ARTICLES

IT TAKES TWO TO TANGO:
THE PRELIMINARY REFERENCE DANCE BETWEEN THE COURT OF JUSTICE OF THE EUROPEAN UNION AND NATIONAL COURTS
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LAWYERING EUROLAW: AN EMPIRICAL EXPLORATION INTO THE PRACTICE OF PRELIMINARY REFERENCES

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ABSTRACT: The preliminary reference procedure is often credited as the engine behind European integration. Until very recently however, the role of lawyers in this parable of law-led political unification has remained relatively unexplored. As a result, we still lack empirical insight into the day-to-day on-the-ground practice of "doing EU law" by legal professionals that represent parties before the Court of Justice. Without an exclusive focus on highly transformative, salient, or "landmark" cases, and opting instead for a bottom-up approach, this *Article* looks at the everyday practice of references to the Court of Justice from the perspective of the legal practitioners that litigate these cases. This *Article* draws on interviews with lawyers that have assisted individual litigants in preliminary reference procedures and presents an empirical exploration into the everyday context in which legal practitioners work on preliminary references cases. The central question this *Article* aims to answer is: How do lawyers deal with the challenges of representing individual parties in preliminary references cases? The findings underscore how the effective use of the preliminary

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reference procedure is reserved largely for organisations and "strategy entrepreneurs" with the necessary credentials, means, and expertise. On the one hand, it provides possibilities for "trumping" the domestic legal system whenever supranational legislation provides opportunities against national policy or legislation; on the other hand, in terms of access to justice and as a form of remedy, the preliminary reference procedure remains a difficult "sword" to yield.

KEYWORDS: preliminary reference procedure – Court of Justice – lawyers – legal expertise – legal opportunity structure – qualitative analysis.

I. INTRODUCTION

The EU is in many respects a genuine "lawyer's paradise"[1] – a unique regional polity with at its core a legal system capable of shaping political development in a most remarkable international integration project. In studying the co-development of law and politics in Europe's history, it is revealed that an abundance of legal and political science research credits EU law as being the "engine" of European integration.[2] At the core of this story of the construction of Europe is the "judicial dialogue" between the Court of Justice (hereafter: the Court) and national courts, in which the latter send references for a preliminary ruling to the Court in Luxemburg for clarification of EU law, and how it is to be applied in particular court cases within the national context. Through its historic judgments in such cases, the Court was able to constitutionalise EU law, curtail the sovereignty of EU Member States, and transform a politically divided Europe into a semi-federalist political union.[3]

Until very recently, the role of lawyers in this parable of law-led political unification has remained relatively unexplored. Lawyers participating in the foundational legal contestations before Europe's most powerful institution, the Court of Justice, featured in this grand story of Europeanisation as mere neutral agents in the service of the more prominent players (Member States, EU institutions, corporations, interest groups, and so on) of the Euro-law game. A recent turn towards this "most invisible of actors" revealed the unquestioned role legal professionals have had in the historical develop-

[1] A. VAUCHEZ, *Brokering Europe*, New York: Cambridge University Press, 2015.

[2] E. STEIN, *Lawyers, Judges, and the Making of a Transnational Constitution*, in *The American Journal of Comparative Law*, 1981, p. 1 *et seq*.; J.H.H. WEILER, *The Transformation of Europe*, in *The Yale Law Journal*, 1991, p. 2403 *et seq*.; A.M. BURLEY, W. MATTLI, *Europe Before the Court: A Political Theory of Legal Integration*, in *International Organization*, 1993, p. 41 *et seq*.; K.J. ALTER, *The European Court's Political Power*, in *West European Politics*, 1996, p. 458 *et seq*.; A. STONE SWEET, T.L. BRUNELL, *The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95*, in *Journal of European Public Policy*, 1998, p. 66 *et seq*.; R.D. KELEMEN, *Eurolegalism*, Cambridge: Harvard University Press, 2011.

[3] E. STEIN, *Lawyers, Judges, and the Making of a Transnational Constitution*, cit., p. 1; A. STONE SWEET, J. CAPORASO, *From Free Trade to Supranational Polity: The European Court and Integration*, in W. SANDHOLTZ, A. STONE SWEET (eds), *European Integration and Supranational Governance*, Oxford: Oxford University Press, 1998, p. 102; A.M. BURLEY, W. MATTLI, *Europe Before the Court*, cit., p. 41 *et seq*.; W. MATTLI, A.M. SLAUGHTER, *Revisiting the European Court of Justice*, in *International Organization*, 1998, p. 177 *et seq*.

ment of this "model of transnational justice".[4] With a focus on what are referred to as "Euro-lawyers", legal professionals that have contributed to the "construction of Europe", these practitioners feature in the literature as important actors – both as "brokers"[5] in EU law and as "ghost writers"[6] of the emerging European legal order. While lawyers are now given their rightful position among the host of actors included as protagonists of supranational legal development, they almost exclusively feature in case studies, prosopography, and historiographic accounts of some of the leading scholars involved in transformative or "landmark" judgments by the Court. As a result, we still lack empirical insight into the day-to-day on-the-ground practice of "doing EU law" by legal professionals that represent parties before the Court.

With an academic trend towards characterising the supranational judicial dialogue between courts as an opportunity for parties seeking to use European law to their benefit,[7] the question remains: How is this "legal opportunity structure" negotiated in practice? Without an exclusive focus on highly transformative, salient, or "landmark" cases, and opting instead for a bottom-up approach, this *Article* looks at the everyday practice of references to the European Court of Justice from the perspective of the legal practitioners that litigate these cases. As such, this *Article* presents an empirical exploration into the everyday context in which legal practitioners work on preliminary reference cases, the kinds of issues that arise from peculiarities of the procedure, the options lawyers have for dealing with these matters, and the considerations that play a role in this respect. Therefore, the central question this *Article* aims to answer is: How do lawyers deal with the challenges of representing individual parties in preliminary references cases?

In order to gain insight in the day-to-day practise of preliminary reference cases from the perspective of lawyers this *Article* draws on interviews with lawyers that have assisted individual litigants in preliminary reference procedures conducted in the context of a study into litigation before the Court.[8] For this study, a selection was made of references for a preliminary ruling by Dutch courts between 2008 and 2012. This result-

[4] Y. DEZALAY, B.G. GARTH, *Lawyers and the Construction of Transnational Justice*, New York: Routledge, 2012, p. 4.

