613; P Craig, *EU Administrative Law* (Oxford University Press 2012) 269; U Öberg, ‘A “General” Court in Name Only?’ (2024) 3 *Concurrences* 1, 4.

<sup>27</sup> Alberti (n 2) 338–340; Bobek (n 25) 1527.

<sup>28</sup> As of the end of August 2025, 60 preliminary ruling cases have been transmitted to the GC. See the list available on the Court’s website ([curia.europa.eu](http://curia.europa.eu)).

<sup>29</sup> Case T-534/24 *Grotek*, EU:T:2025:682.

<sup>30</sup> Court of Justice of the European Union, ‘Annual Report 2024 – Statistics concerning the judicial activity of the Court of Justice’ (n 21) 31.

<sup>31</sup> Regulation (EU, Euratom) 2024/2019 (n 1) recital 2.

### 3.2. Allocation of cases between the EU courts

The criteria used to identify the six areas transferred to the GC's jurisdiction already provide significant insights into the envisaged future role of the CJ. The specific areas are to be devised as follows: they must be clearly identifiable and sufficiently separable from others; they must raise only few issues of principle; there must be a substantial body of case law in these areas to guide the GC and to prevent the risk of inconsistencies or divergences in the case law; and they must give rise to a sufficiently high number of references.<sup>32</sup> Accordingly, areas that typically involve questions of principle and are crucial for the further development of EU law as a whole – and thus can be regarded as constitutional in nature – remain within the competence of the CJ. Even though the relevant provisions do not mention the term 'constitutional', it represents the underlying concept that fundamentally inspired the allocation of competences under this reform.

This fact is further confirmed by the exclusion of a series of specific 'horizontal competences' from any transfer to the GC. According to Article 50b(2) Statute, 'the Court of Justice shall retain jurisdiction to hear and determine requests for a preliminary ruling that raise independent questions relating to the interpretation of primary law, public international law, general principles of Union law or the Charter of Fundamental Rights of the European Union'.<sup>33</sup> As noted at the beginning of this contribution, the qualification of a competence as 'constitutional' will rarely be free from doubt and contestation.<sup>34</sup> Nevertheless, it can be noticed that certain fields are broadly acknowledged as falling within such a qualification, and the topics mentioned in Article 50b(2) Statute surely are among them.

As regards the legislative technique applied in Article 50b(2) Statute, the approach adopted may appear striking. While Article 256(3), first sentence, TFEU refers only to 'specific areas' that can be assigned to the GC, it makes no mention of specific competences expressly to be retained by the CJ.<sup>35</sup> From a technical perspective, this provision may be understood as an additional safeguard mechanism designed to protect the CJ's prerogatives and to exclude a 'competence overreach' by the GC. Seen more positively and in relation to its material content, this provision

<sup>32</sup> Request submitted by the Court of Justice pursuant to the second paragraph of Article 281 of the Treaty on the Functioning of the European Union, with a view to amending Protocol No 3 on the Statute of the Court of Justice of the European Union, at [curia.europa.eu](http://curia.europa.eu), 4–5.

<sup>33</sup> In the meantime, the Court has published a list of examples of the application of Art 50b of the Statute, also indicating the cases in which it considered such an 'independent question' to be given: see Court of Justice of the European Union, 'Implementation of Article 50b of the Statute of the Court of Justice of the European Union (1/10/2024 – 30/06/2025)', at [curia.europa.eu](http://curia.europa.eu).

<sup>34</sup> M Bobek, 'The Future Will Tell. Of Course It Will, But on What Criteria?' in *The 2024 Reform of the Statute of the Court of Justice of the EU* (EU Law Live 2024) 41, 43: '[...] there is simply no dividing line between a "constitutional question" and "mere law" in individual cases'.

<sup>35</sup> See also R Mastroianni, 'Il trasferimento delle questioni pregiudiziali al Tribunale: una riforma epocale o un salto nel buio?' (2024) *Rivista Quaderni AISDUE* 23.

is intended to emphasise the overall attempt to strengthen the constitutional role of the CJ and to ensure that it can exercise its function as custodian of the constitutional core of EU law to the utmost end.

The interpretation of the rather vague Article 50b(2) Statute will require a delicate balancing act, the outcome of which will significantly shape the further evolution of the roles of the EU Courts. In particular, the notion of ‘independent questions’ is ambiguous and leaves the CJ a wide margin of discretion.<sup>36</sup> This term is of crucial importance, since the mere fact that a case raises a question concerning the interpretation of provisions of primary law, public international law, general principles of Union law or the Charter does not automatically trigger the application of Article 50b(2) Statute.<sup>37</sup> Indeed, within the specific areas assigned to its jurisdiction, the GC will act in a way very similar to that of a supreme court and will necessarily be called upon to interpret provisions referred to in Article 50b(2) Statute. Furthermore, it must be borne in mind that references for a preliminary ruling can concern not only the interpretation but also the validity of a provision of EU law, and the latter will in most cases require an interpretation of the provisions mentioned in Article 50b(2) Statute.<sup>38</sup>

Whether the CJ will retain a case under this provision will thus significantly depend on whether the question raised can be qualified as ‘independent’ – a criterion which, however, has not been further defined. It is suggested here that a qualitative assessment should take place when interpreting this concept: the reach of a question beyond the specific case should be of considerable relevance and operate not only horizontally, in relation to similar cases, but also vertically, *id est* by involving matters of structural consistency of the EU legal order as a whole.<sup>39</sup> In particular, questions important for safeguarding and strengthening the unity and consistency of the EU legal order can be regarded as fulfilling the requirements of Article 50b(2)

<sup>36</sup> The recitals of the Regulation try to offer some guidelines but, rather than providing clarity, they create further ambiguities. Recital 16 of the Regulation states that questions of jurisdiction or admissibility raised are not to be considered as horizontal and shall thus remain within the competence of the GC. What, however, happens if an issue of jurisdiction or admissibility gives rise to a question of principle, important for ensuring the unity and consistency of EU law? Can this question be considered as falling under Art 50b(2) Statute? See T Tridimas, ‘Sharing Uniformity: A New Era Beckons’ (2024) 1 *LCEL Research Paper Series* 2, 8; S Iglesias Sánchez, ‘The 2024 Reform of the Statute of the Court of Justice of the EU and the Transformation of the EU Judicial System: Preliminary Rulings before the General Court of the EU’ in A Saiz Arnaiz and J Solanes Mullor (eds), *The European Judiciary* (Hart Publishing 2025) 97, 103.

<sup>37</sup> See also Tridimas (n 36) 13.

<sup>38</sup> *Ibid.*, 12.

<sup>39</sup> S Iglesias Sánchez, ‘Return of the Réexamen’ in *The 2024 Reform of the Statute of the Court of Justice of the EU* (EU Law Live 2024) 35, 37: ‘The criteria for “retained jurisdiction” outlined in Article 50b of the Statute [...] may be traced back to the idea of the “important position” that a rule occupies in EU law.’ Takis Tridimas suggested that ‘independent’ should be understood as ‘separate’, meaning that ‘a reference raises an issue of interpretation of one of the higher ranking norms which goes beyond its mere application in the case in issue’, see Tridimas (n 36) 11–12.

