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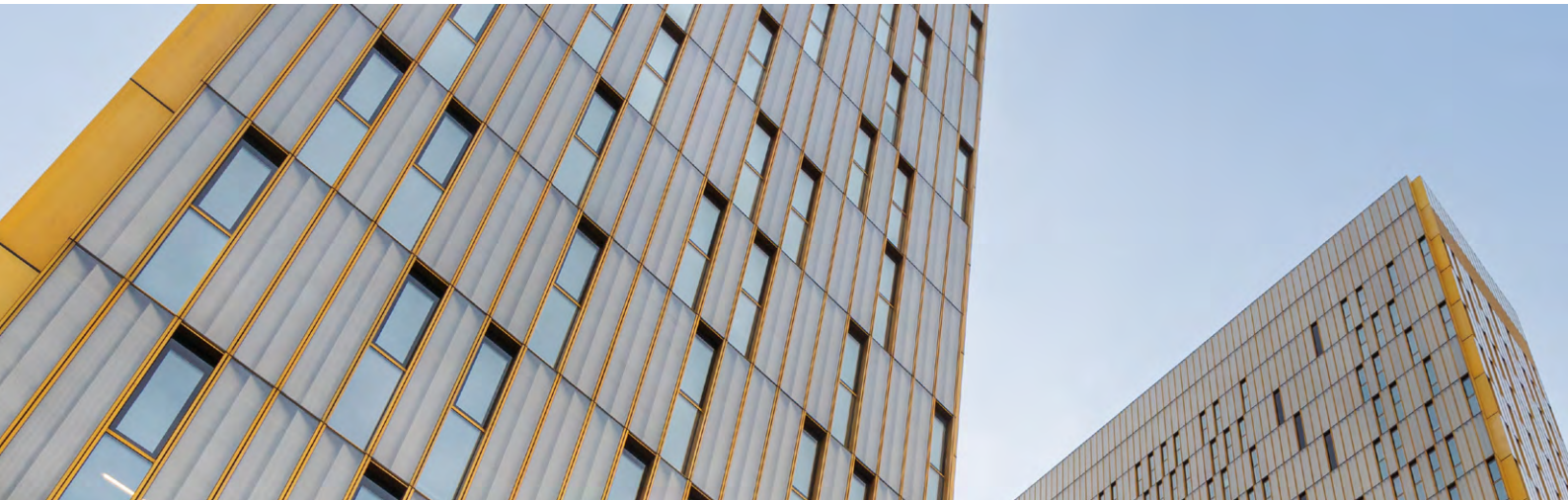
PER ASPERA AD ASTRA? CONCRETISING CILFIT FROM CONSORZIO ITALIAN MANAGEMENT TO REMLING



Per Aspera ad Astra? Concretising *CILFIT* from *Consortio* *Italian Management* to *Remling*

Tanja Hilpold ¹

The judgment of the Court of Justice of the European Union ('CJEU') in *Remling*² marks another important step forward in the long-standing clarification process of the operation of the preliminary reference procedure, the 'jewel' in the Court of Justice's crown. At the same time, however, the Court has not been able to satisfy all the hopes placed in this judgment. As this Long Read will show, some of these aspirations were unrealistic from the outset. The structural limitations inherent in the preliminary reference procedure arguably cannot be overcome as long as individuals do not have a right to obtain a preliminary reference and the *CILFIT* criteria remain unaltered. As Professor Sarmiento has suggested³, however, the Union's accession to the European Convention on Human Rights, if it were finally to materialise, could bring about a fundamental change.



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2. [Judgment of the Court of Justice \(Grand Chamber\) of 24 March 2026, *Remling* \(C-767/23, EU:C:2026:243\)](#).

3. Daniel Sarmiento, [Analysis: "Neither Heaven nor Hell: Welcome to the Limbo of Dialogue Between Judges. A Summary Analysis of *Remling* \(C-767/23\)"](#), EU Law Live, 26 March 2026.

Another Celebrated Judgment

The ‘crown jewel’ of the EU judicial system, the preliminary reference procedure, is once again shining brightly. Following *Conorzio Italian Management*⁴, *KUBERA*⁵, and the 2024 Reform of the Statute of the CJEU⁶, the judgment in *Remling* adds further lustre to this instrument.

