

IMMUNITY OF MEMBERS OF THE EUROPEAN PARLIAMENT



Members of the European Parliament (MEPs) enjoy two categories of immunity: - non-liability for votes cast and opinions expressed in the performance of their duties (absolute immunity), - and the protection from prosecutions and restrictions of their personal freedom during the sessions of the European Parliament (inviolability or relative immunity).

Since absolute immunity is exclusively established by Union Law while relative immunity is partly determined by national law, the immunity regime of MEPs is particularly complex. This is explained by the fact that this regime dates back to an era when the European Parliament was composed of the delegates of the national Parliaments and was not directly elected. Despite several calls for the revision of the relevant legal framework made by the European Parliament with a view to ensuring uniform treatment, to date, the immunity system of MEPs has not been amended.

LEGAL FRAMEWORK

According to **Article 343 of the [Treaty on the Functioning of the European Union](#)**, the Union enjoys in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Union.

The substantive rules on the immunity of MEPs are laid down in **Articles 8 and 9 of the [Protocol \(No 7\) on the Privileges and Immunities of the European Union](#)** annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

The procedure to deal with cases on immunity at committee and plenary stage in the European Parliament is set out in **Rules 7-9 of the [Rules of Procedure](#)** (RoP).

The **case-law of the Court of Justice of the European Union** (CJEU) complements the legal framework on immunity by clarifying for instance the concept of opinion expressed in the performance of parliamentary duties referred to in Article 8 of the Protocol ([Patriciello Case](#)), the application of the procedure for the defence of immunity to Article 8 of the Protocol ([Marra Joined Cases](#)) and the extent and scope of the immunity granted by Article 9 of the Protocol ([Gollnisch v European Parliament Case](#)).

Scope of the immunity

Article 8 of the Protocol provides for **absolute immunity for votes cast and opinions expressed** in the performance of parliamentary duties. Its aim is to protect **freedom of expression** of MEPs. Its **scope is determined by Union Law** exclusively and is therefore uniform for all MEPs. **Absolute immunity cannot be waived** nor renounced and continues to apply even after the end of the parliamentary mandate.

Article 9 of the Protocol provides for the so-called **inviolability or relative immunity** of MEPs. As clarified by the CJEU its aim is to safeguard the **independence** of MEPs by ensuring that pressure, in the form of threats of arrest or legal proceedings, is not brought to bear on them during the sessions of Parliament.

According to Article 9 of the Protocol, **the scope of inviolability** during the sessions of the European Parliament varies depending on whether MEPs are in the territory of their home State (9(1)(a)) or in the territory of any other Member State or are travelling to and from the place of meeting of the European Parliament (9(1)(b) and (2)). In the first case, MEPs enjoy the same immunity granted to the Members of their national Parliaments. However, since national rules on inviolability vary from one Member State to another considerably the application of Article 9(1)(a) may result in **disparity of treatment** among MEPs. In the second case, inviolability is regulated directly by EU Law which provides for the protection from any measure of detention and from legal proceedings.

Unlike the absolute immunity granted by Article 8 **inviolability may be waived** by the European Parliament (Article 9(3)). Lastly, inviolability applies only during the parliamentary mandate and is excluded if MEPs are caught *in flagrante delicto* (Article 9(3)).

Procedures

Pursuant to [Annex VI](#) of the European Parliament's RoP, the Committee on Legal Affairs is responsible for privileges and immunities of MEPs. Rules 7-9 of the RoP lay down the **procedure to request defence of immunity** ([Rule 7](#)); the **procedure to decide on requests for waiver or defence of immunity** ([Rule 9](#)); and the procedure to be followed in case **urgent action** is needed ([Rule 8](#)).

Whereas **requests for the waiver** of immunity must be submitted by the **national competent authority**, **requests for defence** of immunity may emanate from the Member concerned. As clarified by the CJEU a **decision to defend immunity** adopted by the European Parliament constitutes an **opinion with no binding effects** on national judicial authorities. However, pursuant to the **duty of sincere cooperation** the national court must stay judicial proceedings if it is informed that the Member concerned has made a request to the European Parliament for defence of immunity. By contrast, a **decision to waive or not to waive** a Member's immunity **is binding** on national authorities.

EXPERTISE PROVIDED BY THE POLICY DEPARTMENT C

Given the complexity of the immunity system of MEPs stemming from Article 9 of the Protocol, which refers to a great variety of national rules, the Policy Department C drew up a [Handbook on the incompatibilities and immunity of the Members of the European Parliament](#). With a view to assisting the Committee on Legal Affairs when dealing with cases on immunities, this handbook provides an overview of the national rules on parliamentary immunities and lists the national authorities that are competent to request the waiver of MEPs' immunity, as identified after consultation with the Member States.

The Handbook is complemented by the recently published [In-Depth Analysis on the immunity of Members of the European Parliament](#). This analysis describes the scope of MEPs' immunity as well as the procedures followed by Parliament in cases of waiver or defence of such immunities. Lastly, it looks at the practice of the competent committee in order to infer the general principles underlying its decisions.

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