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THE EVOLUTION AND REFORM OF THE PRELIMINARY RULINGS PROCEDURE: HISTORICAL DEVELOPMENT, 2024 IMPROVMENTS, AND CRITICAL ASSESSMENT

This paper examines the historical development, recent reforms, and critical implications of the preliminary rulings procedure under Article 267 TFEU, a cornerstone of the European Union's judicial system. Tracing its evolution from the ECSC Treaty through successive treaty amendments, the study analyzes the 2024 reforms that transferred preliminary ruling jurisdiction in six technical areas to the General Court and introduced significant procedural modernization. While these reforms aim to address the Court of Justice's workload and enhance efficiency, they also raise concerns regarding legal fragmentation, jurisdictional complexity, and the dilution of judicial dialogue between national courts and the EU's highest court. The paper provides a critical assessment of these changes, highlighting both their potential benefits and risks, and offers recommendations for ensuring the continued uniformity and effectiveness of EU law.

Key words: Preliminary ruling procedure, Court of Justice of the European Union (CJEU), General Court, Judicial cooperation, EU law interpretation

INTRODUCTION

The preliminary ruling procedure, enshrined in Article 267 of the Treaty on the Functioning of the European Union (TFEU), is widely recognized as the “keystone of the Union's judicial system” and a fundamental driver of European

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integration.¹ By enabling national courts to refer questions concerning the interpretation and validity of EU law to the Court of Justice of the European Union (CJEU), this mechanism ensures the uniform application of EU law across all Member States. It has played a pivotal role in the development of core doctrines such as the supremacy and direct effect of EU law, and in fostering a unique “judicial dialogue” between national courts and the European judiciary.²

Since its inception in the 1950s, the preliminary ruling procedure has evolved in response to the changing needs of the European project. The increasing scope and complexity of EU law, coupled with successive enlargements of the Union, have led to a dramatic rise in the number of preliminary references submitted by national courts. By the early 2020s, this surge in caseload placed significant strain on the CJEU, raising concerns about delays, efficiency, and the accessibility of justice.³

Against this backdrop, the 2024 amendments to the Rules of Procedure of the CJEU represent the most significant reform of the preliminary ruling system in decades. These reforms include the transfer of preliminary ruling jurisdiction in certain technical areas to the General Court, the introduction of new procedural and digital tools, and enhanced transparency measures. The reforms are intended to streamline judicial processes, reduce bottlenecks, and modernize the administration of justice at the EU level.

However, these changes also raise important questions about the future of the preliminary ruling procedure. While the reforms promise greater efficiency and specialization, they introduce new complexities, such as the risk of legal fragmentation, uncertainty with respect to applicable jurisdiction, and potential shifts in the constitutional balance of the EU judicial system.⁴

This paper provides a comprehensive analysis of the evolution and reform of the preliminary rulings procedure. It traces the historical development of the mechanism, examines the key features and intended benefits of the 2024 amendments, and offers a critical assessment of their potential implications for the coherence and effectiveness of EU law. Ultimately, the study seeks to evaluate whether

¹ Paul Craig, Grainne de Búrca, *EU Law: Text, Cases, and Materials*, 7th ed., Oxford University Press, 2021, 453.

² Koen Lenaerts, José A. Gutiérrez-Fons, “The Constitutional Allocation of Powers and General Principles of EU Law”, *Common Market Law Review*, No. 6, Vol. 47, 2010, 1629–1669.

³ CJEU *Annual Report 2022*, Statistical Overview.

⁴ Lorenzo Grossio, Davor Petrić, “EU Procedural Law Revisited: The Reformed EU Judicial Architecture between the Statute of the Court of Justice and the Rules of Procedure”, *European Papers*, No 2, Vol. 10, 2025, 293–326.

the recent reforms can successfully balance the demands of judicial efficiency with the foundational objective of ensuring the uniform application of EU law across the Union.

