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REPORT

on the reform of the Rules of Procedure with regard to parliamentary immunity
(Rule 6)
(2001/2237(REG))

Committee on Constitutional Affairs

Rapporteur: Andrew Nicholas Duff

CONTENTS

	Page
PROCEDURAL PAGE	4
RULES OF PROCEDURE OF THE EUROPEAN PARLIAMENT	5
PROPOSAL FOR A DECISION	12
EXPLANATORY STATEMENT	13
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET	19

PROCEDURAL PAGE

At the sitting of 15 November 2001 the President of Parliament announced that she had referred the proposals for amendment on the reform of the Rules of Procedure with regard to parliamentary immunity (rule 6) to the Committee on Constitutional Affairs (2001/2237(REG)).

At the sitting of 28 November 2001 the President of Parliament announced that she had also referred the matter to the Committee on Legal Affairs and the Internal Market for its opinion.

The Committee on Constitutional Affairs had appointed Andrew Nicholas Duff rapporteur at its meeting of 12 November 2001.

The committee considered the draft report at its meetings of 21 February 2002, 27 March 2002, 17 April 2002 and 23 May 2002.

At the latter meeting it adopted the proposal for a decision by 26 votes to 2, with 2 abstentions.

The following were present for the vote: Giorgio Napolitano, chairman; Jo Leinen, Ursula Schleicher and William Abitbol, vice-chairmen; Andrew Nicholas Duff, rapporteur; Teresa Almeida Garrett, Pervenche Berès (for Enrique Barón Crespo), Georges Berthu, Jean-Louis Boulanges (for François Bayrou), Carlos Carnero González, Richard Corbett, Gianfranco Dell'Alba (for Olivier Dupuis), Lone Dybkjær, Francesco Fiori (for Luigi Ciriaco De Mita pursuant to Rule 153(2)), Monica Frassoni, José María Gil-Robles Gil-Delgado, Daniel J. Hannan, The Lord Inglewood, Sylvia-Yvonne Kaufmann, Neil MacCormick (for Johannes Voggenhuber), Hanja Maij-Weggen, Hans-Peter Martin, Iñigo Méndez de Vigo, Gérard Onesta, Reinhard Rack (for Giorgos Dimitrakopoulos), Willi Rothley (for Jean-Maurice Dehousse), Mariotto Segni, Antonio Tajani, Margrietus J. van den Berg (for Olivier Duhamel) and Paavo Väyrynen (for Paolo Costa).

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 28 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

RULES OF PROCEDURE OF THE EUROPEAN PARLIAMENT

Present text

Proposed new text

Amendment 1 Rule 6

Waiver of immunity

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

2. The committee shall consider such requests without delay and in the order in which they have been submitted.

3. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary for it to form

Parliamentary Immunity

-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 performance of their duties.

1. 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.

1a. Any request addressed to the President by a Member or a former Member to defend immunity and privileges shall be announced in Parliament and referred to the committee responsible.

1b. As a matter of urgency, in circumstances where a Member is arrested or has his freedom of movement curtailed in apparent breach of his privileges and immunities, the President, after having consulted the Chairman and rapporteur of the committee responsible, may take an initiative to assert the privileges and immunities of the Member concerned. The President shall communicate his initiative to the committee and inform the Parliament.

an opinion on whether immunity should be waived. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

4. The committee's report shall contain a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity. However, where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate proposal for a decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate.

Where the request for the waiver of immunity entails the possibility of obliging the Member to appear as a witness or expert witness thereby depriving him of his freedom, the committee shall:

- ascertain, before proposing that immunity be waived, that the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to fulfil his parliamentary obligations;

- seek clarification regarding the subject of the statement, in order to ensure that the Member is not obliged to testify concerning information obtained confidentially in the exercise of his mandate which he does not see fit to disclose.

5. The committee shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether or not the opinions or acts attributed to him

justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.

6. The report of the committee shall be placed at the head of the agenda of the first sitting following the day on which it was tabled. No amendment may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for or against each proposal to waive or uphold immunity.

