

AG Proposes Paradigm Shift Regarding the Duty to Refer for National Last Instance Courts

News

Thomas Wahl

In his opinion dated 15 April 2021 in [Case C-561/19](#) (*Consorzio Italian Management and Catania Multiservizi SpA/Rete Ferroviaria Italiana SpA*), Advocate General (AG) *Bobek* proposed that the CJEU revisit its case law on exceptions from the duty borne by national last-instance courts to refer questions on the interpretation of Union acts to the CJEU (Art. 267 TFEU). The exceptions were established in the *CILFIT* judgment of 6 October 1982 ([C-283/81](#)); they are widely known as the “*acte éclairé*” and “*acte clair*” doctrine. AG *Bobek* stated that the current approach relies too heavily on the subjectivity of the national judge and should be replaced by a more *objective* imperative of securing uniform *interpretation* of EU law across the EU. According to his opinion, national courts of last instance have a duty to refer a case for a preliminary ruling on the interpretation of EU law, provided that the following three cumulative requirements are met:

- The case raises a general issue of interpretation of EU law;
- EU law can be reasonably interpreted in more than one possible way;
- The way in which EU law should be interpreted cannot be inferred from existing CJEU case law or from a single, clear enough judgment of the Court.

If just one of these requirements is not met, the national court of last instance is relieved of the duty to refer. AG *Bobek* indicated that the CJEU should strive for a paradigm shift (away from its *CILFIT* concept) in order to keep the system of preliminary ruling procedures feasible and warranted.

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