[5] A. VAUCHEZ, *Brokering Europe*, cit.

[6] T. PAVONE, *The Ghostwriters: Lawyers and Politics Behind the Judicial Construction of Europe*, unpublished doctoral dissertation, on file with the Author.

[7] Cf. K.J. ALTER, J. VARGAS, *Explaining Variation in the Use of European Litigation Strategies: European Community Law and British Gender Equality Policy*, in *Comparative Political Studies*, 2000, p. 452 *et seq*.; D. CHALMERS, M. CHAVES, *The Reference Points of EU Judicial Politics*, in *Journal of European Public Policy*, 2011, p. 25 *et seq*.; R.A. CICHOWSKI, *The European Court and Civil Society: Litigation, Mobilization and Governance*, Cambridge: Cambridge University Press, 2007; L. VANHALA, *Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK*, in *Law & Society Review*, 2012, p. 523 *et seq*.

[8] A more extensive discussion of the results of this study can be found in J. HOEVENAARS, *A People's Court? A Bottom-Up Approach to Litigation Before the European Court of Justice*, The Hague: Eleven International, 2017.

ed in a total of forty-five preliminary references that included one or more individual litigants.[9] In total of 26 preliminary reference cases the actors involved in the case were successfully traced and approached for an interview. These respondents included litigants, their legal counsel as well as third parties such as labour union lawyers, EU law professors, and NGO representatives.

The insights presented in this *Article* are based on a total of 28 semi-structured interviews conducted with the lawyers and legal advisers involved in these cases. With the aim of reconstructing case trajectories from the perspectives of the actors involved in those cases, respondents were asked about both the development of the cases itself – including the underlying dispute, legal rationale and strategy followed – and their experiences during the preliminary reference procedure. In particular, respondents were asked about their experiences with regard to the decision to refer by the national court and to the preparation of the case as well as both the written and the oral phase of the preliminary ruling procedure. They were invited to reflect on the course of events during the hearing, the judgment by the Court and the course of the case after referral back to the national court. Respondents were especially asked about the issues and challenges they faced and what strategies they employed to deal with them. To increase the validity of the findings, data collected from the interviews was triangulated where possible with document analysis of sources including newspaper articles; relevant databases; legal documents of judges, lawyers, and/or other actors involved in the litigation; newspapers; personal and digital files. This data was used to provide the context for the reconstruction of these cases and their trajectory through the national and supranational legal system. The insights from this study are limited to references in the Dutch context. The extent to which the result can be translated to other jurisdictions, therefore, remains uncertain. However, the number of cases that were studied in-depth through the abovementioned methodology represent almost 60 per cent of the total amount of references involving individual litigants made by Dutch courts in the selected period and should therefore provide a reliable representation of lawyers' experiences with the procedure for the Dutch context.

This *Article* is structured as follows. Section II provides a concise exploration of the European legal system and the opportunities it is purported to provide to disenfranchised parties. Section III then presents the results from the interviews and analyses the context within which legal practitioners[10] have to work on preliminary reference cases, the kinds of issues that arise from peculiarities of the procedure, and the strategies lawyers employ in dealing with these matters. Section IV subsequently discusses the consequences of the presented findings and their relevance in terms of the distribution

[9] Due to the focus of this study on matters of individual rights and empowerment through litigation, the cases selected for this investigation included only those involving at least one individual party. Companies and institutions were therefore not taken into consideration.

[10] The practitioners discussed in this *Article* include both lawyers and non-lawyers, such as tax advisors; therefore, I use the term practitioner to cover both groups.

of legal agency within the functioning of the European legal system. Finally, section V concludes with a discussion on how these findings help our understanding of the relationship between law and politics in Europe.

II. A European opportunity structure

It has generally been understood that litigation, a court's resolution of societal questions or disputes, can lead to the clarification and expansion of existing laws and to the construction of new rules.[11] Within the European system, the semi-constitutional character of EU law and the fact that the Court's judgments are binding throughout the European Union has made the Court in Luxembourg the subject of both legal and political analysis. The Court is now widely considered to be responsible to a great extent for not only the unprecedented European integration of – first and foremost – its legal system but, by extension, also of its political and social spheres. In this respect, the preliminary reference procedure is rightfully heralded as the backbone of the European legal system, since historically the Court's most far-reaching judgments have resulted from preliminary references. The procedure has been the focus of research in terms of the opportunities it provides to parties invoking EU law in contests against state law and policy, on the one hand, and because of its role in the transformation and integration of Europe as a result of doctrines of EU law developed by the Court of Justice in preliminary rulings, on the other.

While the vast majority of EU law claims are still dealt with within the national courtrooms, the preliminary reference procedure provides a form of supranational judicial review, and the Court's judgments on principle have the capacity to halt certain national policies and set precedents that have an effect beyond the Member State. The mobilisation of EU law in the national courtroom therefore provides the public with new means of addressing possible government trespasses as well as bypassing the domestic system by invoking the powers of the Court.[12] In this sense, the "shield and sword" analogy, as borrowed from Dworkin, has been used to describe the use of EU law and the preliminary reference procedure as a strategic tool in the hands of litigants and civil society.[13] From a rule of law perspective – the idea that law, the legal system, and especially judicial review provide the means for the public to call their government to account – EU law and the preliminary reference procedure provide a means of review of government acts that was previously unavailable.

Additionally, a large body of research into the integration of Europe has given special weight to the role of private litigation in activating the preliminary reference system

[11] M. Shapiro, *Courts: A Comparative and Political Analysis*, Chicago: University of Chicago Press, 1981.

[12] R. Rawlings, *The Euro-Law Game: Some Deductions for a Saga*, in *Journal of Law and Society*, 1993, p. 309 *et seq*.

