Dinner speech of Koen Lenaerts, President of the Court of Justice of the European Union on the occasion of the Meeting of the Network of the Presidents of the Supreme Judicial Courts of the European Union at the Bundesgerichtshof, Karlsruhe, 27 September 2018

Excellencies,
President Limperg,
Dear Colleagues and Friends,

It is an honour for me to be here this evening in such distinguished company and I am delighted to have been given the opportunity to share some thoughts with you on the occasion of this Meeting of the Network of the Presidents of the Supreme Judicial Courts of the Member States of the European Union.

The importance of our regular Meetings should not be understated. They enable us to strengthen the bonds – also on a personal level – that underpin mutual trust between the judiciaries of the Member States and the Court of Justice. That trust is essential since the courts that we represent are all constituent parts of one and the same European Union judiciary.

The European Communities of the nineteen fifties have become a European Union *governed by the rule of law*, firmly founded on the

protection of fundamental rights and freedoms, cultural plurality, democracy and the equality of all its citizens. From the viewpoint of international law, that transformation of the EU represents a revolution of almost Copernican magnitude. It is a form of multinational cooperation in which EU citizens, the people, are centre stage rather than the Member States.

Together, we are the ultimate guardians of the rule of law within the European Union. It is indeed the very raison d'être of the courts that we represent. To paraphrase one of the US founding fathers, John Adams, it is our daily duty to ensure that the democracies which constitute the European Union remain "a government of laws and not men".

The accomplishment of our task can only be achieved with the committed support of the governments of the Member States.

First, they must ensure that competent and truly independent men and women are appointed as judges, be it at a national level or a European level.

Judicial independence is indeed an essential component of the rule of law. Rules will only guarantee proper protection against the arbitrary exercise of power if the judges who interpret and apply them are truly

free from any undue influence, duress or pressure. Without judicial independence, the rule of law is meaningless in practice.

Accordingly, in the *Minister for Justice and Equality v LM* case (C-216/18 PPU), the Court of Justice ruled, on 25 July of this year, that judicial independence "forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, will be safeguarded".

At EU level, the guarantees in respect of the professional competence and independence of the members of the EU courts have, since the entry into force of the Treaty of Lisbon, been reinforced through the panel set up in accordance with Article 255 TFEU.

From the perspective of the Union, since national courts have a central role in applying EU law in the Member States, judicial independence must be ensured not only in respect of the EU courts in Luxembourg but also in each and every court within the national judicial systems. A national rule that impinges upon the independence of national judges triggers a domino effect by undermining mutual trust and thus directly threatens the rule of law in the EU as a whole.

That is why the Court of Justice, in its seminal *Associação Sindical dos Juízes Portugueses* judgment (C-64/16, EU:C:2018:117) of 27 February 2018, ruled that EU law itself – notably Article 19 TEU – can be relied on in order to safeguard the independence of judges within the Member States.

Second, the political authorities should also ensure that the judiciary has sufficient resources in order to be able to function effectively. One of the legitimate criticisms levelled at the General Court of the European Union a few years ago concerned the excessive time taken to reach a decision in complex cases. Since this was, in large part, the consequence of insufficient resources, the political decision-makers undertook to double the number of judges at that court in three successive phases. That decision, whose final stage still has to be implemented in September 2019, has already led to an impressive improvement since the average time taken by the General Court to reach its decisions has decreased by 40 % since 2013.

The political authorities must therefore establish the conditions under which the judiciary can function efficiently and with true independence. In turn, it is our responsibility to gain, and then to maintain, the trust of citizens. Trust is never a given. It must be earned. It is something that is very fragile. It takes a long time to establish and, once lost, it is very hard to rebuild.

For that reason, the Court of Justice strongly underlined the internal dimension of judicial independence in the *Wilson*[1] and "*Portuguese Judges*" judgments. That internal dimension requires judges to come to their decisions on a purely objective basis and, in particular, that they should have no interest in the outcome of the proceedings on which they adjudicate, apart from the strict application of the rule of law. The behaviour of judges must be beyond reproach in order to banish any doubt from the minds of the citizens as to their neutrality with respect to the interests at stake in the cases that come before them.

The quality of judicial decisions is also key to the trust of the citizens and their respect for the rule of law. The courts that we represent should ensure not only that the law is interpreted and applied in a uniform way but also that judicial decisions are sufficiently reasoned. The acceptability of judicial decisions has to be assessed from the perspective of the "losing" party. He or she has, first, to be convinced that his or her pleas were fully taken into consideration and, second, he or she must be able clearly to understand the reasoning that underpins the dismissal of those pleas.

Dialogue and cooperation between courts serve to enhance the quality of justice. On the one hand, formal dialogue by means of the preliminary ruling procedure is important in guaranteeing the uniform

[1] Judgment of 19 September 2006, Wilson, C-506/04, EU:C:2006:587 C-506/04.

interpretation and application of EU law in every part of the Union, from the Gulf of Finland to the Strait of Gibraltar and from the Atlantic to the Aegean. On the other hand, more informal cooperation through networks, such as this one, allows for exchanges of views and of best practices that have beneficial effects on the quality of justice as a whole.

In that regard, it is interesting to note that the most frequently consulted pages of the website of the Judicial Network of the European Union – which was created on the occasion of the 60th anniversary of the signing of the Treaties Rome – are the pages on which national decisions uploaded by the participating courts can be found. This clearly shows that there is a genuine interest in understanding our respective approaches to solving legal problems.

I am therefore confident in asserting that informal exchanges of information through networks – such as the Network of the Presidents of the Supreme Judicial Courts or the Judicial Network of the European Union – improve the quality of our decisions and ultimately the respect for the rule of law.

President Limperg, I thank you very much for having invited us all to this dinner and I wish you very fruitful exchanges tomorrow although – unfortunately – I will be unable to participate in those due to other judicial commitments.

I thank you for your attention.