



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2013/2031(REG)

10.7.2013

OPINION

of the Committee on Legal Affairs

for the Committee on Constitutional Affairs

on amendment of Rule 7 of Parliament's Rules of Procedure
(2013/2031(REG))

Rapporteur: Klaus-Heiner Lehne

PA_REG

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following amendments into its report:

Amendment 1

Parliament's Rules of Procedure Rule 5 – paragraph 1 a (new)

Present text

Amendment

1a. Parliamentary immunity is not a Member's personal privilege, but a guarantee of the independence of Parliament as a whole and its Members.

Amendment 2

Parliament's Rules of Procedure Rule 6 – paragraph 1

Present text

Amendment

1. In the exercise of its powers in respect of privileges and immunities, Parliament ***shall seek primarily*** to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties.

1. In the exercise of its powers in respect of privileges and immunities, Parliament ***acts*** to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties. ***Any request for waiver of immunity shall be evaluated in accordance with the provisions of Articles 7, 8 and 9 of the Protocol on the Privileges and Immunities of the European Union and with the principles referred to in this paragraph.***

Amendment 3

Parliament's Rules of Procedure Rule 6 – paragraph 2

Present text

Amendment

2. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived shall be announced in Parliament and referred to the committee responsible. *deleted*

Justification

This text would be better placed in Rule 7 which covers procedural questions.

Amendment 4

Parliament's Rules of Procedure Rule 6 – paragraph 3

Present text

Amendment

3. Any request addressed to the President by a Member or a former Member to defend privileges and immunities shall be announced in Parliament and referred to the committee responsible. *deleted*

Justification

This text would be better placed in Rule 7 which covers procedural questions.

Amendment 5

Parliament's Rules of Procedure Rule 6 – paragraph 4

Present text

Amendment

4. As a matter of urgency, in circumstances where Members are arrested or have their freedom of movement curtailed in apparent breach of their privileges and immunities, the President, after having consulted the chair and rapporteur of the committee responsible, may take an initiative to *deleted*

assert the privileges and immunities of the Member concerned. The President shall notify the committee of that initiative and inform Parliament.

Justification

This text would be better placed in a new Rule 6 b covering urgent situations.

Amendment 6

**Parliament's Rules of Procedure
Rule 6 – paragraph 5 (new)**

Present text

Amendment

5. Where Members are required to appear as witnesses or expert witnesses, there is no need to request a waiver of immunity, provided:

- that they will not be obliged to appear on a date or at a time which prevents them from performing, or makes it difficult for them to perform, their parliamentary duties, or that they will be able to provide a statement in writing or in any other form which does not make it difficult for them to fulfil their parliamentary duties;

- that they are not obliged to testify concerning information obtained confidentially in the exercise of their mandate which they do not see fit to disclose.

Justification

This text has been moved from Rule 7, as it concerns the question of whether a request for the waiver of immunity is even necessary in cases where a Member is called as a witness.

Amendment 7

**Parliament's Rules of Procedure
Rule 6 a (new)**

Rule 6 a – Defence of immunity

1. In cases where the privileges and immunities of a Member or former Member are alleged to have been breached by the authorities of a Member State, a request for a Parliament decision as to whether there has, in fact, been a breach of those privileges and immunities may be made in accordance with Rule 7(-1).

2. In particular, such a request for the defence of privileges and immunities may be made if it is considered that the circumstances constitute an administrative or other restriction imposed on the free movement of Members travelling to or from the place of meeting of Parliament or an opinion expressed or a vote cast in the performance of the mandate or fall within aspects of Article 9 of the Protocol on Privileges and Immunities of the European Union.

3. A request for the defence of the privileges and immunities of a Member shall not be admissible if a request for the waiver or defence of that Member's immunity has already been received in respect of the same legal proceedings, whether or not a decision has been taken at that time.

4. No further consideration shall be given to a request for the defence of the privileges and immunities of a Member if a request for the waiver of that Member's immunity is received in respect of the same legal proceedings.

5. In cases where a decision has been taken not to defend the privileges and immunities of a Member, the Member may make a request to reconsider the decision, submitting new evidence. The request for reconsideration shall be

inadmissible if proceedings have been instituted against the decision under Article 263 TFEU, or if the President considers that the new evidence submitted is not sufficiently substantiated to warrant reconsideration.

Justification

The purpose of this amendment is to insert a new rule covering requests for the defence of parliamentary immunity, and laying down the basic principles relating thereto. It seeks to prevent the use of repeated requests for defence of immunity as a delaying tactic. Furthermore, it clarifies what is to be done in cases where requests for both waiver and defence are made in respect of the same facts.

Amendment 8

**Parliament's Rules of Procedure
Rule 6 b (new)**

Present text

Amendment

Rule 6 b – Urgent action by the President to defend immunity

1. As a matter of urgency, in circumstances where Members are arrested or have their freedom of movement curtailed in apparent breach of their privileges and immunities, the President, after having consulted the chair and rapporteur of the committee responsible, may take an initiative to assert the privileges and immunities of the Member concerned. The President shall notify the committee of that initiative and inform Parliament.

2. When the President makes use of the powers conferred on him by paragraph 1, the committee responsible shall take cognisance of the President's initiative at its next meeting. Where the committee deems it necessary it may prepare a report for submission to Parliament.

Justification

This amendment introduces a new Rule 6 b covering emergency situations, for greater clarity. The amendment does not introduce any substantive changes.