[13] G. Tridimas, T. Tridimas, *National Courts and the European Court of Justice: A Public Choice Analysis of the Preliminary Reference Procedure*, in *International Review of Law and Economics*, 2004, p. 128.

and, by extension, fostering integration dynamics in Europe.[14] Private parties are recognised as playing an integral part in this equation, in that they are the ones expected to activate this system – or to initiate the dialogue between courts – by engaging in the procedure. In its report on access to justice in the Union, the Directorate-General for Internal Policies defined the purpose of the preliminary reference procedure as that of ensuring both the uniform interpretation of EU law throughout the Union and the effective application of EU law,[15] while stressing its effective function of enabling citizens to enforce their Union rights within their national jurisdiction: "By being able to request references for a preliminary ruling before their national courts, citizens may be able to draw the CJEU's attention to national application or judicial interpretation of EU law in the field of justice which they believe impedes effective access to justice".[16]

As such, it is argued that preliminary rulings can encourage national legal reforms to comply with EU law, and that citizens, when they are party to a dispute before a national court, can ask the court to refer the matter to the Court of Justice. This possibility to request preliminary rulings means that citizens can draw the attention of the Court to the national application or judicial interpretation of EU law where a national interpretation hinders their effective access to justice. Such requests may increase in the future, as there is a recent trend in the case law of the European Court of Human Rights to protect citizens' ability to make these requests. It follows from case law that where a national court refuses to refer a case to the Court of Justice following a request by a party to the case, it is for the national court to indicate why the question should not be referred. If it does not give reasons and ignores the request, this refusal may prove to be arbitrary, thus infringing the right to a fair trial under Art. 6 of the European Convention on Human Rights.[17]

Although there is strong consensus about the pivotal role the procedure has had in the transformation of Europe, there remains significant ambiguity as to why the system is used, and who is primarily responsible for its success. The litigation process in itself has remained relatively unexplored. Scholarly work as well as occasional national re-

[14] For an overview see L. Conant, *Review Article: The Politics of Legal Integration*, in *Journal of Common Market Studies*, 2007, p. 45 *et seq*.

[15] See also M. Broberg, N. Fenger, *Preliminary References to the European Court of Justice*, Oxford, New York: Oxford University Press, 2014, p. 2.

[16] N. Rass-Masson, V. Rouas, *Effective Access to Justice*, Study for the European Parliament, Directorate General for Internal Policies, PE 596.818, 2017. See also: T. Cowen, *"Justice Delayed is Justice Denied": The Rule of Law*, *Economic Development and the Future of the European Community Courts*, in *European Competition Journal*, 2008, p. 16; G. Tridimas, T. Tridimas, *National Courts and the European Court of Justice*, cit., p. 125 *et seq.*

[17] European Court of Human Rights: judgment of 8 April 2014, no. 17120/09, *Dhahbi v. Italy*; judgment of 21 July 2015, no. 38369/09, *Schipani v. Italy*; judgment of 16 April 2019, no. 55092/16, *Baltic Master v. Lithuania*; judgment of 13 February 2020, no. 25137/16, *Sanofi Pasteur v. France.* See also J. Krommendijk, *"Open Sesame!" Improving Access to the CJEU by Obliging National Courts to Reason Their Refusals to Refer*, in *European Law Review*, 2017, p. 46 *et seq.*; M. Broberg, N. Fenger, *Preliminary References to the Court of Justice of the EU and the Right to a Fair Trial Under Article 6 ECHR*, in *European Law Review*, 2016, p. 607.

ports dealing with the procedure tends to focus predominantly on the interinstitutional "dialogue" between the national courts and the Court of Justice.[18] As a result, existing literature fails to capture the contributions of other essential actors. These actors include the parties to the proceedings, as well as intervening parties such as the Member States and the European Commission, which play a pivotal role in the preliminary ruling procedure. Art. 23, para. 2, of the Statute of the Court enables "the parties, the Member States, the Commission and, where appropriate, the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute" to submit their written observations. Art. 32 of the Statute makes it possible for the Court to "examine" the parties to the case during the oral hearing, "through their representatives".[19] Since compliance by Member States is not self-evident[20] – owing to administrative incompetence, misinterpretations, the linking of implementation to a national development, or a deliberate choice by the government – domestic pressure is needed in order to ensure compliance with EU law. When such pressure is essentially channelled through the courts, effective advocacy becomes especially salient.

While private litigants are seen as central actors in the integration dynamics, there is still little insight into who goes to Court in Europe, and why. As such, "Euro-litigation" remains somewhat of a black box. Studies into the use of the preliminary reference procedure from the perspective of litigating parties have understandably tended to focus on strategic litigation and its effects in terms of fostering and steering the dynamics of integration. However, in order to gain insight into the practice of the preliminary reference procedure from a broader perspective and to avoid a confirmation bias due to selective data-collection,[21] it is necessary to take a look at the procedure from the inside and without prejudice towards the (academic) salience of certain cases: that is, without pre-selecting for "landmark" judgments. Moreover, there remains significant ambiguity about the extent to which parties to the national proceedings are involved in pushing national judges towards using the preliminary reference procedure.[22] As will be pre-

[18] General Report ACA Europe Seminar on the preliminary ruling procedure, The Hague, 7 November 2016, available at www.aca-europe.eu.

[19] While these other institutions, and especially the European Commission, play a pivotal part during the proceedings, the sole focus of this *Article* is on the representatives of the parties and their experiences with the preliminary reference procedure.

[20] G. FALKNER, M. HARTLAPP, O. TREIB, *Worlds of Compliance: Why Leading Approaches to European Union Implementation Are Only "Sometimes-True Theories"*, in *European Journal of Political Research*, 2007, p. 395 *et seq.*

[21] Cf. Börzel who argues that research on litigation and participation in the EU tends to suffer from a selection bias on the dependent variable and as such fails to recognise the paradox that arises from increased opportunities available in EU law – *i.e.* the empowerment of the already powerful. T. BÖRZEL, *Participation Through Law Enforcement: The Case of the European Union*, in *Comparative Political Studies*, 2006, p. 128 *et seq.*

[22] Cf. D. CHALMERS, M. CHAVES, *The Reference Points of EU Judicial Politics*, cit., p. 33 *et seq.* find in the British context, that "[a]lthough national courts formally make the references to the Court of Justice, often

sented in the next sections, in which the result from interviews are discussed, the extent to which this is actually the case has significant bearing on the ways in which lawyers are able to navigate the procedure and advocate effective on behalf of their client.

III. Lawyers and references: an unexpected task

The EU legal system – which combines both centralised enforcement through the vigilance and supervision of the European Commission and a decentralised form of enforcement through national courts – relies to a significant extent on the responsiveness of the European polity. The EU political institutions and the Court of Justice alone cannot ensure the effective application of EU law. It depends strongly on domestic courts and on citizens that initiate proceedings before these courts to enforce their rights. When it comes to signalling possible infringements and stimulating the application of EU rules and principles, a large part of this responsibility falls into the hands of legal practitioners that use and invoke these rules in national legal proceedings and stimulate the referral of matters to the Court. Earlier research has focused on familiarity with and experience of the procedure among national judges, with divergent but overall not all too promising results.[23] As also highlighted by Geursen's *Article* in this Special Section with regard to national judges in overseas territories, national judges generally seem to lack the necessary knowledge of EU law. The "institutional consciousness" and the demands of everyday labour may cause judges to resist confrontations with new, foreign, and little-known sets of rules. An in-depth study of lawyers that have experience with the preliminary reference procedure provides the opportunity to see how similar aspects play a role among lawyers and their referred cases.