Statute. Ultimately, it will be for the CJ to breathe life into this element, to define it – if, indeed, it can be captured in any general formula at all – and thereby to delineate its own jurisdiction and further shape its constitutional role.

Caution, however, is warranted, as an overly broad reading of this element should be avoided. This reflects the very philosophy of the 2024 reform, which arguably does not conceive the GC as a mere ‘equerry’<sup>40</sup> of the CJ, but as an equal interlocutor within the scope of its specific functions. Indeed, the success of this reform will essentially hinge on fruitful cooperation and increasingly close interaction between the EU courts.<sup>41</sup> If the CJ were to ardently defend its competences by overly relying on Article 50b(2) Statute and the review mechanism under Article 256(3) TFEU, the essential potential gains in terms of workload would be offset. As has been aptly remarked by Michal Bobek: ‘In contrast to works of science fiction, where one can be travelling without moving, there cannot be transferring without letting go.’<sup>42</sup>

### 3.3. Safeguard mechanisms

As seen, the competence transfer operated by the 2024 reform is characterised by a series of ‘carve-outs’: even though cases pertaining exclusively to the six specific areas listed in the Statute are in principle allocated to the GC’s jurisdiction, the CJ maintains a particular control and steering power, which can be seen as indicative of the future development of its role.

In particular, under the so-called ‘guichet unique’ mechanism, all requests for a preliminary ruling are submitted to the CJ, which then assesses whether a case shall be referred to the GC.<sup>43</sup> The CJ continues to act as the main manager of the preliminary reference procedure, starting from the moment in which a case is lodged by a national court or tribunal before the CJEU.<sup>44</sup>

The President of the CJ assumes a role of paramount importance in this process. After having heard the Vice President and the First Advocate General, he decides whether a question falls exclusively within one or more of the specific areas and, accordingly, whether the Registry of the CJ shall submit a case to the GC. In complex scenarios – where the President considers that a case concerns one or more of the six specific areas but also touches upon other areas of law or raises independent questions relating to the interpretation of the provisions listed in Article 50b(2)

<sup>40</sup> As has been suggested by Alberti (n 2) 344.

<sup>41</sup> Tridimas (n 36) 13.

<sup>42</sup> Bobek (n 25) 1550.

<sup>43</sup> Art 50b(3) of the Statute of the CJEU; Art 93a of the RoP of the CJ.

<sup>44</sup> The fact that the ‘guichet unique’ is composed solely of CJ members sparked some controversy: see, inter alia, Alberti (n 2) 338; Mastroianni (n 35) 21–23; R Alonso García, ‘The Persian Jurist in Luxembourg: On the Decentralisation of the Preliminary Ruling Procedure’ in *Weekend Edition No 195* (EU Law Live 2024) 9–10.

Statute – the decision of whether or not to refer a case to the GC is taken by the *Réunion Générale*.<sup>45</sup> While it is widely acknowledged in literature that this novelty entails a strong verticalisation of judicial control, views differ as to whether it should be interpreted as a confirmation of a further constitutionalisation of the EU judiciary.<sup>46</sup> According to the position advanced here, the verticalisation taking place within the CJEU system – between the CJ and the GC, and even within the CJ itself – is not only a matter of internal procedural reorganisation. Rather, it constitutes a defining feature of the broader process of constitutionalisation currently unfolding within the CJEU. Constitutionalisation is intrinsically linked to hierarchy: constitutional courts enable a structured form of judicial oversight in which a higher-ranking body reviews legal acts in a top-down manner, thereby defending the superiority of the constitutional law.<sup>47</sup> This does not, however, detract from the fact that the GC will be, in principle, the final judicial instance in the specific areas delegated to its jurisdiction, with the CJ intervening only exceptionally.

Such intervention will occur, in particular, where the need arises to safeguard the unity and consistency of EU law. To this end, Article 256(3) TFEU embeds two mechanisms enabling the CJ to examine a case even after it has been delegated to the GC. As mentioned above, while at the national level the task of guaranteeing the unity and consistency of law is typically entrusted to a supreme court, within the EU legal order it also assumes a constitutional character.

First, the GC may transfer a case back to the CJ if it holds that a case requires a decision of principle likely to affect the unity or consistency of EU law.<sup>48</sup> Second, the First Advocate General may propose that the CJ review a GC decision if he considers that there is a serious risk of the unity or consistency of Union law being

<sup>45</sup> Art 93a of the RoP of the CJ. The decision of the President and the decision of the *Réunion Générale* are both not published. For a more detailed analysis of the ‘guichet unique’ see previous contributions in this Special Section: O Porchia, ‘A View from the General Court. The Reform for the Transfer of Competences for Preliminary Rulings to the General Court: Issues Concerning Its Implementation’ (2025) 10 *European Papers* 391, 395–397; L Grossio and D Petrić, ‘EU Procedural Law Revisited: The Reformed EU Judicial Architecture between the Statute of the Court of Justice and the Rules of Procedure’ (2025) 10 *European Papers* 293, 302–307, as well as L Rezki, ‘A View from the Court of Justice. Some Considerations About the Transfer of Competence for Preliminary Rulings to the General Court: The Functioning of the Guichet Unique and a Brief Review After Nine Months of Implementation of the Reform’ (2025) 10 *European Papers* 877.

<sup>46</sup> Critical in this regard Alberti (n 2) 345, who acknowledges that this novelty could be interpreted as a sign of constitutionalisation but considers ‘verticalisation’ to be a more accurate description of the reform’s defining element.

<sup>47</sup> A Stone Sweet, ‘Constitutional Courts’ in M Rosenfeld and A Sajo (eds), *Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) 816, 817.

<sup>48</sup> Art 256(3), second sentence, TFEU; Art 54(2) of the Statute of the CJEU. For a more detailed analysis, see D Düsterhaus, ‘Referring Cases Back to the Court of Justice: Faculty or Duty’ in *The 2024 Reform of the Statute of the Court of Justice of the EU* (EU Law Live 2024) 13; Grossio and Petrić (n 45) 305–306.

affected.<sup>49</sup> As regards procedural time limits, the First Advocate General may propose the initiation of the review procedure within one month of the delivery of the GC's decision.<sup>50</sup> The CJ then has an additional month to decide whether to follow this proposal.<sup>51</sup> Where the CJ accepts to review the GC decision, the 'unity and consistency of Union law' criterion comes again into play. If the CJ concludes that the GC decision affects the unity or consistency of Union law, the preliminary ruling delivered by the CJ will replace the one given by the GC.<sup>52</sup>

Even though the 'unity and consistency of Union law' criterion appears, explicitly and implicitly, throughout the whole reform text, its exact meaning is still unclear. How and how often the 'unity and consistency of Union law' criterion will be applied will have far-reaching repercussions on the success of the reform as a whole and on the evolution of the respective roles of the EU courts.<sup>53</sup> The Court merely stated in its Request to amend the Statute that the recourse to the review procedure should be exceptional and that the GC decision should, in principle, be final.<sup>54</sup>

However, the CJ is not called to develop entirely new criteria for identifying cases falling under Article 256(3), third sentence, TFEU. Rather, it may, to a certain extent, draw on the experience gained under Article 256(2) TFEU, which exceptionally allows the CJ to review GC decisions on appeal from specialised courts where there is a serious risk of the unity or consistency of Union law being affected.<sup>55</sup> Yet, as this provision has been applied only rarely in EU civil service disputes – which have a much more limited reach than preliminary rulings – it remains to be seen whether the CJ will use the interpretative criteria developed in this context also in preliminary ruling cases. Nonetheless, many similarities are likely to emerge.

