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National Judge's Incentives (Not) to Seek a Preliminary Ruling from the Court of Justice of the EU in the Context of National and EU Constitutional Framework

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Abstract

The paper offers insight into the role of national and EU constitutional arrangements in shaping and promoting the incentives for a national judge to refer a question for a preliminary ruling of the Court of Justice of the EU (ECJ) or to abstain from such referral. The constitutional arrangements or framework discussed are a set of formal rules which define (a) the position of a court within the national hierarchical structure of the judiciary on one hand, and with regard to the ECJ on the other hand, as well as (b) the procedural context in which a given judge operates. These include, for example, the possibility of an appeal against their decisions and the scope of such an appeal as well as the duties incumbent upon a national judge in the context of the preliminary reference procedure. In particular, the obligation to give reasons for a refusal to seek a preliminary ruling is considered such a duty. It is assumed that the said arrangements play a major role in the decisional process a judge undertakes and which results in making or avoiding a reference to the ECJ. In this context, the strategies adopted by national judges regarding the preliminary reference procedure are discussed. More specifically, various utility functions maximized by judges are taken into account in an attempt to establish their relevance within the framework of the said procedure.

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