Without prejudice to Rule 122, the Member whose immunity is subject to the request for a waiver shall not speak in the debate.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the matter, an individual vote shall be taken on each of the proposals contained in the report. If any of the proposals are rejected, the contrary decision shall be deemed adopted.

7. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request, if immunity is waived, that he should be informed of any judicial rulings made as a consequence.

When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate.

8. Should a Member be arrested or prosecuted after having been found in the act of committing an offence, any other Member may request that the proceedings be suspended or that he be released.

The President shall ensure that recourse is had to this right where the aim of the arrest or prosecution is to make the Member appear as a witness or expert witness against his will, without his immunity having been waived beforehand.

Paragraphs 2, 3, 4, 5, 6 and 7 are integrated - with modifications - into new Rule 6 (see

amendment 2)

Justification

Paragraph -1 sets out the primary aim of the Parliament in maintaining a system of privilege and immunity. Paragraph 1 establishes that there may be more than one competent national authority. 'Competent' is a better rendition than 'appropriate' in English because it removes any suggestion of opportunism. Paragraph 1a introduces the possibility of a defence of immunity. Paragraph 1b allows the President to take an initiative to act in exceptional circumstances.

Amendment 2
Rule 6 a (new)

Rule 6 a

Procedures on Immunity

- 1. The committee responsible shall consider without delay and in the order in which they have been submitted requests for the waiving of immunity or requests for the defence of immunity and privileges.***
- 2. The committee shall make a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity or for the defence of immunity and privileges.***
- 3. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary 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; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.***
- 4. Where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other***

measure which prevents him from performing the duties proper to his mandate.

5. Where a Member is required to appear as a witness or expert witness, there is no need to request a waiver of immunity, provided that

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

- the Member is not obliged to testify concerning information obtained confidentially in the exercise of his mandate which he does not see fit to disclose.

6. In cases concerning the defence of a privilege or immunity, 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 10 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.

7. The committee may offer a reasoned opinion about the competence of the authority in question and about the admissibility of the request, but shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether or not the opinions or acts attributed to him or her justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.

8. Where the report is confined to the finding that, on the evidence available to the committee responsible, only a prima facie case has been made out, the position shall contain a statement to that effect and an invitation to the authority concerned to draw the necessary conclusions.

9. The report of the committee shall be placed at the head of the agenda of the first sitting following the day on which it was tabled. No amendment may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for and against each proposal to waive or uphold immunity, or to defend a privilege or immunity.

Without prejudice to Rule 122, the Member whose privileges or immunities are the subject of the case shall not speak in the debate.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the matter, an individual vote shall be taken on each of the proposals contained in the report. If any of the proposals are rejected, the contrary decision shall be deemed adopted.

10. The President shall immediately communicate Parliament's decision to the Member concerned and to the competent authority of the Member State concerned, with a request that the President should be informed of any developments in the relevant proceedings and of any judicial rulings made as a consequence. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate, if necessary after consulting the responsible committee.

11. 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.

12. The committee shall treat these matters and handle any documents received with the utmost confidentiality.

13. The committee, after consulting the Member States, may draw up an indicative list of the authorities of the Member States which are competent to present a request for waiving the immunity of a Member.

14. Any inquiry as to the scope of such privileges or immunities made by a competent authority shall be dealt with according to the above rules.

Justification

This new Rule lays out the procedures to be followed by the Legal Affairs Committee in dealing with applications to lift or assert the privileges and immunities of a Member in accordance with Rule 6. Paragraph 7 introduces the notion that the Committee may offer a reasoned opinion about the competence of the national authority concerned. Paragraph 13 permits the Committee to consult Member States about the drawing up of an indicative list of competent authorities.

PROPOSAL FOR A DECISION

European Parliament decision on the reform of the Rules of Procedure with regard to parliamentary immunity (rule 6) (2001/2237(REG))

The European Parliament,

- having regard to the proposed amendments to its Rules of Procedure,
 - having regard to the Conference of Presidents decision of 25 October 2001,
 - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0195/2002),
1. Decides to amend its Rules of Procedure as indicated above;
 2. Decides that these amendments shall enter into force on the day following their adoption;
 3. Resolves to amend these rules further following the adoption of the Statute of Members;
 4. Instructs its President to forward this decision to the Council and the Commission for information.

