

**NETWORK OF THE PRESIDENTS OF THE SUPREME JUDICIAL COURTS OF THE EUROPEAN UNION**

**JOINT MEETING WITH THE COURT OF JUSTICE OF THE EUROPEAN UNION**

**28 MARCH 2025**

**LUXEMBOURG**

**Topic 1: “The independence of the judiciary within the European Union: a shared responsibility”**

**QUESTIONNAIRE**

1. ***Introduction***
2. The rule of law is one of the shared values enshrined in Article 2 TEU. Access to justice by independent and impartial courts is a key component of the rule of law. Upholding the rule of law in all Member States is of concern to each Member State as it is necessary for the effective application of EU law, mutual trust between Member States, the operation of the EU in the area of freedom, security and justice and the internal market. As judicial systems face evolving challenges, from safeguarding autonomy to addressing public perceptions of justice, maintaining and strengthening judicial independence remains vital for upholding constitutional principles and the integrity of the legal order.
3. As guardian of the Treaties, the European Commission has responsibility for promoting and upholding the rule of law and has available to it a Rule of Law toolbox which includes a number of instruments aimed at promoting the rule of law and preventing issues arising. It also has at its disposal other instruments for responding to rule of law challenges, such as: a procedure under Article 7 TEU which may lead to the suspension of EU membership rights if a country seriously and persistently breaches the principles on which the EU is founded; a Rule of Law Framework and general budget conditionality.
4. Challenges to the rule of law in some EU Member States in the past decade have called into question the ability of the EU to address systemic threats to the rule of law. At judicial level, the Court of Justice of the European Union has, in a line of jurisprudence established common minimum standards of judicial independence across EU Member States, grounded in Union law. These standards derive from the foundational provisions of Article 19(1) TEU, which requires Member States to ensure “effective legal protection in fields covered by Union law”; Article 47 of the Charter of Fundamental Rights of the EU, which guarantees the right to a fair trial and effective judicial protection when implementing EU law; and Article 2 TEU. Transparent processes, particularly in judicial appointments, disciplinary actions, and case handling, reinforce public confidence in the impartiality and integrity of the judiciary.
5. Traditionally, national measures affecting key components of the rule of law, such as judicial independence, were understood as generally falling outsidethe scope of EU law. However in *C-64/16, Associação Sindical dos Juízes Portugueses v. Tribunal de Contas*, ECLI:EU:C:2018:11, commonly referred to as the *Portuguese Judges* case, the Court of Justice held that the second subparagraph of Article 19(1) TEU may be used as a self-standing ground for the review of the compatibility of national measures with the EU principle of effective judicial protection “whenever a [national] jurisdiction may be required to rule upon cases ‘in fields covered by Union law.’ Thus, Article 19(1) TEU may be invoked to challenge national measures or practices that potentially violated EU requirements for effective judicial protection, even in cases where Article 47 of the Charter could not be applied. Article 19(1) TEU has formed the basis of a number of preliminary references from national courts to the CJEU, by national courts before whom issues relating to the Rule of Law in other member states have been raised, and by national courts in respect of issues arising in their own jurisdiction. The European Commission has also instituted a small number of infringement procedures before the CJEU.
6. In Case C-585/18, C-624/18 and C-625/18 *A.K. and Others v. National Council of Judiciary and Supreme Court (Independence of the Disciplinary Chamber of the Supreme Court)*, the Court of Justice found that while the organisation of justice remains within the competence of Member States, they must still adhere to EU law obligations, particularly when national courts are tasked with issues related to the application or interpretation of EU law.
7. This topic aims to contribute to an understanding of how judicial independence is safeguarded in practice, whether and how the preliminary ruling procedure is utilised to support this goal, the role of transparent judicial procedures in fostering trust and accountability, and how the principles enshrined in Article 19 TEU and Article 47 of the Charter are being implemented across Member States.
8. ***Question(s)***
9. Has your Court or have other courts in your Member State utilised the preliminary reference procedure in respect of national measures alleged to have an impact on the independence of the Judiciary in another jurisdiction?
10. Has your Court or have other courts in your Member State utilised the preliminary reference procedure in respect of national measures alleged to have an impact on the independence of the judiciary in your own jurisdiction?
11. In your view, is the preliminary ruling procedure an appropriate and effective mechanism for raising issues in respect of national measures alleged to have an impact on judicial independence?
12. Regardless of whether or not your Court or Member State has made a request for a preliminary ruling, has the CJEU's judgment in Portuguese Judges and its interpretation of Article 19(1) TEU and subsequent jurisprudence had practical consequences for national measures or practices within your jurisdiction?