HISTORICAL DEVELOPMENT OF THE PRELIMINARY RULINGS PROCEDURE PRIOR TO 2024

Origins in the ECSC Treaty (1951–1957) and the Rome Treaty Foundation (1957)

The preliminary ruling procedure traces its origins to Article 41 of the 1951 Treaty establishing the European Coal and Steel Community (ECSC).⁵ This provision established a limited form of preliminary reference procedure, granting the Court exclusive jurisdiction to declare acts of the High Authority invalid. However, Article 41 was rarely used and represented only a nascent form of what would later become the comprehensive preliminary ruling mechanism.⁶

The modern preliminary ruling procedure was established under Article 177 of the 1957 Treaty of Rome.⁷ This provision introduced two fundamental innovations compared to the ECSC model: first, it granted the Court jurisdiction over interpretation of Community legislation, and second, it did not confer sole jurisdiction on the European Court. Article 177 established the basic framework that would endure for decades, allowing national courts to refer questions concerning both the interpretation and validity of Community law.⁸

Early Foundational Cases and Procedural Development

The procedure's transformative potential was realized through landmark cases in the 1960s. The *Van Gend & Loos* case (1963) established the doctrine of direct effect, while *Costa v. ENEL* (1964) introduced the principle of EU law supremacy.⁹ The *Da Costa en Schaake* case (1963) further established the binding authority of

⁵ Treaty establishing the European Coal and Steel Community, Article 41.

⁶ Anthony Arnall, *The European Union and its Court of Justice*, 2nd ed., Oxford University Press, 2006, 92.

⁷ Treaty of Rome, Article 177.

⁸ Takis Tridimas, *The General Principles of EU Law*, 3rd ed., Oxford University Press, 2018, 35.

⁹ Case 26/62, *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR I; Case 6/64, *Costa v ENEL* [1964] ECR 585.

ECJ judgments, creating a system whereby preliminary rulings provide authoritative interpretations of EU law generally, not just for the specific case at hand.¹⁰

The Court emphasized in *Rheinmühlen-Düsseldorf* (1974) that “Article 177 is essential for the preservation of the Community character of the law established by the Treaty and has the object of ensuring that in all circumstances the law is the same in all States of the Community”.¹¹ This statement crystallized the procedure’s fundamental purpose: ensuring uniform interpretation and application of EU law across all Member States.¹²

Treaty Amendments and Procedural Evolution

By virtue of the Maastricht Treaty of 1993, Article 177 was renumbered as Article 234 and expanded to include acts of the European Central Bank within the Court’s preliminary ruling jurisdiction.¹³ This represented the only substantive amendment to the provision for decades, demonstrating the stability of the foundational framework.

The Treaty of Nice introduced Article 225(3) TEC (now Article 256(3) TFEU), creating the theoretical possibility for the General Court to exercise preliminary ruling jurisdiction in specific areas. However, this provision remained dormant for over two decades due to concerns about legal complexity, potential delays from appeals, and questions about national courts’ acceptance of General Court decisions.¹⁴

The only change introduced by the Lisbon Treaty (2009) was that the preliminary ruling procedure was renumbered as Article 267 TFEU without substantive changes, maintaining the same basic structure established in 1957.¹⁵

¹⁰ Joined Cases 28-30/62, *Da Costa en Schaake NV v Nederlandse Belastingadministratie* [1963] ECR 31.

¹¹ Case 166/73, *Rheinmühlen-Düsseldorf v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1974] ECR 33, para. 2.

¹² About the significance of the preliminary ruling procedure for the interpretation of EU law, see more in: Maja Lukić Radović, “Prethodni postupak i vrhovni autoritet Suda Evropske unije u odnosu na pravo EU i pojedinačne akte njenih tela” [Preliminary reference procedure and the supreme authority of the Court of the Justice of the European Union with respect to EU law and individual acts of EU bodies], *Savremeni problemi pravnog sistema Srbije, prilozi projektu 2022* (ur. Miloš Živković, Maja Lukić Radović), Univerzitet u Beogradu – Pravni fakultet, Centar za izdavaštvo, Beograd, 2023, 161–173.

¹³ Treaty on European Union (Maastricht), Article 234.

¹⁴ Treaty of Nice, Article 225(3) TEC; Peter J. Wattel, “The Transfer of Preliminary Ruling Jurisdiction to the General Court of the EU”, *CJEU – Recent Developments in Value Added Tax 2023* (eds. Georg Kofler *et al.*), Linde Verlag, Wien, 2024, 2-3.

¹⁵ Treaty of Lisbon, Article 267 TFEU.