Under the review mechanism in Article 256(2) TFEU, the Court found the following four criteria, considered as a whole, to be indicative of the unity and consistency of Union law being affected: whether (1) the judgment of the GC may constitute a precedent for future cases, (2) the GC has departed from established case law of the CJ, (3) the errors of the GC relate to rules that are applicable regardless of the matter at issue and (4) the rules with which the GC failed to comply occupy an important position in the Union legal order.<sup>56</sup> These criteria have, to a large extent,

<sup>49</sup> Art 256(3), third sentence TFEU; Arts 62 to 62b of the Statute of the CJEU.

<sup>50</sup> Art 62(2) of the Statute of the CJEU.

<sup>51</sup> *Ibid.*

<sup>52</sup> Art 62b(2) of the Statute of the CJEU.

<sup>53</sup> See, *inter alia*, Grossio and Petrić (n 45) 313–316; Iglesias Sánchez (n 39) 35–38; Bobek (n 25) 1525–1527.

<sup>54</sup> Request submitted by the Court of Justice (n 32) 6; also Art 256(3), third sentence, TFEU.

<sup>55</sup> See also Iglesias Sánchez (n 39) 36–37; Grossio and Petrić (n 45) 314–316. As regards the application of the 'unity and consistency of Union law' criterion in the context of Art 256(2) TFEU, see S Hummelbrunner, 'The Unity and Consistency of Union Law: The Core of Review under Article 256(2) and (3) TFEU' (2018) 73 *Zeitschrift für öffentliches Recht* 295.

<sup>56</sup> Opinion of AG Wathelet in Case C-417/14 RX-II *Livio Missir Mamachi di Lusignano v European Commission*, EU:C:2015:593, para 54. See also, for example, Case C-197/09 RX-II *Review*

informed the 2024 reform.<sup>57</sup> Indeed, the criteria used for identifying the ‘specific areas’ and the mechanism provided for in Article 50b(2) Statute should ensure that most cases fulfilling these criteria can already be caught before being transferred to the GC.<sup>58</sup> It stands to reason that these four criteria will also inform the CJ’s interpretation of what constitutes a ‘serious risk of the unity or consistency of EU law’ under Article 256(3), third sentence, TFEU. However, they will probably not apply in identical form but will have to be reconstrued in the light of the peculiarities of the preliminary reference procedure.<sup>59</sup> As regards the first criterion, it must be recalled that preliminary rulings – also the ones issued by the GC – are *ex natura* endowed with general validity and are of precedential value.<sup>60</sup> Thus, something more will be required in this context. An adapted formula, suited to such situations, could be framed as follows:

‘The following criteria, considered as a whole, are relevant for the determination of whether the unity or consistency of EU law is affected:

- 1) the judgment of the GC may constitute a precedent for future cases *of fundamental relevance for the EU constitutional order*;
- 2) the GC has departed from established case law of the CJ;
- 3) the errors of the GC relate to *fundamental* rules that are applicable regardless of the matter at issue; and
- 4) the rules with which the GC failed to comply occupy a *central* position in the Union legal order’.

Generally, it can be said that the GC should, and will, enjoy considerable leeway in its jurisprudence and act as the final arbiter of questions arising within the ‘specific areas’,<sup>61</sup> provided that they do not fall under Article 50b(2) Statute and do not pose a serious risk to the unity and consistency of EU law. The review procedure must certainly not be used by the CJ as a mechanism to dictate the development of the GC’s case law.<sup>62</sup> Contrary to what has been argued in literature,<sup>63</sup> there is no fundamental

*M v EMEA*, EU:C:2009:804, paras 60–66; Case C-334/12 RX-II *Review Arango Jaramillo and Others v European Investment Bank*, EU:C:2013:134, paras 50–54.

<sup>57</sup> More in detail, see Iglesias Sánchez (n 39) 37.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*; Grossio and Petrić (n 45) 315.

<sup>60</sup> See, for example, Case C-689/13 *PFE v Airgest SpA*, EU:C:2016:199, para 38.

<sup>61</sup> D Sarmiento, ‘Gaps and “Known Unknowns” in the Transfer of Preliminary References to the General Court’ (2024) 3 *Rivista del Contenzioso Europeo* 21, 35–36; Grossio and Petrić (n 45) 315; Tridimas (n 36) 13: ‘[...] the frame of mind should be towards empowering rather than limiting the GC’.

<sup>62</sup> As has also been stated in the context of the review procedure provided for in Art 256(2), second sentence, TFEU. See Case C-17/11 RX *Review of Judgment T-143/09, Commission v Petrilli*, EU:T:2010:531, para 4: ‘[...] the fact that the Court of Justice has not yet ruled on a point of law is, in itself, not sufficient to justify a review pursuant to Article 62 of the Statute of the Court of Justice of the European Union, in so far as it is now solely for the Civil Service Tribunal and the General Court of the European Union to develop the case-law in matters relating to the civil service, since the Court of Justice has jurisdiction only to prevent the decisions of the General Court affecting the unity or consistency of European Union law’.

<sup>63</sup> Bobek (n 25) 1527; Bobek (n 34) 43.

contradiction between, on the one hand, the aim of obtaining a meaningful transfer of competences and, on the other hand, the need to preserve the constitutional steering role of the CJ in order to safeguard and strengthen the unity and consistency of EU law. Instead, there appears to be a strong confidence by the CJ that the direction devised by its previous jurisprudence will be more or less continued. Deviations may occur,<sup>64</sup> yet they have been implicitly accepted by the CJ as an expression of the autonomy vested in the GC, as long as they do not give rise to a serious risk for the unity and consistency of Union law. This whole reform is informed by the conviction that future, also novel, developments of the jurisprudence in the specific areas can be managed by the GC, while the CJ retains the right to intervene only in ‘emergency situations’. That additional ‘safeguard mechanisms’ were inserted by the 2024 reform, and that the CJ maintains the last word in cases raising important constitutional questions, should arguably not be read as a sign of diffidence towards the GC,<sup>65</sup> but rather as a further attempt to allocate constitutional cases to the CJ.

The GC has been granted something akin to a ‘*carte blanche* authorisation’, subject to certain exceptional clauses: the CJ maintains an overarching control right, but one which is not intended to be exercised in an overly rigorous manner. To a far-reaching extent, the future development of jurisprudence in the six specific areas will be the result of a joint effort by both courts, each exercising its autonomous powers while cooperating towards a common end. Perhaps at first sight paradoxically, the strengthening of the role of the GC, acting as the supreme court in the six specific areas, represents a necessary condition for the transformation of the CJ into a fully-fledged constitutional court.

### 3.4. Specialisation of the General Court

An important, though often overlooked, element in enabling the CJ to concentrate on its constitutional role is the progressive specialisation of the GC.<sup>66</sup> Under Article 50b(4) of the Statute,<sup>67</sup> preliminary references are assigned to specialised chambers within the GC. Since September 2025, two GC chambers have been designated to

<sup>64</sup> See also Sarmiento (n 61) 15. The GC will, in principle, be free to depart from the case law of the CJ in the ‘specific areas’.

