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*Plenary sitting*

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**A9-0023/2019**

12.11.2019

# **REPORT**

on the request for waiver of the immunity of José Manuel Fernandes  
(2019/2005(IMM))

Committee on Legal Affairs

Rapporteur: Ibán García Del Blanco

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## PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

### on the request for waiver of the immunity of José Manuel Fernandes (2019/2005(IMM))

*The European Parliament,*

- having regard to the request for waiver of the immunity of José Manuel Fernandes, forwarded on 26 November 2018 by the Porto Department of Criminal Investigation and Prosecution, in connection with procedure No 1406/14.3TDPRT and announced in plenary on 31 January 2019,
  - having heard José Manuel Fernandes in accordance with Rule 9(6) of its Rules of Procedure,
  - having regard to Articles 8 and 9 of Protocol No 7 on the Privileges and Immunities of the European Union, and to Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
  - having regard to the judgments of the Court of Justice of the European Union of 12 May 1964, 10 July 1986, 15 and 21 October 2008, 19 March 2010, 6 September 2011 and 17 January 2013<sup>1</sup>,
  - having regard to Article 157 of the Constitution of the Portuguese Republic,
  - having regard to Rule 5(2), Rule 6(1) and Rule 9 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A9-0023/2019),
- A. whereas the Porto Department of Criminal Investigation and Prosecution has requested the waiver of the immunity of José Manuel Fernandes, Member of the European Parliament, in connection with a possible legal action concerning an alleged crime of malfeasance, provided for in and punishable under Article 11 of Portuguese Law 34/87 of 16 July, which carries a prison sentence of two to eight years;
- B. whereas the legal proceeding does not concern opinions expressed or votes cast in the performance of the duties of the Member of the European Parliament for the purposes of Article 8 of Protocol No 7 on the Privileges and Immunities of the European Union;
- C. whereas Article 9 of Protocol No 7 on the Privileges and Immunities of the European Union states that Members of the European Parliament enjoy, in the territory of their

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<sup>1</sup> Judgment of the Court of Justice of 12 May 1964, *Wagner v Fohrmann and Krier*, 101/63, ECLI:EU:C:1964:28; judgment of the Court of Justice of 10 July 1986, *Wybot v Faure and others*, 149/85, ECLI:EU:C:1986:310; judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440; judgment of the Court of Justice of 21 October 2008, *Marra v De Gregorio and Clemente*, C 200/07 and C-201/07, ECLI:EU:C:2008:579; judgment of the General Court of 19 March 2010, *Gollnisch v Parliament*, T-42/06, ECLI:EU:T:2010:102; judgment of the Court of Justice of 6 September 2011, *Patriciello*, C 163/10, ECLI:EU:C:2011:543; judgment of the General Court of 17 January 2013, *Gollnisch v Parliament*, T-346/11 and T-347/11, ECLI:EU:T:2013:23.

- own state, the immunities accorded to members of the parliament of that state;
- D. whereas Article 157(2) and (3) of the Constitution of the Portuguese Republic provides that:
- ‘2. Members of the Assembly of the Republic may not appear as makers of declarations or accused persons without the Assembly’s authorisation. In the latter case, the Assembly shall obligatorily decide in favour of authorisation when there are strong indications of the commission of a wilful crime punishable by imprisonment for a maximum term of more than three years.
  3. No Member of the Assembly of the Republic may be detained, arrested or imprisoned without the Assembly’s authorisation, save for a wilful crime punishable by the type of prison term referred to by the previous paragraph and in flagrante delicto.’;
- E. whereas José Manuel Fernandes – in his capacity as Mayor of Vila Verde and in the performance of his tasks in that role and in collusion with others – is under investigation for allegedly violating the general principles of public procurement rules, and specifically, the principles of impartiality, neutrality, competition and transparency, by putting a company in a more favourable position than its competitors, and allegedly participating in the prior preparation and completion of documents required for the tender procedure; whereas that company was awarded the tender on 22 December 2008;
- F. whereas, pursuant to Rule 9(8) of the Rules of Procedure, the Committee on Legal Affairs shall not, under any circumstances, pronounce itself 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, the Committee acquires detailed knowledge of the facts of the case;
- G. whereas in accordance with Rule 5(2) of the Rules of Procedure, parliamentary immunity is not a Member’s personal privilege but a guarantee of the independence of Parliament as a whole and of its Members;
- H. whereas José Manuel Fernandes asked for his immunity to be waived; whereas it is for Parliament alone to decide, in a given case, whether or not to waive immunity; whereas Parliament may reasonably take account of the position of the Member in order to decide whether or not to waive his or her immunity<sup>2</sup>;
- I. whereas the purpose of parliamentary immunity is to protect Parliament and its Members from legal proceedings in relation to activities carried out in the performance of parliamentary duties and which cannot be separated from those duties;
- J. whereas in this case, Parliament has found no evidence of *fumus persecutionis*, i.e. factual elements which indicate that the intention underlying the legal proceeding may be to damage a Member’s political activity and thus the European Parliament;

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<sup>2</sup> Judgment of the General Court of 15 October 2008, *Mote v Parliament*, T-345/05, ECLI:EU:T:2008:440, paragraph 28.

1. Decides to waive the immunity of José Manuel Fernandes;
2. Instructs its President to forward this decision and the report of its committee responsible immediately to the Portuguese authorities and to José Manuel Fernandes.

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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| <b>Date adopted</b>                           | 12.11.2019  |
| <b>Result of final vote</b>                   | +: 22<br>-: 0<br>0: 0   |
| <b>Members present for the final vote</b>     | Manon Aubry, Patrick Breyer, Geoffroy Didier, Angel Dzhambazki, Ibán García Del Blanco, Esteban González Pons, Jackie Jones, Mislav Kolakušić, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Lucy Nethsingha, Sabrina Pignedoli, Liesje Schreinemacher, Stéphane Séjourné, Raffaele Stancanelli, József Szájer, Axel Voss, Tiemo Wölken, Lara Wolters |
| <b>Substitutes present for the final vote</b> | Daniel Buda, Nicola Danti, Evelyne Gebhardt   |