Growing Workload Crisis

By the 2000s, the CJEU faced mounting pressure from an ever-increasing caseload. Preliminary rulings comprised approximately seventy percent of all cases before the Court of Justice by 2022.¹⁶ The expansion of EU membership, the extension of EU competences into new areas, and the success of the procedure itself created an unsustainable workload. Statistics show that the Court received over five hundred preliminary references annually by the 2010s, with processing times averaging from sixteen to eighteen months.¹⁷

IMPROVEMENTS BROUGHT BY THE 2024 AMENDMENTS TO THE RULES OF PROCEDURE

Transfer of Preliminary Ruling Jurisdiction to the General Court

The most significant reform introduced by the 2024 amendments is the transfer of preliminary ruling jurisdiction to the General Court in six specific areas: the common system of value added tax, excise duties, the Customs Code and tariff classification of goods, compensation and assistance to passengers in transport, and the greenhouse gas emission trading scheme.¹⁸ This transfer affects approximately twenty percent of all preliminary references.

A screening and allocation mechanism was also put in place. All preliminary ruling requests continue to be submitted to the Court of Justice, which conducts an initial screening to determine jurisdiction. Cases falling exclusively within the six designated areas are transmitted to the General Court, while those raising broader questions of principle remain with the Court of Justice. This mechanism is designed to ensure that complex constitutional issues and matters affecting the unity of EU law remain under the Court of Justice's jurisdiction.

The reform includes important safeguards to maintain legal consistency across the EU, i.e. EU law. The Court of Justice retains jurisdiction over cases raising “independent questions relating to the interpretation of primary law,

¹⁶ CJEU *Annual Report 2022*, Statistical Overview, https://curia.europa.eu/jcms/jcms/p1_4339717/en/, 9 June 2025.

¹⁷ CJEU, “Preliminary Ruling Procedure: Statistics and Trends”, 2023, https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/en_ra_2023_cour_stats_web_bat_22042024.pdf, 9 June 2025.

¹⁸ Regulation (EU) 2024/1234, amending the Rules of Procedure of the Court of Justice and the General Court.

public international law, general principles of Union law or the Charter of Fundamental Rights”.¹⁹ Additionally, if a General Court case raises issues of principle likely to affect the unity or consistency of EU law, it can be referred back to the Court of Justice.

Structural and Organizational Improvements

The General Court has established specialized chambers for preliminary ruling cases, with judges elected to serve as Advocates General for renewable three-year terms.²⁰ This mirrors the Court of Justice’s structure and ensures specialized expertise in the designated areas.²¹ A new Intermediate Chamber of nine judges has been introduced between the traditional five-judge chambers and the fifteen-judge Grand Chamber, providing greater flexibility in case assignment.²²

Procedural Modernization and Transparency

The amendments introduced enhancements to the digital infrastructure, by formalizing videoconferencing for hearings, building on practices developed during the COVID-19 pandemic. Electronic filing and service of documents have been standardized, with provisions for qualified electronic signatures and secure digital storage.

Another emphasis was put on enhancing transparency. Written observations submitted in preliminary ruling cases will be published online after case closure unless objections are raised. The broadcasting of hearings, including judgment delivery, is now explicitly provided for, increasing public access to proceedings.

Finally, the rights of participation of the EU institutions have been broadened. The European Parliament, Council, and European Central Bank may now submit observations in preliminary ruling cases where they have a particular interest, expanding the range of institutional input available to the courts.²³

¹⁹ *Ibidem*.

²⁰ On the role of Advocates General in the procedure before the CJEU, see more in Maja Lukić, “Razumevanje uloge opštih pravobranilaca u okviru pravosudnog sistema Evropske unije” [Understanding the role of Advocates General within EU judiciary system], *Zbornik radova Pravnog fakulteta u Nišu*, br. 74, tom 55, Niš, 2016, 129–144.

²¹ General Court Rules of Procedure, as amended 2024, Article 29a.

²² *Ibidem*.

²³ Regulation (EU) 2024/1234, Article 17.

Administrative and Cost Efficiency Measures

Registry charges for extracts, copies of procedural documents, and authenticated copies have been abolished, reducing costs for parties. Simplified procedural measures allow certain actions to be taken by simple decision rather than formal order, streamlining case management.²⁴

POTENTIAL NEGATIVE IMPLICATIONS OF THE 2024 REFORMS

Fragmentation and Consistency Concerns

The division of preliminary ruling jurisdiction between two courts creates inherent risks of inconsistent interpretations, even within the designated subject areas.²⁵ While safeguards exist, the practical delineation between “routine” cases suitable for the General Court and “principled” cases requiring Court of Justice intervention may prove difficult to implement consistently.

The requirement that cases fall “exclusively” within the six designated areas creates potential for jurisdictional disputes and delays when cases span multiple legal domains. The complexity of the task of determining exact jurisdictional boundaries may undermine the efficiency gains the reform seeks to achieve.