Before discussing their accounts of the practical aspects of the preliminary reference, it is helpful to have a look at the selection of lawyers under scrutiny. Legal practitioners that have worked on a case that has reached the Court through a preliminary reference belong to a very select group. When considering that judges in the Netherlands – a country with a total caseload in the tens of thousands, and one of the Member States with the highest number of references to the Court every year – still only make

the reference will have been drafted by the litigants, and it is highly unusual, other than in criminal cases, for a national court to refer without one litigant pushing for it". While Hoevenaars concludes about the Dutch context only in about a third of the cases studied can be considered "proactive" in the sense that "the litigants had an express wish and aim to have their case adjudicated by the CJEU, and implored the national court(s) to refer their case" (J. Hoevenaars, *A People's Court?*, cit., p. 75).

[23] J. Blom, B. Fitzpatrick, J. Gregory, R. Knegt, U. O'Hare, *The Utilisation of Sex Equality Litigation Procedures in the Member States of the European Community, a Comparative Study*, Report given by the Commission, DG V, Brussels, 1995; T. Nowak, F. Amtenbrink, M. Hertogh, M. Wissink, *National Judges as European Union Judges*, The Hague: Eleven International, 2012; U. Jaremba, *At the Crossroads of National and European Union Law. Experiences of National Judges in a Multi-level Legal Order*, in *Erasmus Law Review*, 2013, p. 191 *et seq.*

some 30 references annually,[24] participation in this procedure is a rare experience.[25] For most, it will happen only once in their entire career. By the very nature of preliminary reference proceedings, the uncertainty of referrals, and the multiplicity of subjects and legal disciplines, the collection of legal practitioners in the cases at hand can therefore hardly be considered homogeneous. In many respects, these practitioners share only the fact that they have participated in these proceedings. The practitioners interviewed include lawyers from larger legal firms, especially in tax law, as well as many from solo law practices. However, one striking characteristic shared among most of them is that they are not in any way specialised in EU law. The in-depth study of preliminary reference cases in Dutch courts reveals that in a significant portion of the cases a reference to the Court comes as a surprise to the parties in the national proceedings, regardless of whether or not EU law arguments have been used. In over 60 per cent of the cases studied, the parties made no active effort to push for a reference. This in itself is an important observation about the (non-) purposefulness behind references to the Court, but it also has important repercussions for the way legal practitioners can or cannot work a case once it is referred. When the decision to refer cannot be ascribed to pressure from the litigating party, it is less likely that the lawyer in question has any particular expertise in EU law or experience with preliminary references.

Some of the lawyers do advertise their experience with litigating before the Court, but for most this is a form of *post hoc* advertising of broadened expertise after they have had one case before the Court, rather than actually profiling themselves as experienced "Eurolawyers". The main exceptions are law firms that specifically profile themselves as Eurolawyers, even for individual claimants, specifically targeting their services at certain societal groups or professions with distinct – usually cross-border – characteristics. Such groups are likely to encounter EU law in ways that might lead to judicial procedures: for instance, cross-border workers or migrating pensioners. Of the 28 lawyers interviewed, only one had a standing record of acting before the Court. This particular lawyer – over the course of 25 years – had acted, among others, on behalf of larger associations of farmers, but mainly on behalf of government agencies[26] in over 50 preliminary reference procedure cases and over 30 direct actions, of which over 10 were appealed before the Court. In the case studied in the context of this research, he was hired by a large association of pensioners – who sought to take on Dutch policy on health insurance for pensioners living abroad – after their case was referred to the Court.

[24] On average, 28 references were made annually by the Dutch judiciary in the period between 2003-2012. Statistics available at curia.europa.eu.

[25] According to statistics from the Dutch Bar Association, the Netherlands has over 17,000 active lawyers. This number does not include legal practitioners such as tax advisors (over 11,000) who may also act as counsel in preliminary reference cases.

[26] In particular the *Sociale Verzekeringsbank* (the agency responsible for national insurance schemes in the Netherlands).

Beyond a general familiarity, the majority of lawyers in this study admitted to having no previous experience in EU law before their case was referred to the Court of Justice. This included all cases where the referral was not the aim of the litigants or their counsel; but even in cases where lawyers were pressing for a reference, some of them underlined their relative inexperience going in. On the micro level, an unexpected referral to the Court can create different challenges for lawyers, especially since they are not prepared for a reference, nor do they generally possess the expertise or experience to work a case at the level of the Court of Justice.

III.1. Allocating resources

One of the major challenges for lawyers related to preliminary references is the extra time that is involved when working a case after reference to the Court. The amount of time spent by a lawyer on the reference part of any single case varied considerably, ranging from no additional work done up to several full working weeks. The extra hours involved in preparing a reference does not fall within a lawyer's regular day-to-day practice. Initially, the time consumption can increase by the simple fact that the procedure is different from what lawyers are used to. Apart from the substantive legal work, a reference comes with its own timeline, its own rules of procedure and requirements. Even before dealing with the intricacies of EU law, these practitioners are therefore confronted with procedural requirements with which they are unfamiliar.

The difference in the amount of time lawyers spend on references is in large part dependent upon the complexity of the case as well as on the nature of the questions that are referred to the Court. The preliminary questions can be the result of arguments presented in the national court that cast doubt on the interpretation of certain EU legislation. The substantive argumentation that is built before the national court then coincides largely with the way in which a case is advocated before the Court. In these cases, practitioners tend to choose to do little more than adjust their main written arguments to the format of the Court, and possibly expand on certain arguments brought forward in national proceedings. In other cases, the central questions that lie at the basis of a referral involve much more complex combinations of national rules, EU legislation, and the Court's jurisprudence, along with written observations by the European Commission and possibly multiple Member States. In such an instance, a lawyer may wish to respond to these observations during the oral stage of a case. This can require a whole new line of argumentation aimed at taking a position on the specific matter dealt with in the reference, which may be a significant diversion from the arguments brought forth in the main proceedings. In such cases, lawyers spend several full working weeks simply preparing the written part of the proceedings, and more hours on the remainder of the procedure. This creates a significant challenge especially for the solo law practices that do not have as much flexibility in allocating their resources.