Expectations were high in the lead-up to the judgment delivered on 24 March 2026. Shortly beforehand, the European Court of Human Rights (ECtHR) had further fuelled hopes that a further step towards a ‘complete system of judicial remedies’, effective to the utmost extent, might be taken.⁷ These expectations were not disappointed and, from this perspective, *Remling* was rightly celebrated. A closer look at the judgment and the broader discussion preceding it, however, suggests that some tempering of this initial euphoria is warranted.

What Has Been Achieved: Per ‘Aspera’

In the aftermath of *Remling*, it will become somewhat more difficult for national courts and tribunals of last instance to refuse to refer questions concerning the interpretation of EU law to the Court of Justice. As is well known, the obligation to refer is subject to the exceptions set out in *CILFIT*.⁸ While these exceptions may appear clear and straightforward at first sight, their application in practice proves far more complex.

National courts of last instance, while in principle obliged to submit questions on the interpretation of EU law to the Court of Justice, may refrain from doing so if the question is irrelevant for the resolution of the dispute; the Court of Justice has already interpreted the issue (*acte éclairé*); or if the interpretation of EU law is so obvious as to leave no scope for reasonable doubt (*acte clair*).

4. [Judgment of the Court of Justice \(Grand Chamber\) of 6 October 2021, *Conorzio Italian Management* \(C-561/19, EU:C:2021:799\)](#). For an analysis of the case, see, for example, François Xavier Millet, ‘[Cilt Still Fits. ECJ 6 October 2021, Case C-561/19, *Conorzio Italian Management*](#)’, 3 *European Constitutional Law Review* 18, pp. 533-555.

5. [Judgment of the Court of Justice \(Grand Chamber\) of 15 October 2024, *KUBERA* \(C-144/23, EU:C:2024:881\)](#). See, for example, Tanja Hilpold, Op-Ed: ‘[Conorzio Italian Management Reloaded: Court of Justice further Strengthens the Preliminary Reference Procedure in the Case Kubera \(C-144/23\)](#)’, EU Law Live, 15 November 2024.

6. [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](#). On the 2024, see, for example, Daniel Sarmiento, ‘[Gaps and ‘Known Unknowns’ in the Transfer of Preliminary References to the GC](#)’, 2 *Rivista del Contenzioso Europeo* 22, 2024; Sara 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 Alejandro Saiz Arnaiz and Joan Solanes Mullor (eds.), *The European Judiciary*, Hart Publishing, 2025, pp. 97-112; Tanja Hilpold, ‘[The 2024 Reform of the EU Judicial System and the Transformation of the Court of Justice into a Constitutional Court](#)’, 3 *European Papers – A Journal on Law and Integration* 10, 2025, pp. 837-862.

7. [Judgment of the European Court of Human Rights of 16 December 2025, *Gondert v. Germany* \(Application no. 34701/21\)](#).

8. [Judgment of the Court of 6 October 1982, *Cilfit* \(Case 283/83, EU:C:1982:335\)](#).

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Who would contest the reasonableness of these exceptions? The problems arise with the actual application of these criteria. Over the past five years, the Court of Justice has provided important clarifications in this regard.

In *Conorzio Italian Management*, the Court rejected Advocate General Bobek's proposal⁹ to revisit *CILFIT* and introduced an obligation for national courts of last instance to state reasons if they decide not to make a reference. In *KUBERA*, the Court clarified that this obligation also applies to leave-to-appeal proceedings before national courts of last instance: such filtering mechanisms, very common in the procedural law systems of EU Member States, cannot operate as an instrument to bypass the application of the *CILFIT* criteria.¹⁰ Only a few months ago, the ECtHR weighed in on this jurisprudential development in *Gondert*, confirming *CILFIT*, *Conorzio* and *KUBERA* (also by explicit reference) from a Strasbourg human rights stance grounded in Art. 6(1) ECHR.

In *Remling*, the Court of Justice¹¹, relying on *Gondert*, clarified that the obligation to state reasons extends beyond cases in which an applicant has explicitly requested a preliminary reference. It specified that this obligation applies whenever a party relies on EU law (para. 29), irrespective of whether that party expressly asked a court to make a request for a preliminary ruling. Furthermore, the Court emphasised that it is not even necessary for the parties to the dispute to explicitly rely on EU law, as questions concerning the interpretation or validity of EU law may be raised by the national court or tribunal *ex officio* (para. 30). As will be shown in the next section, the Court also provided further guidance as to the required content and level of detail of the reasoning of national last-instance courts.

