



The Duty to State Reasons after Remling (C-767/23): Towards a Constraint on Non-Referral under Article 267 TFEU?

Silke Vermoortele

1. Introduction.

On 24 March 2026, the Court of Justice delivered its judgment in Remling (C-767/23), addressing a procedural question at the core of the EU judicial system: the obligation of courts of last instance to give reasons when refusing to make a preliminary reference under Article 267 TFEU.

The preliminary ruling procedure is traditionally understood as a system of cooperation between national courts and the Court of Justice, based on a division of functions rather than hierarchy. It ensures both the uniform interpretation of EU law and its effective application within national legal systems.

Since *CILFIT* (C-283/81), courts of last instance may refrain from referring only where the interpretation of EU law leaves no reasonable doubt. However, as doctrinal analysis shows, the application of this standard has always depended heavily on judicial discretion (M. P. Broberg and N. Fenger, 2021; M. Bobek, 2021; L. Cecchetti, 2022; F.-X. Millet, 2022). Therefore, recent case law has gradually tightened this discretion. In *Conorzio Italian Management* (C-561/19), the Court required national courts of last instance to engage seriously with EU law arguments and to explain why a reference is unnecessary. In *KUBERA* (C-144/23), the Court further emphasised that national procedural rules must not prevent a court of last instance from assessing whether it is obliged to make a reference under Article 267(3) TFEU. In that context, it required that a refusal to refer be reasoned so that it can be verified whether the *CILFIT* conditions are satisfied (L. Daniele, 2022).

Against this background, Remling further develops the link between Article 267(3) TFEU and Article 47 of the Charter. While in the earlier case law, such as *KUBERA*, the Court already connected the duty to refer the right to effective judicial protection, but that link remained relatively general. In Remling, the Court gives it more concrete procedural content by treating the refusal to refer as a decision that must satisfy the requirements of a reasoned judgment, enabling the parties to understand and, where appropriate, challenge the court's assessment of EU law. The judgment thus clarifies the procedural obligations governing non-referral, while reaffirming the central role of Article 267 TFEU in



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safeguarding the uniform interpretation of Union law.

2. Factual Background.

The case arose in the context of immigration proceedings in the Netherlands. A Moroccan national applied for a residence permit valid throughout the territory of the European Union. His application was rejected by the Dutch authorities on the ground that he already held a residence permit in Spain. He challenged that decision before the District Court of The Hague, which dismissed his action.

On appeal, the Dutch Council of State considered that the relevant issues of EU law were already sufficiently clear in light of the Court's case law and that it was therefore not required to make a preliminary reference under Article 267(3) TFEU. Under Dutch law, the Council of State may dismiss appeals by summary reasoning, which means without setting out detailed grounds for a dismissal and lead to a decision stating only that the argumentation put forward by the applicant is not enough to overturn the lower court's decision. This raised a distinct procedural issue. While the court considered that no reference was necessary on the substance of the dispute, it was uncertain whether EU law nevertheless required it to give specific reasons for refusing to refer.

It therefore decided to stay the proceedings and refer a separate question to the Court of Justice, asking whether Article 267 TFEU, read in conjunction with Article 47 of the Charter, precludes national legislation from allowing courts of last instance to refuse a preliminary reference without substantiating which of the three exceptions to its obligation to refer occurs, after a question on the interpretation of EU law had been raised.

3. The Duty to State Reasons.

The obligation of courts of last instance to make a preliminary reference under Article 267(3) TFEU has traditionally been framed through the *CILFIT* criteria: no reference is required where the correct interpretation of EU law leaves no reasonable doubt. This formulation, however, does not fully reflect how the preliminary ruling procedure operates



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in practice. It is not a mechanical filter, but part of a system of functional allocation between national courts and the Court of Justice. Within that system, the duty to refer reflects a fundamental tension: while Article 267(3) seeks to ensure the uniform interpretation of EU law, it also presupposes that national courts retain discretion in assessing whether a reference is necessary.

Doctrinal analysis confirms that the *acte clair* doctrine cannot be reduced to an objective test ([M. P. Broberg and N. Fenger](#), 2021, p. 144; [M. Bobek](#), 2021; [L. Cecchetti and D. Gallo](#), 2022, p. 44). Decisions not to refer are shaped by contextual factors such as the degree of doubt, the importance of the case, and the practical value of a preliminary ruling. The result is uneven referral practices across Member States, reflecting the persistent tension between formal obligation and practical flexibility.

Recent case law shows that the Court is not redefining the substantive threshold of *acte clair*, but focusing on how that doctrine is applied. Following *Conorzio Italian Management*, national courts are increasingly required to engage with EU law arguments and to justify their refusal to refer ([F. Donati](#), 2025). This reflects a broader strategy: strengthening judicial control over non-referral without directly limiting national discretion.

The duty to state reasons lies at the centre of this development. It leaves the *CILFIT* criteria formally intact, but transforms their operation in practice. What would otherwise remain an internal and largely unreviewable assessment becomes a decision that must be articulated and is therefore open to scrutiny. In this sense, the obligation functions as a form of indirect control: discretion is preserved, but is now subject to greater transparency.

This development is closely linked to the cooperative structure of Article 267, which reflects the principle of sincere cooperation laid down in Article 4(3) TEU. The preliminary ruling procedure depends on national courts acting as decentralised judges of Union law. Where refusals to refer are not adequately reasoned, that cooperative system is weakened, as neither the parties nor reviewing courts can verify whether EU law has been properly considered. The duty to give reasons thus ensures transparency in judicial dialogue.



4. The Judgment of the Court.

The Court reaffirmed that the preliminary ruling procedure is a cornerstone of the EU judicial system, ensuring the uniform interpretation of Union law. While national courts retain discretion in deciding whether to refer, that discretion is not unlimited.