If colleagues are part of their network, lawyers turn for help to those who have previous experience with preliminary references. However, given the scarcity of references, this is not a large pool from which to source. Some lawyers, being unfamiliar with the preliminary reference procedure, unaware of the way such cases are dealt with, and without help from their network, decide to do nothing and simply await answers from the Court.

III.2. Going to Luxembourg

All preliminary reference cases include a written stage, in which parties to the proceedings, as well as privileged actors like the European Commission and Member States, may submit their written observations. Within the written procedure there is no opportunity to respond to the observations filed by other parties. The only opportunity for parties to respond to these positions is during the oral proceedings, requiring the lawyers to travel to Luxembourg.[27] The extra costs involved in a preliminary procedure therefore include not only the additional work that goes into the reference part of a case but also the cost involved with regard to a trip to Luxembourg if the parties choose to participate in the oral proceedings. Participation in the oral proceedings thus becomes, at least in part, a financial consideration. In a common private practice, the financial burden of the added hours, and additional expenses, will be charged to the client. The cases studied, however, all involve individual litigants, and unless third parties back them financially, such additional costs are not easily covered. In such cases, lawyers have to come to an agreement with their client about the amount they will charge. This generally results in two possible outcomes. Either the decision is made to stick with the written observations and forego the possibility of participating in the oral proceedings, or the lawyers charge only a minor amount or even none of the costs related to the trip to Luxembourg and pick up the bill themselves. In only one instance did the client insist on going to Luxembourg, and was willing and able to pay the additional costs.[28] Where these costs are considered too high, clients and their counsel may choose to forego their chance to plead their case before the Court, and with it the chance to respond to questions from the judges and to the observations of both the opposing party and other intervening parties.

Since the selection of cases for this study included only individual litigants, a large number of them were eligible for subsidised legal aid in the Netherlands.[29] In cases financed through legal aid, similar but also different financial considerations play a role.

[27] Not every case includes an oral stage. The rules of procedure of the Court of Justice allow the oral procedure to be dispensed with unless one of the litigants or an interested party taking part in the procedure has lodged a request for a hearing to be held, giving the reasons that the litigant or interested party wishes to be heard. Art. 59 of the Statute of the Court.

[28] In other cases, where clients insisted on attending the hearing, third parties such as a union or an interest group covered the costs, and therefore the individuals themselves did not incur additional costs.

[29] The Netherlands has a centralised system, which provides legal aid to people of limited means.

The next section deals with the importance as well as the difficulties of legal aid schemes with respect to preliminary references.

III.3. Legal aid and references

A large number of legal practitioners, especially those working in the areas of asylum, migration, and social security, practise social advocacy, assisting people who cannot afford a lawyer. They help clients who receive support from the government for financing their legal actions through subsidised legal aid. The importance of legal aid increases when one's case is referred to the Court. References, however, generally cause more work than is planned. And as previously discussed, the relative complexity of such cases in comparison to practitioners' day-to-day practice provides lawyers with a substantial number of extra hours to charge. Without the possibility of legal aid, the costs would be well-nigh impossible for low-income individuals to cover.

Therefore, as far as the Dutch context is concerned, subsidised legal aid for the most part relieves litigants of such a burden. The Dutch system is based on the granting of an amount of "points" for providing legal aid at a certain stage in the procedure. One point equals 106 euro and reflects approximately one hour of work.[30] However, since subsidised legal aid only provides for a fixed fee based on the stage of proceedings, there is a limit to the number of hours of work for which a lawyer can be reimbursed. In very complicated and therefore time-consuming cases, officially called "laborious cases", a lawyer can request reimbursement of extra hours on top of the compensation granted by the fixed fee system. Every hour above the fixed fee is compensated with one point: that is, if the request – including a budget estimating the hours needed – is authorised by the Legal Aid Board in advance.[31] The Board can accept the request and award additional remuneration when there is substantial factual complexity that is legally relevant or when the case is legally complex.[32] However, even when considering the extra remuneration, there is no compensation for the expenses of the trip to Luxembourg. And even when the extra hours are granted, remuneration may still not completely cover the effective time put into such a case. It is up to the lawyer to decide whether or not he or she is willing to bear this additional expenditure. Consequently, advocating the client's interests in these cases depends to a large extent on his or her lawyer's personal investment in a case.

[30] Previously, this hourly wage was indexed every year. However, because of government budget cuts, this amount has been reduced several times in recent years. Since 2012, the hourly wage is around 106 euro. Even with subsidised legal aid, clients have to contribute an income-dependent contribution varying from 143 euro to 823 euro. Art. 3 of the Remuneration Legal Aid Decree 2000 (*Besluit vergoedingen rechtsbijstand 2000*), available at maxius.nl.

[31] Art. 5a, para. 6, Remuneration Legal Aid Decree 2000.

[32] Legal Aid Board's Complex Cases Guide (*Leidraad Bewerkelijke Zaken*), available at www.recht.nl.

Preliminary references therefore put an added strain on the legal assistance provided by these lawyers. Where it is the explicit aim of the lawyer to obtain a judgment on principle, either specifically from the Court of Justice or the highest national court, these considerations can of course be made beforehand, and some form of agreement can be reached with the client or several interested parties, as will be the case in strategic test cases. In the case of multiple interested clients, or other parties such as interest groups and unions, these costs can more easily be covered. Such options are not available for individual clients, and financial aspects therefore truly have an impact on individual litigants to a greater extent.

III.4. Lawyers' motivation

Regardless of the costs involving references, many lawyers choose to invest in these cases and are willing to make the trip to Luxembourg. Lawyers give several non-exclusionary reasons for their decision to do so. The motivation for such a trip often comes from both personal interest and professional ethics with regard to representing the interests of one's client. Some consider the opportunity to plead a case before the Court an honour, or feel it is their professional duty to work a case to the full extent of their ability.