EXPLANATORY STATEMENT

1. The purpose of this Report is to revise Article 6 of the Parliament's Rules of Procedure concerning the waiver of immunity of Members. In particular, the Report bears upon the following issues that have been raised as a result of recent cases:

- on the concept of 'appropriate authority' of a Member State under the terms of Article 6.1,
- the appropriate procedure for verifying the competence of the authority submitting the application for the lifting of immunity of a Member facing prosecution,
- on the procedure by the Parliament to be followed when considering an application for the lifting the immunity of a Member,
- on the procedure to be adopted when the Parliament needs to assert the parliamentary immunity of a Member.

Nature of parliamentary privilege

2. It is important to bear in mind that nowadays the purpose of parliamentary privilege and immunity is to secure the proper dignity, efficiency and independence of the legislature and not to protect individuals from due process. In the nineteenth century, immunity was developed mainly in order to protect government ministers from persecution by monarchs, but the *raison d'être* has shifted over time.¹

3. In the context of the European Union, Article 4.2 of the 1976 Act concerning the election of the representatives of the European Parliament by direct universal suffrage establishes that the basis for an MEP's immunity is the 1965 Protocol on the privileges and immunities of the European Communities, the relevant articles of which read as follows:

Article 9

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 10

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

¹ Dr Richard Wurbs, *Regelungsprobleme der Immunität und der Indemnität in der parlamentarischen Praxis*, Berlin: Duncker & Humblot, 1988, p.23 et seq.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

4. Since the introduction of direct elections by universal suffrage in 1979, MEPs are no longer delegates from national parliaments, and the modern European Parliament is now a sovereign parliament enjoying very significant autonomous legislative and budgetary powers. The legal base of 1965 now appears loose, inadequate and out-moded. The Parliament would be well-advised to try to include a new, clear statement of the definition of privileges and immunities in the proposed Statute for Members (ROTHLEY Report), which would restate the nature of the protection afforded to Members as well as asserting the Parliament's constitutional right to decide on such questions. It should also serve to clarify the issues of privilege and immunity to the judicial authorities of the Member States and to the general public.

5. In addition, the Parliamentary delegation to the constitutional Convention on the Future of the Union should make relevant proposals for the revision of the 1965 Protocol. The terms of any amended statutory basis of parliamentary privilege should then be reflected in a revised Members' Statute.

6. Article 10 of the Protocol, in particular, seems insufficient because it establishes two different regimes - one national, the other European - and does not deal at all with procedure. The parliaments of Member States do not by themselves provide the European Parliament with a comprehensive or coherent basis on which to build its own immunity system ensuring equal treatment for all its Members. There is a wide variety between Member States as far as legal basis, scope, duration, procedure and practice are concerned.¹ Moreover, what may be the form for national MPs within their own country does not and cannot set a precedent for MEPs in a Member State other than their own. For these reasons, the development of European level immunity by analogy with national parliamentary immunity is not fruitful.

Problems with the Rules of Procedure

7. Rule 6.1 of the Parliament's Rules of Procedure on 'Waiver of immunity' says:

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

8. The present wording begs the question about what is 'the appropriate authority' of a Member State. The contemporary nature of the European Union does not allow it to be treated like a conventional international organisation by its Member States, with one point of formal contact. Indeed, the Union's federal characteristics permit, and even encourage, a wide range of direct contacts between the judicial and administrative authorities of Member States and the EU institutions.² Some of these contacts will be below the level of the national

¹ *Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union*, European Centre for Parliamentary Research and Documentation, Brussels, 2001.

² For example, Article 20 of the Statute of the Court of Justice requires requests for preliminary rulings to be sent directly by national courts to the European Court.

government. The rise of constitutional regions with their own parliaments enjoying legislative powers postulates circumstances where, for example, a national Ministry of Justice or Ministry of Foreign Affairs may be moved not to pass on a legitimate request for a lifting of immunity from a competent provincial authority.