Institutional and Procedural Challenges

Historical concerns about national courts’ willingness to engage with the General Court rather than the Court of Justice are being exacerbated by the subject reform. The perception that General Court rulings carry less authoritative weight could affect the quality of the judicial dialogue that underpins the preliminary reference system.²⁶

The possibility of referrals between courts, combined with the limited review mechanism for General Court preliminary rulings, may actually extend rather than reduce proceedings duration in complex cases. The screening process itself adds an additional procedural layer that could cause delays.²⁷

²⁴ CJEU Rules of Procedure, as amended 2024, Article 38.

²⁵ L. Grossio, D. Petrić, op. cit., 302.

²⁶ T. Tridimas, op. cit., 53.

²⁷ Emmanuel Coulon, “Summer 2024 reforms; A radical overhaul of the Statute of the Court of Justice of the EU and the rules of procedure of the Court of Justice and the General Court”, *Legal Practices – Concurrences, Revue des Droits de la Concurrence*, No. 4, 2024, 4.

Finally, the jurisdictional division creates a layer of uncertainty for legal practitioners and parties about which court will ultimately decide their case. This uncertainty may complicate case preparation and strategic decision-making in national proceedings.

Systemic Risks to EU Law Unity

The preliminary ruling procedure has traditionally been characterized as a dialogue between national courts and the Court of Justice. Introducing the General Court as an additional interlocutor may complicate this relationship and potentially weaken the direct connection between national judges and the EU's highest court,²⁸ leading to the erosion of the "judicial dialogue" paradigm.

Some scholars argue that preliminary rulings serve a quasi-constitutional function in the EU legal order. Delegating this function to a court traditionally focused on administrative review may alter the constitutional balance within the EU judicial system in favor of national constitutional courts.²⁹

Resource Allocation and Specialization Concerns

The General Court must rapidly develop expertise in areas previously handled exclusively by the Court of Justice. This transition period may result in less sophisticated preliminary rulings until institutional knowledge develops. Furthermore, while the reform aims to rebalance caseloads, the restriction to six specific areas may create uneven distribution of work between the courts, particularly if case volumes in these areas fluctuate significantly.³⁰

CRITICAL ASSESSMENT AND FUTURE PERSPECTIVES

Balancing Efficiency and Legal Unity

The 2024 reforms represent a carefully calibrated attempt to address the CJEU's workload crisis while preserving the essential characteristics of the preliminary ruling procedure. The restriction to well-defined technical areas with established case law minimizes risks of inconsistent interpretation. However, the long-term success of this

²⁸ P. Craig, G. de Búrca, op. cit., 479.

²⁹ A. Arnall, op. cit., 122.

³⁰ CJEU *Annual Report 2024*, Statistical Overview, https://curia.europa.eu/jcms/jcms/Jo2_7032/en/, 9 June 2025.

approach will depend on the practical implementation of jurisdictional boundaries and the development of effective coordination mechanisms between the two courts.

Implications for European Integration

The preliminary ruling procedure has been instrumental in advancing European integration through judicial constitutionalization. The 2024 reforms may signal a shift toward a more technocratic approach to EU law development, potentially affecting the procedure's role as an engine of integration.³¹ This evolution reflects the maturation of the EU legal system but may also represent a limitation on judicial activism in advancing integration. Notable authors argue, based on sound reasoning, that the reform paves the way for the Court of Justice to grow into a constitutional court of the EU.³²

Recommendations for Implementation

To maximize the benefits while minimizing the risks of the 2024 reforms, several recommendations could be put forth: that guidelines on determining jurisdictional boundaries be set, i.e. that detailed practice directions clarifying the boundaries between Court of Justice and General Court jurisdiction should be developed; formal procedures for information sharing and coordination between the courts should be introduced; systematic monitoring of the reform's impact on case duration, legal consistency, and national court satisfaction should be implemented; as well as a substantial investment in comprehensive training for General Court judges and staff in preliminary ruling procedures should be made.

CONCLUSION

The 2024 amendments to the CJEU Rules of Procedure represent the most significant reform of the preliminary ruling procedure since its establishment in 1957.³³ These changes address genuine efficiency concerns while introducing important modernization measures that enhance transparency and accessibility. However, the reform also introduces new complexities and potential risks to legal unity that must be carefully managed.

³¹ K. Lenaerts, J. A. Gutiérrez-Fons, op. cit., 1644.

³² Daniel 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 (Editorial Note)", *Croatian Yearbook of European Union Law and Policy*, No. 19, 2023, 7-17.