<sup>65</sup> As has been argued, for example, by Mastroianni (n 35) 27.

<sup>66</sup> For a more detailed analysis of the GC’s transformation, see Porchia (n 45) 395–397; Öberg (n 26); G Hesse, ‘Die Übertragung von bestimmten Kategorien an Vorabentscheidungsverfahren auf das Gericht der EU’ (2025) *EuR Beiheft* 189, 193–199. That the GC is undergoing a process of specialisation is, however, not undisputed: see Alberti (n 2) 335–338. He argued, *inter alia*, that the transfer of preliminary rulings to the GC broadens the subject areas and increases the judicial procedures dealt with by the GC. Thus, the argument of the progressive specialisation would not be convincing. However, it must be recalled that the GC’s preliminary ruling jurisdiction is limited to six specific, highly technical areas, assigned to two chambers specialised on dealing with preliminary rulings.

<sup>67</sup> And specified in Arts 25(1) and 26(1) of the RoP of the GC.

hear preliminary ruling cases.<sup>68</sup> Specialisation enhances the sectoral unity and consistency of EU law in these fields, as all preliminary references assigned to the GC are examined by the same two chambers.<sup>69</sup> In this way, the GC will develop technical expertise that will enable it to handle a large number of cases in a coherent way. At the same time, concentrating preliminary references in specific technical fields before two specialised chambers enables the GC to familiarise itself more quickly with this new type of cases.<sup>70</sup> The speed with which the GC delivers preliminary rulings, together with their quality, will be decisive for the success of the 2024 reform and, more broadly, for the transformation of the CJ into a fully-fledged constitutional court. The more efficiently the GC delivers preliminary rulings and the more technical cases can be delegated to it, the greater the breathing space the CJ gains to focus on constitutional questions.

Furthermore, specialisation can provide reassurance to national courts, which must now interact with a different body under Article 267 TFEU, one that is formally lower in the judicial hierarchy than their previous counterpart. While concerns have been voiced in literature regarding the possible reaction of national courts,<sup>71</sup> it can be argued that precisely the specialisation introduced makes the GC a particularly attractive interlocutor for national courts.<sup>72</sup> In several of the areas transferred to the GC's jurisdiction – notably those relating to tax law and customs law – specialised courts also exist in many Member States, such as the '*Bundesfinanzhof*' in Germany.<sup>73</sup> National specialised courts may prefer to engage with a specialised EU court in Luxembourg, which is used to addressing highly complex technical issues, rather than with the CJ, which is increasingly focusing on more abstract, constitutional questions. The progressive specialisation of the GC relieves the CJ of the burden of highly technical cases and can serve as a stepping stone for the CJ's transformation into a fully-fledged constitutional court.

<sup>68</sup> Court of Justice of the European Union, Formation of Chambers and assignment of Judges to Chambers (C/2024/6456).

<sup>69</sup> Request submitted by the Court of Justice (n 32) 7; Bobek (n 34) 42.

<sup>70</sup> Similarly, Request submitted by the Court of Justice (n 32) 7.

<sup>71</sup> R Conti, 'C'era una volta il rinvio pregiudiziale. Alla ricerca della fiducia – un po' perduta – fra giudici nazionali ed europei' in B Nascimbene and G Greco (eds), *La riforma dello Statuto della Corte di giustizia* (2024) *Eurojus* 112; Michal Bobek considers the risk of diminished trust in the lower EU court to be far-fetched. However, he argues that national courts may question the sense of submitting preliminary references to the GC, as in these areas a substantial body of case law exists preventing the potential risk of inconsistencies or divergences in the case law (Bobek (n 25) 1536).

<sup>72</sup> Also D Petrić, 'The Preliminary Ruling Procedure 2.0' (2023) 8 *European Papers* 25, 39; Sarmiento (n 61) 15–16; Hesse (n 66) 197.

<sup>73</sup> Hesse (n 66) 197.

#### 4. Problematising constitutionalisation

To interpret the 2024 reform as a further step towards constitutionalising the CJ is a widely,<sup>74</sup> though not unanimously,<sup>75</sup> held position. Indeed, some voices in literature, including a contribution to this Special Section,<sup>76</sup> have problematised the notion of constitutionalisation. This section engages with these arguments by examining the potential countervailing dynamics of the reform. It will be shown that these positions – while not without merit – do not ultimately call into question the evolution of the CJ into a constitutional court; on the contrary, certain arguments may even be regarded as further indications of the strengthening of the CJ’s constitutional role.

First, this section examines whether the decentralisation of the preliminary reference procedure also entails, as has been suggested in literature, a de-constitutionalisation of this mechanism. It then turns to the objection that the 2024 reform did not confer any new competences to the CJ, and asks whether such an extension of powers is necessary for its transformation into a fully-fledged constitutional court. The third subsection addresses alternative pathways of strengthening the CJ’s constitutional role, focusing in particular on the debate surrounding the recalibration of the *CILFIT* criteria. Finally, the section situates the 2024 reform within the broader trajectory of reforms since the Treaties of Nice and Lisbon and assesses whether the current reform process represents a continuation of or a departure from the logic underpinning the Treaties.

In addressing these issues, some important caveats should be noted. The dividing line between ‘constitutional’ and ‘ordinary’ cases is, in practice, often less clear than it might appear in theory. Constitutional questions can well arise also in highly technical areas, as the *Akerberg Fransson*<sup>77</sup> case paradigmatically shows. Moreover,

<sup>74</sup> D Sarmiento, ‘On the Road to a Constitutional Court of the European Union: The Court of Justice After the Transfer of the Preliminary Reference Jurisdiction to the General Court’ (2023) 19 *Croatian Yearbook of European Law and Policy* VII, VII–XVII; S Iglesias Sánchez, ‘Shared Jurisdiction of EU Courts Over Preliminary Rulings: One procedure. Two Courts. One Interpretation?’ (2024) 3–4 *REALaw* 79, 84; Petrić (n 72) 42; S Iglesias Sánchez and D Sarmiento, ‘Insight: A New Model for the EU Judiciary: Decentralising Preliminary Rulings as a Paradoxical Move Towards the Constitutionalisation of the Court of Justice’ (EU Law Live, 8 April 2024); MF Orzan, ‘Un’ulteriore applicazione della “legge di Hooke”? Riflessioni a margine dell’entrata in vigore della recente riforma dello Statuto della Corte di giustizia dell’Unione europea’ (2024) *Rivista del contenzioso europeo* 30, 74; C Tovo, ‘Le nuove regole processuali in materia pregiudiziale e le loro implicazioni istituzionali per la Corte di giustizia: verso un’ulteriore costituzionalizzazione?’ in B Nascimbene and G Greco (eds) (n 71); P Dermine, ‘What the European Court of Justice Is For – Making Sense of the ECJ’s Procedural and Organisational Law’ (2023) 19 *European Constitutional Law Review* 768, 784–785.

<sup>75</sup> Alberti (n 2) 340–344; Bobek (n 34) 43.

<sup>76</sup> Alberti (n 2).

