

**Question for written answer E-005593/2011
to the Commission**

Rule 117

Emilie Turunen (Verts/ALE) and Margrete Auken (Verts/ALE)

Subject: European Court of Justice

Denmark has a special practice which comes into play when Danish courts are to rule on whether a case should be referred to the European Court of Justice for a preliminary ruling. Before the court makes its final ruling, it receives an assessment from the Special Legal Committee, which is a special committee made up of civil servants appointed by the Ministry of Justice and the Foreign Ministry. In practice this amounts to a circumvention of the threefold division of powers, since the courts are no longer an independent body.

Danish researchers have investigated the committee and its practice on the basis of a number of cases brought before the Danish courts in which it might have been relevant to ask the European Court of Justice for a preliminary ruling. In nearly all cases the Special Committee found that it was not necessary to refer the cases. The Danish courts nearly always follow these recommendations. The researchers take the view that the Danish courts too often make use of the 'acte clair' doctrine to avoid having to refer cases to the European Court of Justice, irrespective of whether there is any evidence to support this. The Danish rules on family reunification of EU citizens are a case in point where Danish citizens should have obtained referral of the cases for a preliminary ruling to the European Court of Justice. However, this did not happen.

At the same time we have discovered that in 2004 the Commission criticised Sweden for sending too few cases to the European Court of Justice on the basis of a legal practice which did not give (sufficient) recognition to the European Court of Justice.

In the light of this state of affairs, is the Commission aware of this Danish special legal practice? And what is its view of this practice?

Does the Commission intend to subject this Danish legal practice to closer investigation?