Which of these two judgments is the more progressive one, and which of these brings us closer to consolidating the rule of law in Europe? The answer is not straightforward and depends largely on the perspective adopted. From the standpoint of individual rights protection, however, it is clear that the current EU framework still falls short of achieving its full potential.

9. [Opinion of AG Bobek of 15 April 2021 in *Conorzio Italian Management* \(C-561/19, EU:C:2021:291\)](#).

10. [Judgment of the Court of Justice \(Grand Chamber\) of 15 October 2024, *KUBERA* \(C-144/23, EU:C:2024:881\)](#). For discussion of the judgment, see Tanja Hilpold, [Op-Ed: “Conorzio Italian Management Reloaded: Court of Justice further Strengthens the Preliminary Reference Procedure in the Case Kubera \(C-144/23\)”](#), EU Law Live, 15 November 2024. As regards the Opinion issued by AG Emiliou in *Kubera*, see Tanja 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, 30 July 2024.

11. Following, in that respect, the [Opinion of AG Ćapeta of 26 June 2025 in *Remling* \(C-767/23, EU:C:2025:486\)](#).

Remling in a Nutshell

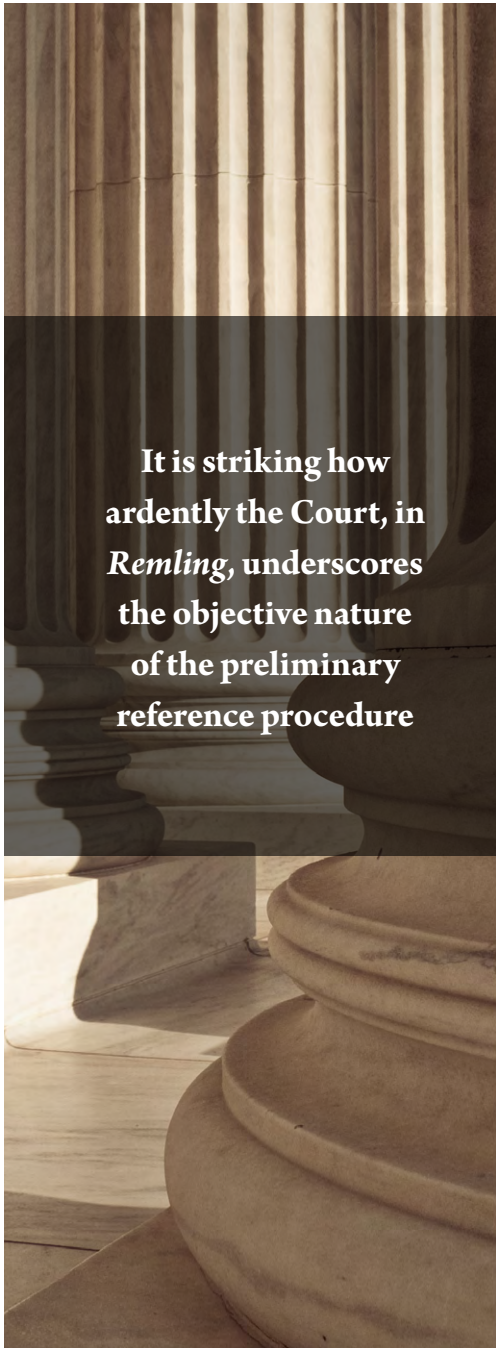
How precise must the statement of reasons be, and may reference to the *CILFIT* criteria also be implicit? In *Remling*, the Dutch Council of State asked the Court whether its national legislation allowing for summary reasoning is compatible with Article 267(3) TFEU, read in the light of Article 47(2) Charter. Under Dutch law, in immigration cases, national courts of last instance can refuse to make a reference for a preliminary ruling by a summary ruling, without specifying which of the three *CILFIT* exceptions is applicable.

The Court took a clear stance, building on its case law in *CILFIT*, *Conorzio Italian Management*, and *KUBERA*: a national court or tribunal of last instance must set out ‘the specific and concrete reasons why one of the three *Cilfit* exceptions applies in the case in question’ (para. 38). Thus, the Dutch provision providing for a summary reasoning is incompatible with Article 267 TFEU, read in the light of Article 47 of the Charter. Furthermore, as noted, no explicit request by the parties for a preliminary reference is required for this duty to state reasons to apply.