<sup>77</sup> Case C-617/10 *Akerberg Fransson*, EU:C:2013:105. The Court itself referred to the *Akerberg Fransson* case in its 2017 Report, highlighting the risk that requests for a preliminary ruling, although falling within technical areas, may nonetheless raise questions concerning the interpretation of fundamental provisions of EU law. See Court of Justice of the European Union, ‘Report submitted pursuant to Article 3(2) of Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the

many cases initially appear to be technical in nature and only afterwards reveal their constitutional potential.<sup>78</sup>

That being said, the reform is endowed with several ‘safeguard mechanisms’, analysed above, that shall ensure that the CJ can seize cases raising constitutional questions even when they fall within one of the six specific areas, and also at a later stage of the proceeding if constitutional questions cannot be detected from the outset. Whether the CJ will ultimately succeed in developing into a fully-fledged constitutional court will also depend on how these safeguard mechanisms operate in practice.

#### 4.1. Decentralisation and de-constitutionalisation of the preliminary reference procedure?

As regards the potential consequences attributed to the 2024 reform, a frequently reiterated mantra concerns the decentralisation and de-constitutionalisation of the preliminary reference procedure.<sup>79</sup> This subsection argues, however, that the decentralisation of the preliminary reference procedure enhances its efficiency and may even contribute to its further constitutionalisation.

That the 2024 reform entails a decentralisation of the preliminary reference procedure in the six specific fields delegated to the GC is self-evident, representing its most significant novelty. Before the 2024 reform, a potential decentralisation of the CJ’s ‘crown jewel’ was viewed with diffidence and even as a threat to the constitutional character of the preliminary reference procedure.<sup>80</sup> AG Ruiz-Jarabo Colomer, for example, argued in 2001 in *De Coster* that the ‘key to the success of the preliminary ruling procedure has lain in the centralisation of the interpretative function, which promotes uniformity’ and that the death knell would sound for the preliminary reference procedure in the moment in which two different courts would issue two different interpretations in respect of the same precept of Union law.<sup>81</sup>

This position was perhaps well-founded at the time of writing. Indeed, the CJEU long opposed any transfer of jurisdiction on preliminary rulings, invoking similar arguments and, in particular, warning against the risk of divergent case law that could undermine the unity and consistency of EU law.<sup>82</sup> However, as the CJ’s Request to

Council amending Protocol No 3 on the Statute of the Court of Justice of the European Union’, at [curia.europa.eu](http://curia.europa.eu), 6.

<sup>78</sup> Petrić (n 72) 33; Sarmiento (n 74) X; JJ Vasel, ‘Die Organisationsstruktur der Europäischen Gerichtsbarkeit’ in U Karpenstein, MT Kotzur and JJ Vasel (eds) (n 11) 24, 32; Bobek (n 34) 43.

<sup>79</sup> See, inter alia, Iglesias Sánchez (n 36) 109; Iglesias Sánchez and Sarmiento (n 74).

<sup>80</sup> Iglesias Sánchez (n 36) 109.

<sup>81</sup> Opinion of AG Ruiz-Jarabo Colomer in Case C-17/00 *François De Coster v Collège des bourgmestres et échevins de Watermael-Boitsfort*, EU:C:2001:366, para 74.

<sup>82</sup> Report submitted pursuant to Article 3(2) of Regulation (EU, Euratom) 2015/2422 (n 77) 6–7; Court of Justice of the European Union, ‘Report provided for under Article 3(1) of Regulation (EU, Euratom) 2015/2422’, at [curia.europa.eu](http://curia.europa.eu), 8–9. See also Lenaerts (n 9) 1656.

amend the Statute made clear, the overall context has since evolved.<sup>83</sup> As seen above, the 2024 reform tries to address the threat identified by AG Ruiz-Jarabo Colomer through a range of ‘safeguard mechanisms’. One of the leitmotifs of the reform is precisely the ‘safeguarding and strengthening of the unity and consistency’ of EU law, a task explicitly entrusted to the CJ.<sup>84</sup> The CJ remains the ultimate arbiter of fundamental questions concerning the future development of the EU legal order as a whole. While decentralisation undeniably alters the framework of the preliminary reference procedure, it does not deprive the CJ of the last word in speaking the law when constitutional questions arise. Ironically, in the context of the 2024 reform, it is precisely the decentralisation of the preliminary reference procedure that reinforces, rather than diminishes, the constitutional role of the CJ.

It has been argued in literature that decentralisation gives rise to a transformation of this procedure, depriving it of part of its constitutional coating.<sup>85</sup> Paradoxically, the strengthening of the constitutional role of the CJ would entail the de-constitutionalisation of at least part of the preliminary reference procedure, the very mechanism that most paradigmatically conferred upon the CJ its constitutional role.<sup>86</sup> When looking at the individual cases transferred to the GC, the 2024 reform might indeed be seen as conducive to such a process. In fact, a distinction will emerge between preliminary rulings concerning core constitutional questions, delivered by the CJ, and preliminary rulings relating to more technical, less complex, and less sensitive aspects, handed down by the GC. Therefore, the GC has, as mentioned, been qualified as an ‘equerry of the CJ’,<sup>87</sup> a depiction with which the GC judges may not be particularly satisfied.

The question, however, is whether such a perspective does justice to the reform process as a whole. Indeed, from a systematic perspective, a different, more comprehensive picture emerges. The tasks of the CJ and the GC are intertwined, and their interaction with the broader constitutional framework is undeniable. The transfer of more technical and less complex cases to the GC ensures that the CJ can exercise its core constitutional functions more effectively. Notwithstanding the GC’s autonomy in the six specific fields mentioned above – an autonomy further strengthened by the 2024 reform – this Court also exercises a crucial supporting task, enabling the CJ to concentrate on its core constitutional role. Returning to the picture presented before of the GC as an ‘equerry of the CJ’, it could be suggested to replace it with another image of similar colour but different message: the GC seated next to the CJ on the ‘Union’s judicial carriage’, driving together towards an enhanced constitutionalisation of the CJEU system. In fact, the GC not only fulfils its constitutional task under Article 19(3) TEU in the six specific areas but also plays a

<sup>83</sup> Request submitted by the Court of Justice (n 32) 3.

<sup>84</sup> Regulation (EU, Euratom) 2024/2019 (n 1) recital 2.

<sup>85</sup> Iglesias Sánchez and Sarmiento (n 74).

<sup>86</sup> *Ibid.*

<sup>87</sup> Alberti (n 2) 344.

pivotal role in paving the way for the CJ's transformation into a fully-fledged constitutional court. In doing so, it will significantly strengthen its own role as something akin to the Union's supreme court and thereby contribute to completing the comprehensive constitutional setting of the EU procedural order in essential respects. The EU judicial system, so famously touted by the CJ as a 'complete system of legal remedies and procedures' in *Les Verts*,<sup>88</sup> at least implicitly presupposes effectiveness if it pretends to be complete. The 2024 reform must therefore be regarded as an important additional cornerstone in realising this ambition.

It may thus be argued that the continuing transformation of the CJ into a court focusing prevalently on constitutional questions could further reinforce and constitutionalise the preliminary reference procedure. While preliminary rulings on more technical aspects will be delivered by the GC, the CJ will have the opportunity to devote its capacity to requests of constitutional significance. The allocation of preliminary references raising constitutional questions to a judicial instance explicitly and predominantly entrusted with such cases may enhance the effectiveness of the preliminary reference procedure and thereby comprehensively strengthen its constitutional nature.