9. The European Parliament enjoys in effect a plurality of relations with competent authorities within Member States. National governments do not command a monopoly of relations with the European Union institutions, and the rapid growth to maturity of the European Parliament, supported by the case law of the Court of Justice, has complicated and deepened the role of MEPs (as the steady rise in the number of immunity cases bears witness). For national courts and prosecutors, the European Parliament is not a 'foreign body'.¹ The Parliament, therefore, should not put in the way of a national jurisdiction any obstacle except what is evidently justified by the need to protect its independence as a legislature whose members act without fear or favour in their role as elected representatives.

10. It is clear that Member States are bound not only by the Protocol on Privileges and Immunity, which has the status of European Community primary law, but are also bound to respect the Parliament's Rules of Procedure, which are adopted pursuant to Article 199 TEC. Failure to observe the Rules can lead to action by the Court of Justice.² As Advocate General Darmon pointed out in *Wybot v. Faure* with regard to Article 10 of the Protocol:

"That provision refers to national law only in relation to the substantive extent of the immunity of Members of the European Parliament. It establishes a system of immunity which varies according to the nationality of the Member when proceedings are brought against him in his own country but is common to all Members in respect of proceedings brought in other Member States.

"It is therefore in primary Community law that the meaning of the phrase 'during the sessions of the Assembly' must be found.

"Article 10 of the Protocol provides no further assistance in that regard. Reference must therefore be made to the Assembly's power to organise its own activities, granted to it by the Treaties."³

11. It follows that the opinion of a government of a Member State, whether sought by the Parliament or not, as to which of the authorities of the Member State is 'appropriate' is one element which has to be taken into account. But such an opinion cannot be considered binding upon the Parliament, which has autonomy in the matter and can use its own discretion. Parliament may take the view, for example, that a court entitled to lodge a request for the waiver of immunity of a member of the national parliament concerned should also be entitled to do so with regard to a Member of the European Parliament. Such a position would of course be open to challenge in the courts, and the European Court of Justice would have the last word on the matter. The principle involved here is that the terms used in provisions of

¹ Here the European Union is in a substantively different relationship with its Member States to that of the Council of Europe, in which case, for example, the request to the President of the Parliamentary Assembly from the Spanish courts for the lifting of the immunity of BERLUSCONI/DELL'UTRI was channelled quite properly through the Ministry of Foreign Affairs.

² For example, Case 68/86 *Hormones* [1988].

³ Case 149/85, *Wybot v. Faure*, [1986], ECR p. 2398.

Community law must be interpreted in an autonomous way and not by referral to any given national legal order. The Court of Justice underlined this with regard to Article 10 of the Protocol in its judgment of *Wybot v. Faure*, as follows:

"12. It must be pointed out in that regard that Article 10 expressly refers to the concept of a session of the European Parliament. It follows that to refer to national law in order to interpret that concept would be incompatible not only with the wording of the Protocol but also with the very objective of that provision, which is intended to ensure immunity for the same period for all Members of the European Parliament, whatever their nationality.

"13. In view of the foregoing considerations it must therefore be held that the duration of sessions of the European Parliament can be determined only in the light of Community law".¹

Definitions of 'appropriate authority'

12. It would appear that the phrase 'the appropriate authority' was originally included by the Parliament in its Rules without the advice or consent of the Member States. The presumption behind the drafting is that each Member State has one (and only one) appropriate authority, and that the identity of that authority is both known and settled. However, as the case of *BERLUSCONI/DELL'UTRI* bears witness, that presumption is wrong, at least with respect of Spain. The present wording of Rule 6.1, therefore, appears to be too restrictive in that it does not reflect the reality of the whole complex of relations between the European Union on the one hand and Member States on the other.

13. There have to date been about one hundred applications for the waiver of immunity of an MEP.² The existing precedents show a fairly wide variation in terms of both the *source* of the application to lift legal immunity but also of its *transmission* to the European Parliament. In the case of Spain, for example, the European Parliament has previously accepted applications from not only the Ministry of Justice but also the Supreme Court.³ The precise definition of the appropriate authority in Spain remains controversial, at least in the view of the President of the Supreme Court.