Due to their legal complexity as well as the possibility of creating a precedent at the Court of Justice level, cases like these are very appealing to lawyers. Consequently, part of the motivation and interest is usually at least partly of a more personal nature in that it is simply a once-in-a-lifetime opportunity to plead a case before the highest court in the EU. Professional considerations and a personal interest in the "Luxembourg experience" are not mutually exclusive. When it comes to representing the interests of one's client, even when neither the client nor subsidised legal aid covers the costs, professional ethics compel lawyers to at least try to make the most of what for some is a significant investment. However, not all lawyers are willing to do so, as is evidenced from one joined case where the lawyers in cases that were joined with others appeared to have contributed nothing – neither written observations nor attendance at the hearing – to the proceedings before the Court. This lack of involvement could be due to the fact that in this case the lawyer was aware that a team of academics was assisting the lawyer being interviewed, and thus chose to leave matters up to them. In some cases, however, and on the basis of a general unfamiliarity with and possible misunderstanding of the nature of these proceedings, counsel refrain from filing any observations, and simply await answers from the Court.

Lawyers have a key role to play in the dynamics of these cases and in balancing collective and individual interests, taking on cases that in and of themselves, from a commercial point of view, are not viable. This applies especially to cases pertaining to migrants and asylum seekers. Asylum and migration law are areas where practitioners can be found to have a professional engagement specific to these types of legal action, which is related directly to the stakes in these cases. Lawyers are forced to make deci-

sions on the amount of time and overtime they are willing to spend on a case, which therefore will effectively be truly *pro bono*. Moreover, since these lawyers have no certainty as to the chances of a case actually being referred to the Court – in many cases it comes as a complete surprise – they have no way of preparing for this additional expenditure, and therefore have to make *ad hoc* decisions on whether or not they are willing to spend additional time, and/or if the client can be asked to cover those costs.

III.5. The "language" of EU law

Apart from structural obstacles like time and financial considerations, there is also the added as well as linked challenge of a general lack of expertise in working cases within the context of EU law, supranational jurisprudence, and possible conflicts between EU and national law. EU law has its own structure and logic and the Court's jurisprudence its own language.[33] Scholars and lawyers that deal with EU law are regularly very familiar with its logic and have been acculturated into this language. They share the *argot* of EU law and are familiar both with the legal grammar of EU principles and the reasoning style in the Court's jurisprudence.[34] Common practitioners, who deal only occasionally with EU law, let alone have their case referred to the Court, do not share this characteristic. Once a case is referred to the Court, both the venue and the context of the case change, which means lawyers have to adapt both their "language" and strategy accordingly. As a result, practitioners are confronted with a situation in which they have to argue a matter within the framework of an unfamiliar legal sphere, in a different language so to speak: namely, that of EU law and the Court's jurisprudence.

Most of the lawyers interviewed are not in any way experts in the field of Euro-litigation, at least not beyond the point of bringing up possible infringements of EU law in national proceedings. Only six of the 28 lawyers interviewed for this research claimed to have more than a basic knowledge of the Court's jurisprudence relevant to their case. Moreover, the expertise that lawyers did claim to have was usually *post hoc*, gained while working on that one particular case. Depending on the complexity of the questions referred to the court, references are something outside of the daily expertise of many lawyers. Ranging from the formulation of the questions that are referred to the Court to the writing of observations and effective participation in the oral stage before the Court, this lack of knowledge and expertise in the field of EU law affects practitioners' capacity to undertake effective advocacy at different stages in the preliminary reference proceedings.

[33] V. Réveillère, *Le juge et le travail des concepts juridiques: le cas de la citoyenneté de l'Union européenne*, doctoral thesis, European University Institute, 2018, available at cadmus.eui.eu.

[34] The Court's jurisprudence is structured particularly along very specific, almost syntax-like lines due to the need for uniformity. As analysed by Lasser, who states "ECJ decisions are rather short, terse, and magisterial decisions that offer condensed factual descriptions, impersonally clipped and collegial legal reasoning, and ritualized stylistic forms". See M. De S.-O.-L'E. Lasser, *Judicial Deliberations: A Comparative Analysis of Judicial Transparency and Legitimacy*, Oxford: Oxford University Press, 2004, p. 104.

III.6. The significance of the hearing

The technical legal nature of procedures before the Court leads some lawyers to conclude that the oral proceedings do not matter a great deal to the outcome of a case at the national level. And even among insiders the idea is that the hearing is more a sign of goodwill from the judges, the practical importance of which – for the conclusion of a case – is seen as being auxiliary to the written proceedings. The idea of its relatively diminished usefulness can play a role in practitioners' decision not to attend the hearing in Luxembourg. However, the oral stage of the proceedings provides parties with the only possibility to respond to observations filed by both the European Commission and intervening Member States. And there are a number of reasons that these proceedings can and do matter, and that the parties involved have an interest in pleading their case both in the written and in the oral stage. Firstly, the fact that Member States choose to intervene and provide their view on the matter at hand shows that they acknowledge the importance of pleading a case before the Court. Secondly, the Advocate General's opinion[35] is formulated after the written and – if applicable – oral proceedings, giving him or her the chance to ask questions that may help in formulating a stance. Thus, written and oral observations and the possibility of answering questions on the matter may influence the Advocate General's stance. And thirdly, a lawyer has the opportunity at a hearing especially to provide and clarify "pure facts or aspects of national law".[36] Broberg and Fenger describe how "[o]ften the judges or the Advocate General will ask more argumentative questions in order to test the strength of a legal argument".[37] Such questions can play an important role in the framing of the issue before the Court, and allow for elaboration on the way national policies work out in practice – details that may matter greatly for the conclusion of the case.

As Edward states: "The court relies heavily on the Commission, to fill in the factual and legal background".[38] The Court examines cases on the basis of observations by the parties, and being present gives an opportunity for parties to fill in the blanks and clarify certain points as well as to respond to the representation of the facts by the other parties. Where they have an interest in a certain outcome of a case, Member States intervene in order to provide their viewpoint. The fact that the Court relies on these pleadings for its judgment, and therefore the significance of providing one's viewpoint, is confirmed by lawyers who attended the hearing and who describe how clarifying and providing a competing representation of the fact to that of the Member State in opposition was an important part of the proceedings.

[35] The Court may choose to deal with cases without an opinion of the appointed Advocate General.

[36] D. Edward, *How the Court of Justice Works*, in *European Law Review*, 1995, p. 545. See also D. Vaughan, M. Gray, *Litigating in Luxembourg*, in *Jersey & Guernsey Law Review*, 2007, p. 1 *et seq*.

[37] M. Broberg, N. Fenger, *Preliminary References to the European Court of Justice*, cit., p. 382.