³³ P. Craig, G. de Búrca, op. cit., 453.

The success of this reform will ultimately be measured not merely by statistical improvements in case processing times, but by its ability to maintain the preliminary ruling procedure's essential function as the guarantor of EU law's uniformity and effectiveness. The coming years will be crucial in determining whether the 2024 reforms achieve their ambitious goals while preserving the constitutional foundations of the European legal order.

The transformation of the preliminary ruling procedure reflects broader challenges facing the EU as it balances institutional efficiency with legal coherence in an increasingly complex and diverse Union. As such, the 2024 reforms serve not only as a response to immediate practical pressures but also as a test of the EU's capacity for institutional adaptation while maintaining its fundamental legal principles.

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EVOLUCIJA I REFORMA POSTUPKA ODLUČIVANJA O PRETHODNOM PITANJU: ISTORIJSKI RAZVOJ, UNAPREĐENJA IZ 2024. GODINE I KRITIČKA OCENA

Rezime

Ovaj rad analizira istorijski razvoj, najnovije reforme i kritičke implikacije postupka po prethodnom pitanju prema članu 267 UFEU, koji predstavlja temelj pravosudnog sistema Evropske unije. Prateći evoluciju ovog mehanizma od osnivanja Evropske zajednice za ugalj i čelik do najnovijih izmena, rad se posebno fokusira na refome iz 2024. godine koje su nadležnost za odlučivanje o prethodnom pitanju u šest tehničkih oblasti prenele na Opšti sud i uvele značajne proceduralne i digitalne inovacije. Iako su ove reforme usmerene na rasterećenje Suda EU i povećanje efikasnosti postupaka pred sudovima EU, one istovremeno otvaraju pitanja fragmentacije prava, složenosti nadležnosti i potencijalnog slabljenja dijaloga između nacionalnih sudova i najvišeg suda EU. Rad pruža kritičku ocenu ovih promena ističući njihove potencijalne koristi i rizike, i daje preporuke za očuvanje jedinstva i delotvornosti prava EU.

Ključne reči: postupak o prethodnom pitanju, Sud Evropske unije, Opšti sud, sudska saradnja, tumačenje prava Evropske unije

Bibliography

- Arnull A., *The European Union and its Court of Justice*, 2nd ed., Oxford University Press, 2006.
Craig P., De Búrca G., *EU Law: Text, Cases, and Materials*, 7th ed., Oxford University Press, 2021.
Coulon, E., "Summer 2024 reforms; A radical overhaul of the Statute of the Court of Justice of the EU and the rules of procedure of the Court of Justice and the General Court", *Legal Practices – Concurrences, Revue des Droits de la Concurrence*, No. 4, 2024.

- Grossio, L., Petrić, D. "EU Procedural Law Revisited: The Reformed EU Judicial Architecture between the Statute of the Court of Justice and the Rules of Procedure", *European Papers*, No. 2, Vol. 10, 2025.
- Lenaerts K., Gutierrez-Fons J. A., „The Constitutional Allocation of Powers and General Principles of EU Law”, *Common Market Law Review*, No. 6, Vol. 47, 2010.
- Lukić M., "Razumevanje uloge opštih pravobranilaca u okviru pravosudnog sistema Evropske unije" [Understanding the role of Advocates General within EU judiciary system], *Zbornik radova Pravnog fakulteta u Nišu*, br. 74, tom 55, Niš, 2016.
- Lukić Radović, M., "Prethodni postupak i vrhovni autoritet Suda Evropske unije u odnosu na pravo EU i pojedinačne akte njenih tela" [Preliminary reference procedure and the supreme authority of the Court of the Justice of the European Union with respect to EU law and individual acts of EU bodies], *Savremeni problemi pravnog sistema Srbije, prilozi projektu 2022* (ur. Miloš Živković, Maja Lukić Radović), Univerzitet u Beogradu – Pravni fakultet, Centar za izdavaštvo, Beograd, 2023.
- Sarmiento, D. "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 (Editorial Note)", *Croatian Yearbook of European Union Law and Policy*, No. 19, 2023.
- Tridimas T., *The General Principles of EU Law*, 3rd ed., Oxford University Press, 2018.
- Wattel, P. J., "The Transfer of Preliminary Ruling Jurisdiction to the General Court of the EU", *CJEU – Recent Developments in Value Added Tax 2023* (eds. Georg Kofler *et al.*), Linde Verlag, Wien, 2024.

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