This latter clarification lays bare what may be regarded as the real thrust of the judgment: unlike the ECtHR’s ruling in *Gondert*, it is less concerned with further reinvigorating the individual rights of the parties than with enhancing the effectiveness of the ‘dialogue between courts’ within the EU’s composite judicial system. Of course, as an indirect consequence, the individual rights of the parties will also be strengthened; however, this is not the main aim of this judgment.

The Preliminary Reference Procedure as a Mere Dialogue Between Courts

It is striking how ardently the Court, in *Remling*, underscores the objective nature of the preliminary reference procedure. It is well established that preliminary references do not constitute a means of redress available to the parties to a case. Here, the Court once again highlighted that this procedure is conceived as a form of dialogue between the national courts and the Court of Justice, aimed at ensuring uniform interpretation of EU law. Thereby, ‘that procedure serves to ensure the consistency of EU law and its full effect and particular nature as well as the autonomy of the EU legal system, observance of which is ensured by the Court’ (para. 19).¹² The Court thus stressed that this mechanism operates primarily in the public interest: it protects, first and foremost, the uniformity and consistency of EU law.



It is striking how ardently the Court, in *Remling*, underscores the objective nature of the preliminary reference procedure

12. As the Court has also stressed, for example, in [Judgment of the Court of Justice \(Grand Chamber\) of 15 October 2024, *KUBERA* \(C-144/23, EU:C:2024:881, para. 33\)](#); [Opinion 2/13 \(Accession of the European Union to the ECHR\) of 18 December 2014 \(EU:C:2014:2454, para. 176\)](#).

Scope of the Obligation to State Reasons: To 'Astra'?

As regards the precise scope of the obligation to state reasons, the Court has further specified and refined its earlier case law. Only if the lower court in the dispute concerned has already stated why it considers that one of the *CILFIT* criteria occurs, the court of last instance may simply appropriate that reasoning (para. 33). Outside this situation, the following criteria apply.

As to the *acte éclairé* and *acte clair* exceptions, the Court emphasises, in principle, the need for detailed reasoning. Reasoning may be succinct only 'if the question raised is materially identical to a question that has already been the subject of a preliminary ruling in a similar case, or, a fortiori, in the same national proceedings' (para. 36). However, if the issues in dispute are not strictly identical, even if established case law exists resolving the point of law, again more demanding criteria apply and a more detailed statement of reasons might be necessary to justify a refusal (para. 36). As regards the *acte clair* exception, the court must explain why it considers that the matter is equally obvious to the other national courts or tribunals of last instance and the Court of Justice (para. 37).

The situation is different where a national court of last instance refuses to make a reference on the ground that the question raised is irrelevant to the resolution of the dispute: in such cases, the reasoning may again be succinct (para. 35). This exception leaves open a significant loophole in the system, as it falls to courts of last instance themselves to determine whether a question raised is relevant or not. If the Court's aim has been to further objectivise the criteria governing the obligation to refer under Article 267(3) TFEU, and thereby to curtail the discretion of national courts, this exception to the general rule requiring a full statement of reasons nevertheless appears to reintroduce a strong subjective element.

Ensuring full compliance with this obligation under Article 267(3) TFEU, in the absence of a subjective right to a preliminary reference, requires more than doctrinal refinement

Admittedly, this gradual development may encourage national courts to perceive themselves as effective participants in the EU's composite judicial system. Nevertheless, as noted, they retain significant interpretative leeway. Where national last-instance courts are unwilling to cooperate in this dialogue in good faith, they will find ways to circumvent their obligation to refer. Ensuring full compliance with this obligation under Article 267(3) TFEU, in the absence of a subjective right to a preliminary reference, requires more than doctrinal refinement; it presupposes a judicial culture of cooperation between the national and the EU level, which, however, remains imperfect for the time being.