14. Moreover, the precise role of the President of the European Parliament in dealing with applications for the waiver of immunity is nowhere laid down. Is it right to assume that the President must verify the appropriateness of the national authority? What should the President do if that question proves in practice to be unverifiable?

15. There seems to be room for a clearer distinction to be established between the role of the President on the one hand and the Legal Affairs Committee on the other. It is certainly right and proper that the President of the Parliament, on receipt of an application, has to exercise a certain discretion in verifying the authenticity and appropriateness of the agency purporting to request the lifting of immunity. But the exercise of this discretion should not involve the

¹ Ibid. p. 2391.

² See the document from DG IV *Demandes de levée de l'immunité parlementaire des membres du Parlement européen examinées depuis la 1ère législature jusqu'en février 2001*, 5 avril 2001.

³ Both cases concerned Mr RUIZ-MATEOS, the first transmitted by the Spanish Permanent Representative on 22 February 1990, the second directly from the President of the Supreme Court on 3 March 1992.

President in prejudging the substance of the case. In other words, he or she should try to verify that the application has in fact come from where it purports to come, and that the application is not blatantly from some unentitled third party. But it must be up to the responsible Committee to determine the admissibility of all authentic applications for the waiver of immunity. At all times the European Parliament must respect, and be seen to respect, the judicial nature of the process.

Assertion of immunity

16. Lastly, and as a counterpoint to the matter of waiving immunity, it sometimes arises that a Member him or herself, in the course of a judicial process, wishes the Parliament positively to assert his or her immunity.¹ It may also arise that a national court by an omission does not apply to the President of the Parliament for the waiving of the immunity of a Member before proceeding with the litigation. In such circumstances Rule 6.1 as presently drafted is clearly inadequate. At present, Parliament has no power to intervene in the trial of a Member without the goodwill (and expedient action) of the authorities of the Member State in question. Within the context of a reform of the privileges and immunities system, therefore, the Parliament should consider adopting a procedure that would enable the President to establish before a court the existence and continuation of a Member's immunity, if necessary in an emergency. The Parliament should be able to prompt a court that it has to take into consideration the fact of a Member's immunity.

Some elements of reform

17. One aspect of the reform of the procedure should be to invite Member State governments to specify exactly which are their legally competent authority or authorities. Some could provide such a list with no difficulty; others, as we have seen, would have more difficulty. In any case, however, the list would be indicative rather than definitive because the matter of whether or not the Parliament chooses to admit the admissibility of an application for immunity to be waived is a question to be decided by Parliament and, in any case, would always remain open to judicial review in the Court of Justice and, in other circumstances, to an administrative complaint to the Ombudsman.

18. In addition, the Parliament should be obliged to formulate and set out its mandate to the Legal Affairs Committee in this matter, and to publish as part of the Rules of Procedure (proposed new Rule 6a) guidelines as to how the Committee intends to process requests for the lifting or assertion of immunity, along with a statement of criteria for their acceptance. This proposal places firmly with the Legal Affairs Committee the duty to consider each case on its own merits, including the option of seeking any further information or explanation from the Member State concerned. The Committee should be permitted to consult Member States in drawing up an indicative, non-definitive list of competent national authorities, as well as being enabled to send to the plenary a reasoned opinion on the merits of the case in question. The plenary will then decide the matter.

19. This proposal amounts to a certain clarification but also formalisation of the procedures governing the immunity of Members of the European Parliament. It should therefore satisfy

¹ This is particularly the case in Italy, which is the subject of a special draft report by Sir Neil MACCORMICK for the Legal Affairs Committee.

the requirement of the Court of First Instance that all decisions on the status of an MEP should be subject to a proper procedure.¹

20. Several Members have raised the question of what, if any, sanction the Parliament has against a national court that chooses to ignore, wilfully or otherwise, the parliamentary immunity of a Member. At present, the Parliament must invite the Commission to take action on its behalf under Article 226 TEC. The constitutional Convention may wish to consider whether Parliament's autonomy of access to the Court of Justice should be enhanced in respect of its own privileges and immunities.