[38] D. Edward, *How the Court of Justice Works*, cit., p. 539 *et seq*.

Choosing to plead one's case before the Court of Justice may prove worthwhile and can be important in providing the Court's judges with the necessary facts and context of a case. The general lack of lawyers' experience in this arena diminishes their effectiveness once their case is brought before the Court, where they find themselves up against – often several – representatives of Member States who litigate before the Court on a regular basis. This can put lawyers at a significant disadvantage, especially when compared to the genuine repeat players before the Court: namely, the representatives of Member States and the European Commission, who work on Court's cases on a daily basis, and who are able to build up significant familiarity with the Court's *modus operandi* and culture.

III.7. The ways of the Court

Language and translation play an immense role in the day-to-day practice of the Court. Almost 1,000 posts and over 45 per cent of the Court's staff consist of language – and translation – related services. These include over 600 lawyer linguists and over 70 interpreters that translate all the work done at the Court into 24 official languages in 552 language combinations, with over one million pages being translated each year.[39] The multi-linguistic nature of the EU also plays an important role during the oral proceedings. While the written observations are meticulously translated, and often discussed in detail in the judgment itself, the oral observations are subject to simultaneous interpretation, with the consequent risk of communication problems, translation mistakes, and the failure of judges to understand immediately the points that a party is trying to get across. Lawyers are therefore implored to speak slowly and clearly, and, where possible, to provide their plea notes beforehand to the relevant interpreters.

When it comes to pleading one's case before the Court, language also matters in a different sense. Lawyers acting more often before the Court know how to address the Court. Repeat players know its "language" and style, and this is certainly true of the European Commission's representatives and agents of the Member States, in addition to specialised lawyers that are hired to appear before the Court. Where most Member States have an experienced array of lawyers at their disposal who attend hearings and deal with cases before the Court on a regular basis, the average litigant does not have access to such representation. This applies to his or her knowledge of EU law, knowledge of procedural requirements, accurate knowledge of the possibilities and importance of the written and oral stages in the proceedings, and knowledge of the "ways of the Court". As a long-standing member of the Court bench has said, "[t]he basic rules of advocacy apply as

[39] Since the 2004 enlargement, all court documents must be written in one of the five pivot languages, which are English, French, German, Italian, or Spanish (and from 2018 Polish), and are then translated into one of the 24 recognised EU languages in a two-stage process. See K. McAuliffe, *Enlargement at the European Court of Justice: Law*, *Language and Translation*, in *European Law Journal*, 2008, p. 806 *et seq*.

much in pleading before the European Court of Justice as before any court or tribunal [...]: know your court; know your procedure; and know what you are trying to achieve".[40]

In addition to preparing the way one will address the Court, it also proves useful to be aware not only of how proceedings are conducted but also of the preferences of the judges. Lawyers who only appear occasionally before the Court will in a sense be addressing the Court in another language, in another *argot*. He or she may be very blunt in making certain points or simply speaking in the legal language of their national jurisdiction, possibly causing difficulty in communication. It is then for the Court to determine whether this one-shotter really has a good point, even though he or she is not as capable of making this point *à la communautaire*. At times, however, this may require the Court to go beyond the arguments that are presented to it. The question remains open as to what extent the judges and Advocates General of the Court of Justice are willing to do so, and therefore as to how effective these lawyers can be.

III.8. Coping strategies

The aforementioned lack of experience and expertise among lawyers confronted with a reference to the Court prompts many of them to seek outside assistance. Turning to experts, usually EU law scholars, helps them work their case at the Court of Justice's level. For many lawyers, the first time they are called on to deal with matters beyond their daily practice is the moment a national judge decides to refer questions to the Court. The questions that the national judge will ask the Court are sometimes formulated in cooperation with the parties to the proceedings, and are usually provided to them for comments, revision, or reformulation. Debating the formulation of questions with the aim of steering them in a desired direction again requires at least some expertise in the field of EU law. The formulation of questions that are referred to the Court can have an important bearing not only on the focus of what will be discussed before the Court but also on the scope of the eventual judgment. Where questions are formulated very narrowly and focused on very specific circumstances, the impact of the Court's answers will potentially be smaller than when the questions are formulated more broadly. The understanding of these nuances – as well as signalling possible opportunities and suggesting other formulations to the national court – also requires expertise.

After the questions are referred to the Court, the parties are requested to send in their observations and to formulate their stance on how the questions are supposed to be answered. This is the next stage where lawyers may feel ill-equipped to be effective in their advocacy. Strikingly, over half of the lawyers interviewed decided to reach out to experts in academic circles for help. Such a response to their lack of expertise, and soliciting help from external experts, not only underscores a general lack of expertise

[40] D. Edward, *Advocacy Before the Court of Justice: Hints for the Uninitiated*, in G. Barling, M. Brealey (eds), *Practitioners Handbook of EC Law*, London: Trenton, 1998, p. 28.

among those confronted unexpectedly with a reference but it also reveals where the expertise is to be found. Academia is the obvious choice for most lawyers when seeking help with working on the complexities of EU law questions. Experts with a good understanding of particular fields of EU law, and with knowledge of the relevant Court's jurisprudence, are usually found among scholars. However, while their expertise helps lawyers to formulate their arguments and to include relevant case law, their knowledge of the practice of Court of Justice proceedings is usually also limited.

IV. Macro effects of the allocation of Eurolaw expertise

The previous sections have provided an overview of the general lack of experience and expertise among lawyers confronted with a reference to the Court of Justice. The unpredictability of preliminary references is an important aspect of these procedures and is related to the possibility for litigants to solicit expert services. In comparison, in direct actions before the Court, the dispute clearly unfolds within the sphere of EU law, since it is addressed at one of the EU institutions. In the preliminary reference procedure, however, a dispute may in the course of proceedings turn gradually into a matter of EU law, which makes it unlikely that the litigants will have EU law expertise at their immediate disposal. Hence, the unpredictability of a reference forms an inherent obstacle to the effective advocacy of preliminary cases at the Court of Justice's level.