Indeed, many national courts of last instance are still reluctant to refer questions for a preliminary ruling to the Court of Justice. Striking discrepancies emerge when comparing the number of preliminary references submitted by courts and tribunals in different Member States. In 2025, for example, 110 preliminary references originated from Italy, whereas Estonia, Croatia, Luxembourg, and

Malta each submitted only a single reference.¹³ It may reasonably be doubted that in those latter jurisdictions only one question concerning the interpretation or validity of EU law arose in 2025 before national courts or tribunals that would have warranted clarification from the Court of Justice.

Furthermore, it is also well known that the enforcement of the obligation of national last-instance courts to refer is fraught with enormous difficulties. State liability under *Köbler* has so far remained more a compelling academic construct than an effective remedy in concrete cases.

It is argued here that the *CILFIT* criteria are not suited to being specified to such an extent as to eliminate the broad margin of discretion enjoyed by national courts of last instance when applying them. In *Remling*, the Court has not succeeded in overcoming the inherent tensions underlying the *CILFIT* criteria and may arguably never fully resolve them.

Of course, it can be argued that it has never been the aspiration of the Court to grant the parties to a dispute an individual right to have their questions heard in Luxembourg. However, even the more modest ambition of improving the dialogue between the courts has been achieved by *Remling* only in part.

In Whose Hands Lies the Preliminary Reference Procedure?

Does the uniformity of EU law emerge almost automatically from such a judicial dialogue, or is there, and if so how can there be, a superior instance entrusted with deciding on the uniformity of EU law within a relationship conceived as *inter pares*?

On the one hand, as noted above, the Court has consistently stressed in its case law that the obligation to refer is grounded in a cooperative relationship, aimed at ensuring the proper application and uniform interpretation of EU law across all Member States.¹⁴ The Court has further underlined that a national court or tribunal of last instance “must therefore take upon itself, independently and with all the requisite attention, the responsibility for determining whether it is under an obligation to refer” (para. 22).¹⁵ Such formulations suggest a relationship of *pares inter pares*, in which both the national courts and the Court of Justice act as co-arbiters in ensuring the effectiveness of the preliminary reference procedure, each operating within its respective sphere of competences.

13. Cour de Justice, ‘Rapport annuel 2025 – Statistiques judiciaires de la Cour de justice’, p. 10.

14. [Judgment of the Court of Justice \(Grand Chamber\) of 24 March 2026, Remling \(C-767/23, EU:C:2026:243, para. 21\)](#). See also, for example, [Judgment of the Court of Justice \(Grand Chamber\) of 15 October 2024, KUBERA \(C-144/23, EU:C:2024:881, para. 35\)](#); [Judgment of the Court \(Second Chamber\) of 9 September 2015, X and van Dijk \(C-72/14 and C-197/14, EU:C:2015:564, para. 54\)](#); Judgment of the Court of 24 May 1977, *Hoffmann-La Roche* (107/76, EU:C:1977:89, para. 5).

15. See also [Judgment of the Court of Justice \(Grand Chamber\) of 15 October 2024, KUBERA \(C-144/23, EU:C:2024:881, para. 37\)](#); [Judgment of the Court of Justice \(Grand Chamber\) of 6 October 2021, Consorzio Italian Management \(C-561/19, EU:C:2021:799, para. 50\)](#).

On the other hand, the Court of Justice seems to guard its role as the ultimate guardian of the uniformity of EU law jealously and shows little willingness to share that function with national courts.¹⁶ *Remling* can be seen as a further example of the gradual shift from a predominantly horizontal dialogue to a more vertical structure, from a mechanism of cooperation *inter pares* to one in which the Court of Justice tries to supervise how national courts discharge their obligations under Article 267 TFEU.¹⁷ This tension becomes particularly evident when the judgment is read alongside the Opinion of Advocate General Ćapeta, who placed greater emphasis on the *pares inter pares* logic underpinning Article 267 TFEU. The Advocate General considered summary reasoning to be compatible with Article 267 TFEU, read in the light of Article 47 of the Charter, even where the national last-instance court does not expressly indicate which *CILFIT* exception applies, provided that the parties can understand why a question of interpretation of EU law was not referred to the CJEU.¹⁸ It should remain for the national court to assess whether a summary reasoning is sufficient in the specific circumstances of a case.¹⁹ The Court, however, opted for a more centralised allocation of responsibility for ensuring the uniformity of EU law. It is precisely here that the underlying tension becomes apparent: to what extent is the Court prepared to entrust national courts with a meaningful role in safeguarding the uniformity of EU law and thereby in ensuring the effective functioning of the preliminary reference procedure?

