Thank you Mr Kuusiniemi and let me warmly thank the Supreme Court of Ireland for hosting us in this lively city and beautiful castle.

My speech focuses on organization and functioning of the Plenary Assembly (Adunanza Plenaria), the special jurisdictional body of the Italian Council of State in charge of ensuring the respect of the nomophylactic principle in the administrative system (that is the function to guarantee uniformity and stability of case-law). Its current composition of 13 judges, including the President of the Council of State, dates back to 1982.

First of all, it should be pointed out that, despite the lack of rules on the binding value of the precedent (*stare decisis*), administrative judges have given a great contribution to the "creation" of the administrative law, in Italy.

The Plenary Assembly itself has provided a solid basis for the administrative procedure and the administrative trial with several historical decisions, regulating the relations between citizens and public power, drawing rules to public authorities, ensuring protection by the courts to situations not namely regulated by law.

Nowadays, on one hand, this creative phase is receding as the jurisprudential principles have increasingly become law; on the other hand, the role of case law is still crucial not because of the absence of normative ruling but for its overwhelming and contradictory being.

Nevertheless, the importance of case law in the evolution of administrative law, as side effect, could take the risk of having less predictable judges’ decisions. In fact, the absence of codified rules and the matter that the public power itself is unpredictable, since the identification of the public interest to be pursued is “a work in progress”, contribute to the unpredictability of Courts’ decisions.

Whereas, case-law stability and decisions’ predictability are important values nowadays, being related to general principles such as legal certainty, predictability for citizens and companies of the consequences of their behaviour and protection of legitimate expectations.
In this general framework, art. 99 of the Code has codified the nomophylactic function of the Plenary Assembly, strengthening its role of solving conflicts that have arisen or could arise among the jurisdictional sections of the Council of State.

Article 99 c.a.p. has established the binding value of the decisions of the Plenary Assembly.

Let us briefly analyze how this mechanism works.

The Plenary Assembly decisions have “binding value”, that is to say they set a principle of law that must be applied in all similar cases. Therefore, all judges shall interpret the law according to the principle set by the Plenary Assembly in relation to a specific case.

What does “binding value” exactly mean?

It does not mean indeed that all the Sections of the Council of State must comply with the Plenary Assembly rulings.

It means instead that if one Section does not agree with the principle stated by the Plenary Assembly, it cannot judge in disagreement with it, but it must once again refer the matter to the Plenary Assembly, with a motivated order, to solicit a change in jurisprudence.

In other words, the revirement of a decision of the Plenary Assembly is allowed only to the Plenary Assembly itself.

What is the procedure for submitting a case before the Plenary Assembly?

The power of referring a question to the Plenary is given to a Section or to the President of the Council of State:

a) first, the Section to which the appeal has been assigned may refer a question if it detects that the matter (the point of law) has brought about or might bring about conflicts with case law. The referral is mandatory if the Section considers "not to share a principle of law enunciated by the Plenary Assembly" (art. 99, paragraph 3, c.p.a.).

b) secondly, the President of the Council of State, at the request of the parties or ex officio, may refer "any application" to solve broad issues of particular importance or to settle disagreements within case law.
The parties cannot appeal directly to the Plenary Assembly in any case: they can only request it to the President or to the Section.

The referral of the question to the Plenary Assembly does not even belong to the Regional Administrative Tribunals, which are Courts of first instance.

Moving on to the decision phase, it should be pointed out that until the Code of administrative procedure entered into force, the conclusion of the referral procedure was the final decision of the entire dispute.

Currently, the Code provides four different outcomes of the referral procedure, regardless of who has taken the initiative:

- the Plenary Assembly "may return the case to the Section", if it “decides not to decide” considering appropriate not stating a binding principle of law for example because a debate between Sections could still be needed;

- the Plenary Assembly decides to state the principle of law and “returns the judgment to the referring Section for the rest”;

- the Plenary Assembly decides "the entire dispute";

- the Plenary Assembly, "if it considers that the matter is of particular importance", may still state the legal principle “in the interest of law”, even when it declares inadmissible, unacceptable or impossible its application, or declares the extinction of the judgment (art. 99, paragraphs 4 and 5). In such cases, the pronunciation of the Plenary Assembly has no effect in the dispute.

All the above mentioned ways of concluding the proceedings before the Plenary, are aimed at strengthening its nomophylactic role, in particular with the enunciation of the principle in the interest of law.

In the end, the Plenary Assembly plays a key role which has never had before, because the principles of law that it states become somehow sources of law.

In this "pendulum" between the need for legal certainty and predictability, on one hand, and, on the other, the necessity of evolutionary interpretation of law, the mechanism of the referral I’ve just described has created a balanced solution.
This solution tends to ensure stability, supporting predictability of any decision relating to similar cases and preventing the jurisprudence from getting still, because it is always possible for that principle of law to be overruled by Plenary Assembly itself, *re melius perpensa* or due to the changing of legal and social context.

Nevertheless art. 99 c.a.p. and art. 374 c.p.c. for the Court of Cassation do not introduce the principle of *stare decisis* into the Italian legal order.

This would conflict, first with the art. 101, paragraph 2, of the Constitution that submits the judge exclusively to the law, secondly with the principle of separation of powers, according to which law is placed by Parliament.

The referral to the Plenary Assembly allows the Section to disagree and activate the mechanism to overcome the contrast of decisions but it does not oblige it to submit to the principles enunciated by the Plenary Assembly, in compliance with art. 101, paragraph 2 of the Constitution.

At the same time, this mechanism enriches the system with a new source of law, though a cultural one, based no longer solely on the authoritativeness and persuasive capacity of the Supreme administrative Court, but on a specific positive legal restriction.

In the end, the issue of the possible interference between the described role of the Plenary Assembly and the European Court deserves mention.

With regard to the relationship with the European Court of Justice, must be recalled the Puligienica decision (CG UE 5.4.2013, C-689/13) and, before that, the Interedil case (CG UE 20.10.2011, C 369/09), according to which no national Court may be bound by the ruling of a higher national Court, if these rulings are at variance with the European Union law as interpreted by the Court of Justice.

Reaffirming the prevalence of European law as interpreted by the European Court of Justice is probably obvious.

The consequence of this reaffirmation is more questionable: the European Court of Justice states that the single Section, which is unwilling to comply with the Plenary Assembly's decision, can directly refer the question to EU Court of Justice, without previously involving Plenary Assembly at national level.
This happens even when the national law gives a binding value to the principles enunciated by a superior judge, as in the case of art.99.

In this respect, some doubts arise in relation to the principle of Member States procedural autonomy, because this jurisprudence of the European Court weakens the stabilizing role entrusted to a body as the Plenary Assembly (and to the Joint Sections of the Court of Cassation).

In conclusion, I believe that the nomophylactic principle, despite its considerable complexity, works as a counterpart to the "unpredictability" of judicial decisions. In the lack of this, the principle of equality would be weakened as well as the trust that the citizens rely on the consequence of their behaviour respectful of law.