Given the inherent obstacles to hiring expertise, when looking at the lawyers involved in these proceedings it is all the more striking to see some names occurring more than once. Considering that only a few dozen references are made each year, together with the fact that the case selection in this study spans only a period of five years, being involved in more than one case suggests something more than coincidence. This could lead to the conclusion that these lawyers must have some form of expertise in EU law and are actively approached by parties – litigants or other interested actors involved in litigation – because of that. However, this could only be confirmed in four cases. In only two cases did the litigant or litigants themselves hire them before their case was referred to the Court. In the other cases, other parties were responsible for involving these lawyers in the proceedings. In two cases, lawyers were approached by colleagues to assist in a preliminary reference case based on their – albeit single – previous experience with the procedure. Another lawyer, who had no significant expertise in EU law, considered it a complete coincidence that he had participated in two preliminary reference cases, especially given the fact that the two cases were in two completely unrelated fields of law. These lawyers, although they have had some repeated experiences with the Court, cannot be considered true repeat players.

Although small in number, there are repeat players before the Court among lawyers in the cases studied. Of all the legal counsel in the total of selected cases that could be identified, a small minority was specialised specifically in EU law. Among them were professors of European fiscal law, lawyers with a specialisation in the Association

Agreement between the EU and Turkey, and lawyers working in the area of labour law and social security specifically for cross-border workers. It can easily be reasoned that the individual one-shotter will not be among those able to solicit the services of these professionals with extensive Euro-litigation expertise. This is why experienced Euro-lawyers in preliminary reference procedure cases show up mainly in support of larger repeat players, both private and public or semi-public. As such, this is an illustration of what Galanter called the "allocating effects" of lawyer expertise, meaning that some lawyers may specialise and build up experience with Euro-litigation, but that we can expect these lawyers to take up positions litigating on behalf of the more affluent parties: *i.e.* the larger companies, Member States and institutions, NGOs, interest groups, and so forth. As we have seen, this is also why these "Euro-litigation one-shotters" – litigants as well as lawyers – often reach out to academics with expertise in the field of EU law, who subsequently act *pro bono* in support of these parties. For these one-shotters, soliciting the expertise of scholars who are willing to lend their services free of charge tends to be the only option of getting help.

V. Conclusions

Insight into the day-to-day practise of lawyers working on preliminary references cases reveals the challenges and dilemmas these legal professionals face when their case is referred to the Court of Justice. This *Article* set out to open the existing black box of context in which legal practitioners work on preliminary reference cases. The interviews with lawyers that have experienced a reference reveal several aspects of the preliminary procedure that significantly challenge the effectiveness of lawyers in working a case at the Court of Justice's level. Due to the highly infrequent nature of referrals, the more general build-up of expertise of lawyers in this area is less likely. For a practitioner, having a case referred to the Court is a highly improbable event, and is often a once-in-a-lifetime experience. For most lawyers, therefore, the Court of Justice remains an unlikely destination, both in result as well as in objective. This makes it difficult for parties to find and solicit lawyers specialised in Euro-litigation. In a financial sense, hiring specialised Eurolaw experts does not prove to be an option for the bulk of the individual litigants in these cases, considering that these lawyers will usually be more expensive as compared to any generalist practitioner the litigants may be able to afford through subsidised legal aid. Therefore, cost considerations often fall on the lawyers themselves, who have to decide how much unpaid extra work they are willing to put into a case. In terms of legal representation, this raises the question to which extent these cases are advocated – and litigants represented – effectively, before the Court.

These observations have certain consequences in terms of the functioning of the European legal system and the preliminary reference procedure. Where the enforcement of EU law relies heavily on the "vigilance" of the polity and on claims brought before national courts, the burden of enforcement falls on individuals and organisations signalling Mem-

ber States' trespasses. In practice, the larger part of this responsibility lies with the legal profession. This mechanism of enforcement presupposes the profession's ability to monitor Member States' implementation of rules stipulated by EU law effectively and to be alert to possible infringements. The findings presented in this *Article* provide an indication of how EU law and EU norms have – or have not – become integrated into the "legal consciousness" of practitioners. It reveals the lacunae in practical knowledge among practitioners when it comes to applying EU law in a meaningful way. To the extent that lawyers are confronted with a reference more or less unexpectedly, the procedure will constitute unknown territory. While the data presented in this *Article* are limited to the Dutch context, and the question remains to what extent this translates to other jurisdictions, it is likely that similar dynamics play a role throughout the EU.

Given that compliance by Member States is not self-evident – owing to administrative incompetence, misinterpretations, the linking of implementation to a national development, or a deliberate choice by the government – domestic pressure is needed in order to ensure compliance with EU law. When such pressure is essentially channelled through the courts, effective advocacy becomes especially salient. When it comes to preliminary references taking on the character of judicial review of national policy and compliance with EU law, the fact that such cases do not necessarily fall into the hands of the practitioners best equipped to argue such claims can, on a macro scale, further undermine the effectiveness of the system. The self-reported domestic focus and lack of EU law expertise of legal practitioners – lawyers as well as national judges – could result in the structural neglect of implementation errors and potential breaches of EU law.[41]

It has been stressed in the literature that the distinct nature of the EU legal system, with the preliminary reference procedure as its most important instrument, makes for an enhanced opportunity to circumvent the domestic legal system. That same nature, however, makes deliberately aiming for the Court of Justice via this route a highly uncertain endeavour. The ability to make use of this procedure for underprivileged parties is, next to structural barriers, greatly hampered by an unequal distribution in legal agency and largely contingent on the ability to employ experts. Although the development of the European legal system has provided new avenues for individuals to seek justice, the emancipating rhetoric surrounding this opportunity structure should be viewed with some scepticism. The focus on "landmark cases" in current research arguably contributes to an overestimation of the deliberative nature as well as the enfranchising effects of preliminary references. The findings presented in this *Article* underscore how the effective use of the preliminary reference procedure is reserved largely for organisations

[41] J. HOEVENAARS, *A People's Court?*, cit., p. 284.

and "strategy entrepreneurs"[42] with the necessary credentials, means, and expertise.[43] On the one hand, it does provide new possibilities for "trumping" the domestic legal system whenever the supranational legislation provides opportunities against national policy or legislation; on the other hand, in terms of access to justice and as a form of remedy, the preliminary reference procedure remains a difficult "sword" to yield.

[42] Cf. L. VANHALA, *Is Legal Mobilization for the Birds? Legal Opportunity Structures and Environmental Nongovernmental Organizations in the United Kingdom, France, Finland, and Italy*, in *Comparative Political Studies*, 2017, p. 1 *et seq*.

[43] A. VAUCHEZ, *Democratic Empowerment Through EU Law?*, in *European Political Science*, 2008, p. 45.