

**Silence is no longer an option:  
courts of last instance must give reasons for not seeking EU guidance**

**A March ruling of the Court of Justice of the European Union (the “Court” or “CJEU”) may appear to concern a technical detail of judicial procedure, yet in reality it is of outstanding importance for legal certainty and the predictability of adjudication. The Court held that a national court of last instance (i.e. a court against whose decisions no further remedy lies) is required to provide specific reasons for not making a reference for a preliminary ruling to the CJEU in cases involving issues of EU law—even where its domestic law would otherwise allow for decisions supported only by brief or summary reasoning. In other words, a supreme judicial body cannot simply dispose of the matter by stating that the answer is clear; it must demonstrate precisely why it considers this to be the case.**

The preliminary ruling procedure is one of the cornerstones of EU law. It enables national courts to seek interpretative guidance from the CJEU where there is uncertainty as to the interpretation of an EU provision, or where a question arises concerning the validity of applicable secondary EU legislation. For courts of last instance, this constitutes, in certain circumstances, an obligation from which only limited exceptions are permitted. Such exceptions include situations where the question is not relevant to the outcome of the case, where the CJEU has already provided a clear answer, or where the correct interpretation is so obvious as to leave no reasonable doubt. The essence of the present judgment is that reliance on these exceptions cannot remain implicit: the court must state which exception it invokes and why.

From a business perspective, the decision is significant because rulings of courts of last instance often define the ultimate contours of legal risk. Where a question of EU law arises in areas such as taxation, employment law, consumer protection, immigration, or competition law, it is of no small consequence how transparently the supreme court arrives at the conclusion that no guidance from the CJEU is required. The obligation to provide detailed reasoning enhances predictability, as the parties can better understand why the EU law dimension was not given decisive weight and can more readily assess the prospects of further remedies or strategic adjustment.

The judgment also conveys a nuanced but important message to the judiciary: while the acceleration of proceedings is a legitimate objective, it cannot override the requirement of the uniform application of EU law. National legislators may seek to enable courts of last instance to decide cases with shorter reasoning, thereby allowing them to devote greater resources to genuinely complex matters; however, where the question of a preliminary reference arises, the reasoning cannot be reduced to an empty formality. The court must demonstrate that it has genuinely carried out the necessary assessment.

For corporate actors, this development is equally relevant from the perspective of litigation strategy. Where a company is involved in a case in which the interpretation of EU law is not clear, it is advisable to deliberately construct arguments supporting the necessity of a preliminary reference. The present judgment reinforces that a court of last instance cannot dismiss such a request by silence. Even if it rejects the request, it must set out its reasons clearly, specifically, and in a manner tailored to the particularities of the case. This may strengthen the position of the parties and provide a more solid basis for the strategic planning of legal disputes.



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In a broader sense, the ruling promotes transparency as an element of the rule of law. For businesses, predictable application of the law is at least as important as a favorable regulatory environment. Where it is clear why a court of last instance does or does not seek guidance from the CJEU, interpretative uncertainty is reduced and risk becomes more manageable. The message is clear: courts of last instance must not only decide, but also demonstrate how they have arrived at their decisions.