It held that a court of last instance may not refuse to refer by means of summary reasoning, unless it sets out specific and concrete reasons demonstrating that one of the CILFIT exceptions applies. More concretely, the court must make clear whether it considers the issue irrelevant, already settled by existing case law, or sufficiently clear. The reasoning must enable the parties, and where appropriate reviewing courts, to understand why no reference was made.

5. Evaluation of the Judgment.

From a doctrinal perspective, Remling confirms a broader shift already visible in the case law discussed above: instead of changing the substantive conditions of non-referral, the Court strengthens its control by requiring national courts to give clearer and more structured reasons for not referring.

Advocate General *Ćapeta*'s Opinion in Remling articulates a more demanding understanding of the duty to give reasons than the one ultimately adopted by the Court. She emphasises that the obligation to state reasons cannot be satisfied by merely stating which situations developed in CILFIT apply. What matters is that the reasoning enables the parties to understand why the court considered the conditions for non-referral to be fulfilled. While the Advocate General does not reject summary reasoning, it must be sufficiently clear and concrete to make the underlying assessment of EU law intelligible and open to review. In this sense, the duty to give reasons requires more than a formal reference to the CILFIT situations: it obliges the court to explain its assessment ([T. *Ćapeta*, 2025](#)).

This approach differs from that of Advocate General Bobek in *Consortio Italian Management*, whose critique goes further. He challenges the very premises of the CILFIT



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framework. He stated that the current approach relies too much on the subjectivity of the national judge and should be replaced by a more objective imperative of securing uniform interpretation of EU law ([M. Bobek](#), 2021; [R. Torresan](#), 2021). By contrast, Advocate General Ćapeta accepts the CILFIT framework but seeks to discipline how it is used. Her focus is not on redefining the duty to refer, but on ensuring that decisions not to refer are properly reasoned, so that their justification can be understood and assessed.

The two approaches thus reflect different responses to the same problem. Advocate General Bobek calls for a rethinking of the structure and rationale of the duty to refer itself, questioning the very idea of uniformity underlying CILFIT. Advocate General Ćapeta, instead, works within that framework and relies on the duty to give reasons as a means of controlling how judicial discretion is exercised in practice.

The Court follows this latter approach, but in a more cautious way. Instead of tightening the conditions for non-referral, it concentrates on how those conditions are invoked. This strengthens the duty to give reasons, but the Court leaves the existing CILFIT framework unchanged and does not specify what level of detail is required in practice for reasoning to be considered sufficiently “specific and concrete”.

Moreover, Remling builds on KUBERA, but shifts the role played by Article 47 of the Charter. In KUBERA, the requirement to give reasons serves to ensure that a court of last instance actually engages with its obligation under Article 267(3) TFEU and does not bypass it through summary reasoning ([G. Capudi](#), 2025). In Remling, by contrast, the focus is on the justification of non-referral itself. The obligation to give reasons thus becomes a requirement governing how a refusal to refer must be explained and that respects the parties’ right to a reasoned judgment.

The role of Article 47 of the Charter is therefore central, but also limited. While the Court relies on it to reinforce the duty to give reasons, it frames that obligation primarily as an objective requirement linked to the proper functioning of Article 267 TFEU, rather than as a right belonging to the parties. Article 47 thus ensures that a refusal to refer is explained, but does not grant individuals a right to obtain a reference or to effectively challenge a



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refusal.

This distinction is significant. By treating the duty to give reasons as an element of judicial accountability rather than as a procedural right of the parties, the Court preserves the traditional understanding of the preliminary ruling procedure as a dialogue between courts. The invocation of Article 47 therefore strengthens control over non-referral, without altering the position of individuals within the system.

Remling therefore reveals a continuing tension. The Court increases its control over non-referral, but still preserves a broad margin of discretion for national courts in how they justify their decisions. This raises a critical question: does the duty to give reasons meaningfully limit non-referral, or does it simply lead to more carefully formulated refusals?

6. Implications.

The implications of *Remling* extend beyond the procedural context of the case. Courts of last instance will now be required to engage more explicitly with the duty to refer and to give concrete reasons when relying on the *acte clair* doctrine that comply with EU fundamental rights, in particular the right to effective judicial protection under Article 47 of the Charter. Summary reasoning mechanisms may therefore become harder to reconcile with EU law where they conceal the court's assessment of EU law issues.

Following this, the judgment strengthens the procedural framework surrounding non-referral by linking the duty to give reasons to Article 47 of the Charter. However, this development remains limited in scope. Article 47 does not confer a right for parties to obtain a reference, but only guarantees that a refusal is properly explained. This will likely lead to better reasoned refusals rather than limiting non-referral under Article 267 TFEU.

7. Conclusion.

Remling clarifies the link between the duty to give reasons and the functioning of the preliminary ruling procedure. By requiring courts of last instance to justify their refusal to



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refer questions of EU law, the Court strengthens the visibility of judicial reasoning and places the use of the *acte clair* doctrine under closer scrutiny.

However, the judgment remains cautious. By preserving the existing CILFIT framework and not clarifying what counts as sufficiently “specific and concrete” reasoning, the Court avoids addressing the practical limits of the duty to refer. As emphasised by Advocate General Čapeta, what matters is that courts of last instance make clear why a reference was considered unnecessary ([T. Čapeta](#), 2025).

In this respect, Remling strengthens accountability only in form. Without clearer standards, the duty to give reasons may lead mainly to better explained refusals, rather than genuinely limiting the use of the *acte clair* doctrine. The judgment therefore leaves unresolved whether it meaningfully constrains non-referral in practice.