¹ Case *LE PEN v. Parliament*, T-353/00, ECR(2001)II, p.128 et seq.

16 April 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Constitutional Affairs

on the reform of the Rules of Procedure with regard to parliamentary immunity (Rule 6)
(2001/2237(REG))

Draftsman: Ana Palacio Vallelersundi

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Ana Palacio Vallelersundi draftsman at its meeting of 6 November 2001.

It considered the draft opinion at its meetings of 21 November 2001, 27 March 2002 and 16 April 2002.

At the last meeting it adopted the following amendments by 29 votes to 0, with 3 abstentions.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, vice-chairman; Ioannis Koukiadis, vice-chairman; and Bill Miller, vice-chairman, Ana Palacio Vallelersundi, draftsman; Paolo Bartolozzi, Maria Berger, Ward Beysen, Brian Crowley, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, Othmar Karas, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Francesco Enrico Speroni, Marianne L.P. Thyssen, Rijk van Dam, Rainer Wieland, Joachim Wuermeling, Matti Wuori and Stefano Zappalà, Renzo Imbeni (for Carlos Candal), Hannes Swoboda (for François Zimeray), pursuant to Rule 153(2).

SHORT JUSTIFICATION

Your draftsman agrees with the approach adopted by the rapporteur for the lead committee. She considers, however, that it is better not to conflate provisions on waiver of immunity, which are concerned with immunity under Article 10 of the Protocol on Privileges and Immunities, with provisions on upholding or defending Members' privileges and immunities, in particular under Article 9 of the Protocol.

Your draftsman also proposes adding a paragraph to the motion for a resolution in order to make it clear that the amendments to Rule 6 cannot come into force until such time as the proposed annex detailing the procedure has been drafted and approved by Parliament. Furthermore, she suggests that, owing to the importance of the whole question of privileges and immunities, a special committee be set up to deal with this issue when Annex VI to the Rules of Procedure is next reviewed.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following amendments in its report:

Existing text

Amendments by Parliament

Amendment 1 Rule 6, paragraph 1

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

1. Any request addressed to the President ***to waive the immunity of a Member by an*** appropriate authority of a Member State shall be announced in Parliament and referred to the committee responsible. ***Detailed provisions setting out the procedures of the committee responsible are laid down in Annex N.***

Justification

This provision should deal solely with waiver of immunity under Article 10 of the Protocol on Privileges and Immunities.

Amendment 2 Rule 6, paragraph 2

2. The committee shall consider such requests without delay and in the order in

Deleted.

which they have been submitted.

Justification

To be included in the new annex.

Amendment 3
Rule 6, paragraph 3

3. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary for it to form an opinion on whether immunity should be waived. The Member concerned shall be heard at his request; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

Deleted.

Justification

To be included in the new annex.

Amendment 4
Rule 6, paragraphs 4 and 5

4. The committee's report shall contain a proposal for a decision which simply recommends the adoption or rejection of the request for the waiver of immunity. However, where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate proposal for a decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents him from

2. The committee shall make a decision which simply recommends the adoption or rejection of the request for the waiver of immunity. It may offer a reasoned opinion about the appropriateness of the authority in question and about the admissibility of the request, but shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether or not the opinions or acts attributed to him or her justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.

performing the duties proper to his mandate.

Where the request for the waiver of immunity entails the possibility of obliging the Member to appear as a witness or expert witness thereby depriving him of his freedom, the committee shall:

Deleted.

- ascertain, before proposing that immunity be waived, that the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to fulfil his parliamentary obligations;

Deleted.

- seek clarification regarding the subject of the statement, in order to ensure that the Member is not obliged to testify concerning information obtained confidentially in the exercise of his mandate which he does not see fit to disclose.

Deleted.

5. The committee shall not, under any circumstances, pronounce on the guilt or otherwise of the Member nor on whether or not the opinions or acts attributed to him justify prosecution, even if, in considering the request, it acquires detailed knowledge of the facts of the case.

Deleted.

