

Question for written answer E-004470/2025
to the Commission
Rule 144
Marion Walsmann (PPE)

Subject: Possible lack of legal remedy in the event of failure by courts of last instance to refer questions of EU law

Pursuant to Article 267(3) of the Treaty on the Functioning of the European Union (TFEU), national courts of last instance have an obligation to refer questions of EU law to the Court of Justice of the European Union (CJEU). In practice, however, several Member States, including Germany, appear to lack a specialised judicial remedy to review a failure to refer a question, even where such a referral would be required under EU law. This could lead to a structural deficit in the legal protection system within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union (CFR), Article 19 of the Treaty on European Union (TEU) and Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Last but not least, the European Court of Human Rights (Dhahbi v. Italy, 2014) has stressed the need to ensure an effective remedy also in the case of violations by courts of last instance. As the problem arises in the application of EU law, its resolution ought to be the responsibility of the Commission as the ‘guardian of the Treaties’ (Article 17 TEU).

1. How does the Commission ensure that the preliminary ruling procedure remains effective even in the event of failure to make a referral?
2. Does the Commission see this as a structural deficit in the EU’s legal protection system?
3. Does the Commission intend to consider measures, such as recommendations, legislative proposals or infringement procedures, to eliminate this potential lacuna in protection?

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