

(English version)

**Question for written answer E-004470/25
to the Commission
Marion Walsmann (PPE)
(11 November 2025)**

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?

Submitted: 11.11.2025

**Answer given by Mr McGrath on behalf of the European Commission
(21 January 2026)**

The article 267 of the Treaty on the Functioning of the European Union (TFEU) preliminary ruling procedure is the keystone of the judicial system established by the Treaties.

It sets up a dialogue between the Court of Justice of the European Union (CJEU) and the courts of the Member States, in which the latter are closely involved in the correct application and uniform interpretation of EU law and the protection of individual rights.

Where there is no judicial remedy under national law against the decisions of a national court before which a question on EU law interpretation arises, that court is in principle obliged to refer to the CJEU under Article 267(3) TFEU unless the question is irrelevant, the provision has already been interpreted, or the correct interpretation is obvious ⁽¹⁾.

Proceedings under Article 267 TFEU rely on a clear separation of functions between the national courts and the CJEU. It is solely for the national court where the dispute arises, which must assume responsibility for the decision, to determine, in light of the case, both the need for and relevance of the questions it submits ⁽²⁾.

The Commission, as guardian of the Treaties, may initiate infringement proceedings under Article 258 TFEU for possible non-compliance with Article 267(3) TFEU when a Member State adopts legislation preventing proper judicial cooperation under that provision, or when evidence shows a systematic breach.

The Commission monitors structural deficits in judicial cooperation under Article 267 TFEU, a prerequisite to consistent interpretation of EU law in the Member States.

⁽¹⁾ Judgment of 6 October 2021, C-561/19 *Conorzio*.
⁽²⁾ ‘Ibid’.