Justification

Clarifies the role of the competent committee. The provisions deleted are to be covered by the new annex.

Amendment 5
Rule 6, paragraph 3 (new)

3. Any request addressed to the President by a Member to defend privileges or immunities conferred by the Protocol on Privileges and Immunities, in particular

by Article 9 of the Protocol, and any enquiry made of the President as to the scope of such privileges and immunities by an appropriate authority of a Member State shall be referred to the committee responsible for privileges and immunities. The committee shall prepare a position on the request or enquiry for submission to the plenary in accordance with the detailed rules set out in Annex N. The said position may be confined to the finding that a prima facie case has been made out and a request for further particulars.

Justification

It is logical to have a separate provision dealing with cases in which Parliament is called upon to defend Members' privileges and immunities. In this connection, it seems appropriate to draw a distinction between the case in which a Member or his or her lawyer seeks to assert privileges or immunities and the case in which an appropriate authority of a Member State requests clarification of the scope of, for instance, Article 9 immunity.

Amendment 6 Article 6, paragraph 6

6. The report of the committee shall be placed at the head of the agenda for the first sitting following the day on which it was tabled. No amendment may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for and against each proposal to waive or uphold immunity.

Without prejudice to Rule 122, the Member whose ***immunity is subject to the request for a waiver*** shall not speak in the debate.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the

4. The report ***or position*** of the committee shall be placed at the head of the agenda for the first sitting following the day on which it was tabled. No amendment may be tabled to the proposal(s) for a decision.

Discussion shall be confined to the reasons for and against each proposal to waive or uphold immunity ***or to defend a particular privilege or immunity***.

Without prejudice to Rule 122, the Member whose ***privileges or immunities are the subject of the report or position*** shall not speak in the debate.

The proposal(s) for a decision contained in the report shall be put to the vote at the first voting time following the debate.

After Parliament has considered the

matter, an individual vote shall be taken on each of the proposals contained in the report. If any of the proposals are rejected, the contrary decision shall be deemed adopted.

matter, an individual vote shall be taken on each of the proposals contained in the report. If any of the proposals are rejected, the contrary decision shall be deemed adopted.

Justification

It seems appropriate to distinguish between the situation in which a waiver of immunity is sought from that in which a request is made to defend privileges and immunities.

Amendment 7 Rule 6, paragraph 7

7. The President shall immediately communicate Parliament's decision to the appropriate authority of the Member State concerned, with a request, ***if immunity is waived***, that ***he*** should be informed of any judicial rulings made as a consequence. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate.

5. The President shall immediately communicate Parliament's decision to the ***Member concerned and to*** the appropriate authority of the Member State concerned, with a request that ***the President*** should be informed of any ***steps taken in the relevant proceedings and of any*** judicial rulings made as a consequence. When the President receives this information, he shall transmit it to Parliament in the way he considers most appropriate, ***if necessary after consulting the committee responsible***.

Justification

Self-explanatory.

Amendment 8 Rule 6, paragraph 6 (new)

6. In accordance with Rule 186(b), provisions implementing the terms of this rule shall be laid down in an annex to these Rules, which is to be adopted by a majority of the component Members of Parliament.

Justification

Self-explanatory.

Detailed procedure for dealing with requests and enquiries made pursuant to Rule 6 in the committee responsible

Requests for waiver of immunity made pursuant to Rule 6(1)

1. The committee responsible shall consider such requests without delay and in the order in which they have been submitted.

2. The committee may ask the authority which has submitted the request to provide any information or explanation which the committee deems necessary for it to form an opinion on whether immunity should be waived. The Member concerned shall be given an opportunity to be heard; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

3. Where the request seeks the waiver of immunity on several counts, each of these may be the subject of a separate decision. The committee's report may, exceptionally, propose that the waiver of immunity shall apply solely to prosecution proceedings and that, until a final sentence is passed, the Member should be immune from any form of detention or remand or any other measure which prevents him from performing the duties proper to his mandate.