#### 4.2. New competences for the Court of Justice?

In this Special Section, it has been argued that the 2024 reform should not be regarded as part of a broader process of constitutionalisation, as it did not grant the CJ any new powers or functions but 'merely' delegated cases that previously fell within the competence of the CJ to the GC.<sup>89</sup> Furthermore, it has been contended that the real 'game changer for the constitutionalisation of the CJ (and of the EU legal order as a whole)' would have been the attribution of powers which are typically vested in many constitutional courts, such as to annul the legislation of the federated entities.<sup>90</sup>

As regards the first point of criticism, it must be noted that the attribution of new competences to the CJ is not necessarily required for the CJ's transformation into a fully-fledged constitutional court. What is crucial, however, is to afford the CJ greater leeway in exercising its core competences. As has been repeatedly emphasised in this contribution, by adjusting the allocation of tasks within the preliminary reference procedure, the 2024 reform has enabled the CJ to concentrate on questions that typically raise constitutional issues.<sup>91</sup> It is precisely this delegation of powers to the GC that will ultimately strengthen the constitutional functions retained by the CJ.

<sup>88</sup> Case 294/83 *Les Verts*, EU:C:1986:166, para 23.

<sup>89</sup> Alberti (n 2) 341.

<sup>90</sup> *Ibid.*

<sup>91</sup> See also Regulation (EU, Euratom) 2024/2019 (n 1) recital 4.

Furthermore, it can be argued that the CJ inherently possesses a constitutional role, which merely needs to be progressively uncovered and brought to the fore. The debates in the Court's early years concerning its qualification already concluded that this constitutional role must be regarded as intrinsic. For example, Maurice Lagrange, who contributed decisively to the shaping of the Court, stated in 1954<sup>92</sup>: 'Can it not be argued that, to the extent the treaty has a veritable constitutional nature (and it undoubtedly does), the Court of Justice itself has a constitutional role?'<sup>93</sup> Similar views were subsequently expressed by many members of the Court in its formative years, among them, to name only a few, Josse Mertens de Wilmars,<sup>94</sup> Andreas Matthias Donner,<sup>95</sup> Ole Due,<sup>96</sup> Gil Carlos Rodríguez Iglesias,<sup>97</sup> Francis Jacobs,<sup>98</sup> and Bo Vesterdorf.<sup>99</sup>

Interesting insights into the Court's original perception of its role – and the potential future architecture of the EU judicial system as envisaged at the time – are offered by the Court's Paper of 1999 entitled 'The Future of the Judicial System of the European Union (Proposals and Reflections)'.<sup>100</sup> At the conference that led to its adoption, there was already a broad consensus that the CJ fulfils the role of a constitutional court and that this role should be explicitly recognised.<sup>101</sup> It was also stressed that the CJ should be given sufficient breathing space to exercise its role as a constitutional court, without, however, losing jurisdiction over areas crucial to the performance of this role.<sup>102</sup>

Thus, overburdening the CJ with new responsibilities would not only be an unnecessary condition for the constitutionalisation of the CJ but could even prove counterproductive. The Treaty of Nice already introduced the necessary instruments to ensure that the CJ can concentrate on the most important cases steering the further development of EU law.<sup>103</sup> The most essential challenge is therefore not to invent

<sup>92</sup> The year in which the Court issued its first ruling: Case 1/54 *France v High Authority* (ECR 1954).

<sup>93</sup> M Lagrange, 'La Cour de justice de la Communauté européenne du charbon et de l'acier' (1954) 80 *Revue du droit public et de la science politique en France et à l'étranger* 417, 434–435. See A Cohen, "'Ten Majestic Figures in Long Amaranth Robes": The Formation of the Court of Justice of the European Communities' (2010) 60 *Revue française de science politique* 23, 37.

<sup>94</sup> Centre d'études internationales et européennes (n 5) 55.

<sup>95</sup> AM Donner, 'The Constitutional Powers of the Court of Justice of the European Communities' (1974) 11 *Common Market Law Review* 127, who however adopted a more critical approach.

<sup>96</sup> Due (n 9) 3–10.

<sup>97</sup> Iglesias (n 11) 225–246.

<sup>98</sup> Jacobs (n 17) 25–31.

<sup>99</sup> Vesterdorf (n 5) 607–616. He acknowledged that the CJ already performs the tasks of a constitutional court but emphasised that its competences are broader than those of a pure constitutional court. He therefore argued that the CJ resembles more a supreme court than a specialised constitutional court.

<sup>100</sup> Printed in Dashwood and Johnston (eds) (n 5) 113–143.

<sup>101</sup> *Ibid.*, 59.

<sup>102</sup> *Ibid.*, 60.

<sup>103</sup> Vesterdorf (n 5) 614.

new mechanisms and to attribute new tasks to the CJ, but rather to bring to light the core competences of the CJ already embedded in the EU legal system and to enable them to operate more effectively. By reallocating part of the CJ's jurisdiction on preliminary rulings to the level below, new resources are set free, and the CJ's role as a constitutional court can be gradually unveiled.

As regards the second point of criticism, it must be acknowledged that this argument is impeccable if addressed from the perspective of national constitutional law. However, as already highlighted, the 'sui generis' character of the EU requires a 'sui generis' assessment of the CJ's role. It is well known and uncontested that the CJ cannot annul national legislation. However, this also does not represent an insurmountable obstacle to the qualification of this court as a constitutional one. The CJ has achieved, in this regard, similar results to national constitutional courts, although through different instruments. While this Court has, in principle, no jurisdiction to rule on the conformity of national law with EU law in the context of Article 267(1)(a) TFEU,<sup>104</sup> the Court's interpretation (of EU law), however, has (indirect) repercussions on the validity of national law.<sup>105</sup> The ultimate practical outcome of this judicial review is comparable – albeit narrower in scope – to that of proceedings before national constitutional courts.<sup>106</sup> A similar reasoning applies to infringement proceedings. Here too, the CJ cannot directly annul a national act contrary to EU law. Nevertheless, by determining that a Member State violated EU law under Article 258 TFEU and possibly imposing a pecuniary penalty under Article 260 TFEU, it can very well achieve a result that is similar to that of a national constitutional court endowed with the power to annul national provisions.<sup>107</sup>

#### 4.3. Constitutionalisation through an amendment of the *CILFIT* criteria?

There can be no doubt that the approach chosen by the 2024 reform does not represent the only possible means of strengthening the CJ's constitutional role. Instead of adjusting the allocation of competences between the CJ and the GC, it would have been possible, for example, to reduce *ex ante* the number of preliminary references reaching the CJEU.

<sup>104</sup> Most famously *Costa v ENEL* (n 14) p 592–593.

<sup>105</sup> See, for example, Case C-189/18 *Glencore Agriculture Hungary*, EU:C:2019:861, para 31; Case C-448/19 *Subdelegación del Gobierno en Guadalajara*, EU:C:2020:467, para 17; Case C-463/19 *Syndicat CFTC du personnel de la Caisse primaire d'assurance maladie de la Moselle*, EU:C:2020:932, paras 29–30; Case C-817/19 *Ligue des droits humains*, EU:C:2022:491 2022, para 240.