***Remling* can be seen as a further example of the gradual shift from a predominantly horizontal dialogue to a more vertical structure**



16. See also, for example, Catherine Donnelly and Thomas de la Mare, 'Preliminary Rulings and EU Legal Integration', in Paul Craig and Gráinne de Búrca (eds.), *The Evolution of EU Law*, Oxford University Press, 2021, pp. 228-274. At page 248: "However, on one entirely cynical level it can be pointed out that continued usage of the language of cooperation is aimed at sweetening the bitter pill of CJEU's own re-positioning of itself by pointing out the important role of national courts."

17. See, more generally, Paul Craig and Gráinne de Búrca, 'EU Law. Text, Cases, and Materials', Oxford University Press, 2024, pp. 493-494, who point out that the preliminary reference procedure was originally conceived as a horizontal relationship but has become steadily more vertical.

18. [Opinion of AG Ćapeta of 26 June 2025 in *Remling* \(C-767/23, EU:C:2025:486, paras 83 and 84\)](#).

19. *Ibid.*, para. 85.

Recent developments within the EU judiciary suggest that the Court of Justice does not even fully trust its junior sibling, the General Court, when it comes to safeguarding the unity and consistency of EU law.²⁰ The most recent reform of the Statute of the CJEU clearly assigns the task of guaranteeing and strengthening the unity and consistency of EU law to the Court of Justice, and equips the latter with additional safeguard mechanisms to ensure that it can review a General Court's decision where necessary to protect the unity and consistency of EU law.²¹ If the Court of Justice, when it comes to safeguarding the unity of EU law, cannot fully trust even its junior counterpart, which forms part of the same judicial institution, how can it be expected to repose such trust in courts and tribunals outside the CJEU system?

The system thus stands on a delicate fault line. On the one hand, the unity and consistency of the EU legal order are to be guaranteed by a central authority, namely the Court of Justice as the highest echelon of the EU judicial system. On the other hand, unity and consistency of EU law are expected to emerge from a process of judicial cooperation presented as a horizontal dialogue *inter pares*. Reconciling these two logics has long been, and will remain, one of the central challenges the CJEU is facing.

Conclusions: 'And Back to Aspera'?

The promise of a preliminary reference procedure objectivised to the utmost extent – such that references to the Court are made except where they are strictly unnecessary – shines brightly. It is, however, doubtful whether this promise can ever be fully realised. The *CILFIT* criteria were introduced precisely to achieve this aim, but, as shown, they have not proved capable of eliminating discretion and arbitrariness exercised by national courts within this procedure.

At the same time, access to the Court of Justice is increasingly portrayed from an individual rights perspective – one that may become realistic and coherent if the European Union continues to evolve into a legal order in which the protection of fundamental rights is paramount. As has been pointed out by Professor Sarmiento, an eventual accession of the European Union to the European Convention of Human Rights could provide the momentum for such a change of perspective.²²

Recent developments within the EU judiciary suggest that the Court of Justice does not even fully trust its junior sibling, the General Court, when it comes to safeguarding the unity and consistency of EU law

20. Of course, there are differences between 'unity' and 'uniformity', but similar structural challenges can nonetheless be identified in the pursuit of these two aims.

21. [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](#), Recital 2. In particular, it activated the safeguard clause enshrined in Article 256(3), 3rd sentence TFEU: "Decisions given by the General Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected." See, more in detail, Tanja Hilpold, ["The 2024 Reform of the EU Judicial System and the Transformation of the Court of Justice into a Constitutional Court"](#), 3 *European Papers – A Journal on Law and Integration* 10, 2025, pp. 837-862.

22. Daniel Sarmiento, [Analysis: "Neither Heaven nor Hell: Welcome to the Limbo of Dialogue Between Judges. A Summary Analysis of Remling \(C-767/23\)"](#), EU Law Live, 26 March 2026.

Generally speaking, a shift in the interpretation of the very nature of the preliminary reference procedure would be necessary, as it is presently understood to be fundamentally based on a dialogue between courts. From an individual rights perspective, such a development would be a valuable step towards reaching *astra*. Yet it would also entail significant practical challenges, not least in terms of additional financial and human resources required in Luxembourg. And this refers us again back to *aspera*.



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