Amendment 9

Parliament's Rules of Procedure Rule 7 – paragraph -1 (new)

Present text

Amendment

-1. A competent authority of a Member State may address a request to the President that the immunity of a Member be waived, and a Member or a former Member may address a request to the President to defend privileges and immunities. Such requests shall be announced in Parliament and referred to the committee responsible.

Justification

This is a new paragraph explaining the first step of the procedure, replacing Rule 6(2) and Rule 6(3) concerning waiver and defence procedures respectively, without making any substantive changes.

Amendment 10

Parliament's Rules of Procedure Rule 7 – paragraph 1

Present text

Amendment

1. The committee ***responsible*** shall consider without delay ***and in the order in which they have been submitted*** requests for the waiver of immunity or requests for the defence of immunity and privileges.

1. The committee shall consider without delay ***but having regard to their relative complexity*** requests for the waiver of immunity or requests for the defence of immunity and privileges.

Justification

In practice, in view of the differences in the technical complexity of immunity cases, it is not always possible to deal with requests strictly in chronological order. Applying this rule

strictly would mean that simple cases are unnecessarily delayed by complex cases. The Committee on Legal Affairs must deal with cases as quickly as possible, but needs some discretion as to the respective timetables of the cases.

Amendment 11

Parliament's Rules of Procedure

Rule 7 – paragraph 3

Present text

3. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary in order for it to form an opinion on whether immunity should be waived or defended. ***The Member concerned shall be given an opportunity to be heard, may present any documents or other written evidence deemed by that Member to be relevant and may be represented by another Member.***

Amendment

3. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary in order for it to form an opinion on whether immunity should be waived or defended.

Justification

The provisions on hearings should be moved to a new, more detailed paragraph.

Amendment 12

Parliament's Rules of Procedure

Rule 7 – paragraph 3 a (new)

Present text

Amendment

3a. The Member concerned shall be given an opportunity to be heard, may present any documents or other written evidence deemed by that Member to be relevant and may be represented by another Member.

The Member shall not be present during debates on the request for waiver or defence of his or her immunity, except for the hearing itself.

The Chair of the committee shall invite the Member to be heard, indicating a date and time. The Member may waive the right to be heard.

If the Member fails to attend the hearing pursuant to that invitation, he or she shall be deemed to have waived the right to be heard, unless he or she asks to be excused from being heard at the date and time proposed, giving reasons. The Chair of the committee is the sole authority empowered to rule on whether such a request to be excused is to be accepted in view of the reasons given, and no appeals are permitted on this point.

If the Chair of the committee grants the request to be excused, he or she shall invite the Member to be heard at a new date and time. If the Member fails to comply with the second invitation to be heard, the procedure shall continue without the Member having been heard. No further requests to be excused, or to be heard, may then be accepted.

Justification

This amendment concerns the right of Members to be heard in immunity cases. The reason for the clarifications is that individual Members have, in the past, abused their right to be heard, using it as a tool to delay proceedings and prevent Parliament from taking a decision. The amendment aims to ensure that Members may be heard, but that they cannot repeatedly postpone their hearing in order to block judicial proceedings against them. The Chair is given powers to prevent such unjustified delays.

Amendment 13

Parliament's Rules of Procedure Rule 7 – paragraph 5

Present text

5. Where Members are required to appear as witnesses or expert witnesses, there is no need to request a waiver of immunity, provided:

Amendment

deleted

- that they will not be obliged to appear on a date or at a time which prevents them from performing, or makes it difficult for them to perform, their parliamentary duties, or that they will be able to provide a statement in writing or in any other form which does not make it difficult for them to fulfil their parliamentary duties;

- that they are not obliged to testify concerning information obtained confidentially in the exercise of their mandate which they do not see fit to disclose.

Justification

This paragraph should be moved to Rule 6, as it concerns the question whether a request for a waiver of immunity is required in cases where Members are to appear as witnesses.

Amendment 14

Parliament's Rules of Procedure Rule 7 – paragraph 6

Present text

Amendment

6. In cases concerning the defence of immunity or privileges, the committee shall state whether the circumstances constitute an administrative or other restriction imposed on the free movement of Members travelling to or from the place of meeting of Parliament or an opinion expressed or a vote cast in the performance of the mandate or fall within aspects of Article 9 of the Protocol on Privileges and Immunities which are not a matter of national law, and shall make a proposal to invite the authority concerned to draw the necessary conclusions.

deleted

Justification

This paragraph should be moved to Rule 6 a, as it concerns the basic criteria for defending the immunity of a Member.

Amendment 15

Parliament's Rules of Procedure Rule 7 – paragraph 10

Present text

Amendment

10. When the President makes use of the powers conferred on him by Rule 6(4), the committee responsible shall take cognisance of the President's initiative at its next meeting. Where the committee deems it necessary it may prepare a report for submission to Parliament.

deleted

Justification

This paragraph should be moved to Rule 6 b, as it concerns the President's powers in urgent cases.

Amendment 16

Parliament's Rules of Procedure Rule 7 – paragraph 12 a (new)

Present text

Amendment

12a. The committee shall draw up principles for the application of this Rule.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	9.7.2013
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Rebecca Taylor, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Axel Voss
Substitute(s) under Rule 187(2) present for the final vote	Jörg Leichtfried, Anna Záborská