4. Where a Member is required to appear as a witness or expert witness, there is no need to request a waiver of immunity, provided that
- the Member will not be obliged to appear on a date or at a time which prevents him from performing, or makes it difficult for him to perform, his parliamentary duties, or that he will be able to provide a statement in writing or in any other form which does not make it difficult for him to

*fulfil his parliamentary obligations;
- the Member is not obliged to testify concerning information obtained confidentially in the exercise of his mandate which he does not see fit to disclose.*

5. The committee shall treat the matter and handle any documents received with the utmost confidentiality.

Guidelines for requests for waiver of immunity made pursuant to Rule 6(1)

The committee responsible shall have regard to the following guidelines drawn from the case-law of the Court of Justice and the customary rules as developed and applied by Parliament.

i. Decisions to waive or not to waive immunity must not be influenced by considerations relating to the political affiliation or the nationality of the Member concerned.

ii. Parliamentary immunity is not a Member's personal privilege, but a guarantee of the independence of Parliament and its Members in relation to other authorities. Accordingly, the date on which the alleged deeds took place is of no importance and may be either prior to or subsequent to the election of the Member.

iii. Relinquishment of parliamentary immunity by the Member concerned has no legal effect.

iv. Members benefit from immunity even during periods when the session is interrupted. Parliamentary immunity is effective throughout a Member's term of office and covers the commencement of the proceedings, preparatory inquiries, measures for the execution of pre-existing judgments, appeals and applications for judgments to be set aside.

v. Immunity should not be waived in any case where a Member is accused of actions that come under the heading of political activity. Further considerations militating for or against waiver of immunity include *fumus persecutionis*, i.e. a founded suspicion that criminal proceedings have been brought with the intention of causing the Member political damage (for instance, proceedings based on anonymous accusations, requests made a long time after the alleged facts, etc.), and charges of a particularly serious nature.

vi. In treating the various cases brought before it, the committee responsible should endeavour to create a consistent notion of European parliamentary immunity which, in general terms, is independent of the various national parliamentary procedures so as not to accentuate disparities between members of one and the same parliament on the basis of their nationality. To this end, regard may be had to whether under legislation in Member States other than the Member's country of origin the alleged facts would be subject to less severe penalties or might not even be regarded as a breach of the law.

Requests to defend privileges and immunities and enquiries as to their scope made pursuant to Rule 6(3)

6. A request to defend privileges or immunities may be made by a Member or a former Member. Any enquiry as to the scope of such privileges or immunities must be made in accordance with these rules.

7. The committee responsible shall consider such requests and enquiries without delay and in the order in which they have been submitted.

8. In the case of both requests and enquiries, the committee may ask the appropriate authority of the Member State in question to provide any information or

explanation which the committee deems necessary for it to form an opinion. The Member concerned shall be given an opportunity to be heard; he may bring any documents or other written evidence he deems relevant. He may be represented by another Member.

9. In the case of both requests and enquiries, the committee shall submit to Parliament a draft position addressed to the appropriate authority of the Member State in question which states whether the circumstances described therein 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 10 of the Protocol on Privileges and Immunities which are not a matter of national law, and invites the appropriate authority to draw the necessary conclusions.

10. Where the position drawn up for the plenary is confined to the finding that, on the evidence available to the committee responsible, only a prima facie case has been made out, the position shall contain a statement to that effect and an invitation to the appropriate authority to draw the necessary conclusions.

11. The committee shall treat the matter and handle any documents received with the utmost confidentiality.

[The passage underlined is intended to be in italics in the final version.]

Justification

Self-explanatory.

Amendment 10

Point 1a of the proposal for a decision

Instructs the competent committee to prepare a new annex to the Rules of Procedure for submission to Parliament, since it is only after such an annex has been adopted that the amendments contained in this report can enter into effect;

Justification

Self-explanatory.

Amendment 11

Point 1b of the proposal for a decision (new)

Considers that, when Annex VI of the Rules of Procedure, "Powers and responsibilities of standing committees", is next reviewed for the next legislature, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities should be reinstated;

Justification

The task of dealing with the Rules of Procedure and privileges and immunities is so important and specialised that it should be conferred on a separate committee. This committee could be relatively small and convened as necessary.