<sup>106</sup> See GF Mancini and DT Keeling, 'From *CILFIT* to *ERT*: the Constitutional Challenge facing the European Court' (1991) 11 *Yearbook of European Law* 1, 9. It must, however, be stressed that the preliminary reference procedure is highly dependent on fruitful cooperation between national courts and the CJEU.

<sup>107</sup> *Ibid.* See also Opinion of AG Ćapeta in Case C-769/22 *European Commission v Hungary*, EU:C:2025:408, para 71.

In recent years, the debate on a possible relaxation of the *CILFIT* criteria has again become heated, and the responses provided by the CJEU can be seen as pieces of a mosaic which, when analysed in the light of the 2024 reform, gradually assemble into a clearer picture. Famously, Advocate General Bobek proposed in his Opinion in *Consorzio Italian Management* to reformulate the *CILFIT* criteria, shifting the CJEU's focus towards the uniform interpretation of EU law rather than its application in a single case.<sup>108</sup> The CJ, however, unequivocally expressed its intent to maintain the *CILFIT* criteria as formulated in 1982. In addition, it strengthened the duty of national courts of last instance to refer questions to the CJEU by introducing an obligation to state reasons when they decide not to refer.<sup>109</sup> In *Kubera*, the CJ upheld the traditional understanding of the *CILFIT* criteria and further reinforced the obligation of national courts of last instance to examine whether they have to submit a question to Luxembourg.<sup>110</sup> It thus becomes clear that the CJ's intent was not to curtail the number of preliminary references reaching Luxembourg, but rather to reallocate and open up resources within the CJEU system itself.<sup>111</sup>

There is broad agreement that overburdening the CJ can significantly threaten the effectiveness of the EU judicial system and thereby compromise the CJ's constitutional role. It may be argued that re-transferring competences to the national courts by limiting access to the CJEU could provide new breathing space for the EU judicial system and enable the CJ to concentrate on constitutional questions. However, while this approach might at first sight appear to strengthen the CJ's constitutional role, it risks undermining its core constitutional functions. By loosening the *CILFIT* criteria, many constitutional questions might never reach the CJ, and national courts of last instance could significantly curtail the scope of the preliminary reference procedure.<sup>112</sup> The approach adopted by the 2024 reform, by contrast, preserves the full spectrum of 'national court input' while upholding, and

<sup>108</sup> Opinion of AG Bobek in Case C-561/19 *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA*, EU:C:2021:291, paras 134, 149.

<sup>109</sup> Case C-561/19 *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA*, EU:C:2021:799, para 51.

<sup>110</sup> Case C-144/23 *Kubera v Republika Slovenija*, ECLI:EU:C:2024:881. The CJ clarified that this obligation also applies within national 'filtering' mechanisms, such as proceedings for granting leave to appeal before national supreme courts. See T Hilpold, 'Op-Ed: Consorzio Italian Management Reloaded: Court of Justice further Strengthens the Preliminary Reference Procedure in the Case Kubera (C-144/23)' (EU Law Live 2024); T Hilpold, 'Op-Ed: Vigilantibus non Dormientibus Iura Succurrunt: Are National Filtering Mechanisms for the Access to the Preliminary Ruling Procedure Admissible? AG Opinion in Case C-144/23 Kubera' (EU Law Live 2024).

<sup>111</sup> See also Iglesias Sánchez (n 36) 110–111.

<sup>112</sup> This could have far-reaching consequences, as in recent years high courts have been those primarily referring cases to the CJEU: see, for example, T Pavone and RD Kelemen, 'The Evolving Judicial Politics of European Integration: The European Court of Justice and national courts revisited' (2019) 25 *European Law Journal* 352; A Dyevre, M Glavina and A Atanasova, 'Who refers most? Institutional incentives and judicial participation in the preliminary ruling system' (2020) 27 *Journal of European Public Policy* 912.

probably expanding, its ‘output capacity’.<sup>113</sup> The only price to be paid was that of an ‘internal decentralisation’, which, however, does not undermine but arguably even strengthens the CJ’s constitutional role, as the GC is operating within the same institution and fully supporting the CJ.<sup>114</sup>

#### 4.4. Constitutionalisation in line with the Treaty of Nice and Treaty of Lisbon?

It has also been argued in literature that, if one wants to frame the ongoing reform of the CJ in terms of constitutionalisation, it represents a different type from that envisaged by the Treaty of Nice and the Treaty of Lisbon.<sup>115</sup> This new groundbreaking restructuring of the EU judiciary would not, according to some, be in line with the EU judicial architecture foreseen by the Treaty of Nice and the Treaty of Lisbon.<sup>116</sup> In particular, these authors make reference to the fact that the Treaty of Nice provided for a three-tier judicial structure; and that the GC was envisaged to become the EU’s ‘Council of State’, hearing all direct actions, appeals against decisions of specialised courts and requests for preliminary rulings in specific areas.<sup>117</sup> The Court’s original intention would have been to align the GC’s jurisdiction to hear requests for a preliminary ruling with its jurisdiction as an appellate court for civil service disputes.<sup>118</sup>

However, the Treaties neither define the concept of constitutionalisation nor dictate a single path for the development of the EU judicial system. On the contrary, they grant significant leeway in this regard, ensuring that the EU judicial architecture can be adapted to the challenges the EU faces. It is true that Article 19(1) TEU provides for a three-tier judicial architecture encompassing the CJ, GC and specialised courts. However, Article 257(1) TFEU merely stipulates that specialised courts attached to the GC ‘may’ be established. They can be created and abolished by ordinary legislative acts, without the need for Treaty amendment, thereby offering significant flexibility. Furthermore, Article 256(3) TFEU, which states that the GC ‘shall’ have preliminary ruling jurisdiction in specific areas, remained dormant for over 20 years. These Treaty provisions provide for a constitutional testing ground

<sup>113</sup> Iglesias Sánchez (n 36) 110–111.

<sup>114</sup> Similarly, Tridimas (n 36) 23; T Tridimas, ‘Breaking with Tradition: Preliminary Reference Reform and the New Judicial Architecture’ in *The 2024 Reform of the Statute of the Court of Justice of the EU* (EU Law Live 2024) 5, 6.

<sup>115</sup> Alberti (n 2) 342–344.

<sup>116</sup> Ibid; Bobek (n 25) 1529; Alonso García (n 44) 8; C Amalfitano, ‘The Future of Preliminary Rulings in the EU Judicial System’ in *Weekend Edition No 133* (EU Law Live 2023) 1, 7.

<sup>117</sup> Alberti (n 2) 342–344. For example, Marc van der Woude argued for a conceptual model according to which ‘the Court of Justice would increasingly act as the Union’s constitutional court and transfer lesser tasks and responsibilities to the General Court. This court would become the Union’s Council of State controlling the conduct of its institutions, when they act directly or indirectly in close cooperation with national administrations’. See M van der Woude, ‘The Place of the General Court in the Institutional Framework of the Union’ in *Weekend Edition No 81* (EU Law Live 2021) 20, 26

<sup>118</sup> Bobek (n 25) 1529.

aimed at identifying those judicial models that prove most effective in practice. The EU judicial architecture has evolved through a process of trial and error: approaches are tested, their effects evaluated, and, where necessary, alternative paths pursued. The experimental nature of this reform process and the limited scope of the 2024 reform suggest that any unsatisfactory outcome may be readily remedied. This flexibility enables the Court and the legislator to adapt the reform and, should it prove unsuccessful, to reverse it and explore alternative approaches.

Generally, reforms must be seen as products of their time: the conditions must be ripe for their implementation, with the details to be clarified once the dust has settled. Frequently, one development paves the way for approaches that might previously have been rejected. The 2024 reform represents a very good example in this regard. The doubling of the number of GC judges in 2015 and the abolition of the Civil Service Tribunal (CST)<sup>119</sup> paved the way for the 2024 reform.<sup>120</sup> Yet, in the context of the 2015 reform of the EU judicial architecture, a possible transfer of jurisdiction on preliminary rulings to the GC was rejected,<sup>121</sup> as the time was not yet ripe for such a groundbreaking reform of the CJ's 'crown jewel'. Likewise, in two reports issued in December 2017 and in December 2020 assessing the 2015 reform, the CJEU vehemently opposed the idea of transferring jurisdiction on preliminary rulings to the GC. In 2017, the CJEU highlighted, *inter alia*, that the time was not yet ripe for such an amendment, that the reform of the EU Courts of 2015 was not yet concluded, that cases were dealt with expeditiously, and that the risk of divergences in the case law of the EU Courts would only be exacerbated by a transfer of competences.<sup>122</sup> Similar arguments were repeated in the 2020 Report.<sup>123</sup> Nonetheless, in 2022, the CJEU revised its stance and considered that the time had come for a partial transfer of jurisdiction on preliminary rulings to the GC, with two courts now sufficiently prepared for this new step in the EU's trial-and-error process.

It is true that the Due Report ('Report by the Working Party on the Future of the European Communities' Court System'),<sup>124</sup> which is often invoked to argue that the

<sup>119</sup> Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending Protocol No 3 on the Statute of the Court of Justice of the European Union. On the 2015 reform, see, for example, D Sarmiento, 'The Reform of the General Court: An Exercise in Minimalist (but Radical) Institutional Reform' (2017) 19 *Cambridge Yearbook of European Legal Studies* 236; A Alemanno and L Pech, 'Thinking justice outside the docket: A critical assessment of the reform of the EU's court system' (2017) 54 *Common Market Law Review* 129.

<sup>120</sup> Iglesias Sánchez (n 74) 78–79; Bobek (n 25) 1515; Sarmiento (n 74) X, XIII. However, as mentioned above, the possibility of transferring competences on preliminary references to the GC was already provided for in the Treaty of Nice.

<sup>121</sup> Draft amendments to the Statute of the Court of Justice of the European Union and to Annex I thereto of 7 April 2011, Interinstitutional file: 2011/0901 (COD), 10.

<sup>122</sup> Report submitted pursuant to Article 3(2) of Regulation (EU, Euratom) 2015/2422 (n 77) 4–8.

<sup>123</sup> Report provided for under Article 3(1) of Regulation (EU, Euratom) 2015/2422 (n 82) 54.

<sup>124</sup> Report by the Working Party on the Future of the European Communities' Court System (January 2000), printed in Dashwood and Johnston (n 5) 147.

2024 reform departs from the original vision of the EU judiciary,<sup>125</sup> advocated a three-tier judicial architecture.<sup>126</sup> However, it is frequently overlooked that the Due Report itself described this only as ‘a medium-term possibility for the structure of the Community court system’.<sup>127</sup> Furthermore, it emphasised that its proposals were intended to indicate how the EU judicial system could look ‘some fifteen years hence’, thus in 2015 rather than 2025.<sup>128</sup> It also underlined that future changes would have to be taken into account,<sup>129</sup> thereby recognising the necessity of flexibility in the system. The 2024 reform is perfectly in line with the very logic of the reform programme of the EU judiciary, representing one, and certainly not the last, outcome of the EU’s trial-and-error process in shaping its judicial architecture.

## 5. Outlook

The present article has shown that the 2024 reform must be seen in a broader context – with regard to both the timeline of its adoption and its substantive content – in order to grasp its actual and potential reach, which, as argued here, is considerable. The 2024 reform should be understood as part of a trial-and-error process that lasted for decades and is still far from concluded. Indeed, it may be argued that this process will never reach a definitive end, since EU procedural law is inherently linked to EU substantive law and, as a consequence, as long as EU law evolves, the EU judicial system must evolve as well.

A trial-and-error process is never linear but inherently uneven and adaptive. Yet it is important that judicial reforms do not represent merely ‘*ad hoc* measures’ dictated by the needs of the moment, but instead are part of a broader plan for the evolution of the EU judicial architecture.<sup>130</sup> As Josse Mertens de Wilmars, one of the first judges of the Court,<sup>131</sup> observed, law is not only experience but rather ‘logic and experience’.<sup>132</sup> It is therefore essential to develop a coherent structure for the future course of the EU judiciary, together with a clear vision of the respective roles of the EU Courts. The earlier such transparency is achieved, the more effectively future reforms of the EU judiciary can be designed.

As this contribution has shown, by adjusting the allocation of tasks within the preliminary reference procedure, the 2024 reform enables the CJ to focus

<sup>125</sup> See Bobek (n 25) 1529–1530, in particular fn 41; Alberti (n 2) fn 39.

<sup>126</sup> And, of course, as mentioned before, the Treaties, see Art 19(1) TEU.

<sup>127</sup> Report by the Working Party on the Future of the European Communities’ Court System (January 2000), printed in Dashwood and Johnston (n 5) 186.

<sup>128</sup> *Ibid.*, 161.

<sup>129</sup> *Ibid.*

<sup>130</sup> See already Report by the Working Party on the Future of the European Communities’ Court System (January 2000), printed in Dashwood and Johnston (n 5) 186.

<sup>131</sup> Judge at the Court of Justice of the European Communities from 1967 to 1984, and President of the Court from 1980 to 1984.

<sup>132</sup> Centre d’études internationales et européennes (n 5) 66.

increasingly on constitutional questions. Crucial will be the resolve to continue along the path charted by the 2024 reform. In the long term, the CJ could thereby evolve into a fully-fledged constitutional court, focusing predominantly on constitutional questions. The GC, by contrast, assumes an ever more important role as an adjudicator not only of direct actions but also of preliminary rulings in specific areas. As seen in this article, the strengthening of the role of the GC – fulfilling a function akin to that of a supreme court in the specific areas delegated to its preliminary ruling jurisdiction – constitutes an essential condition for the CJ's transformation into a fully-fledged constitutional court.

If the statement of Josse Mertens de Wilmars is applied to the 2024 reform, it can be said that the logic of the reform process was directed towards the creation of an EU procedural law system that could satisfy the criteria of a perfect constitutional order, with one court, the CJ, increasingly focusing on constitutional questions. Law is, however, also experience, and in this regard the elements of the 2024 reform mirror the outcome of a decades-long learning process. This learning process is destined to continue, with constitutionalisation – despite its definitional uncertainties – remaining the guiding principle of the whole reform programme.