

# EUROPEAN PARLIAMENT

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*Committee on Legal Affairs*

**2006/2025(REG)**

21.11.2006

## **OPINION**

of the Committee on Legal Affairs

for the Committee on Constitutional Affairs

on the rules applying to Members in the event of maternity or paternity  
(2006/2025(REG))

Draftsman: Giuseppe Gargani

PA\_NonLeg

## OPINION

The proposal to amend Rules 4 and 8 of the European Parliament's Rules of Procedure is a response to the need for action concerning the absence of Members on the grounds of maternity or paternity.

The draftsman supports the amendment to Rule 8, since it is entirely logical to spell out the fact that, in the event of maternity or paternity leave, such absence from Parliament's sittings or meetings is deemed to be excused, in accordance with the relevant detailed rules laid down by the Bureau within the meaning of the current text of Rule 8.

Conversely, the proposal concerning Rule 4 of the Rules of Procedure is less convincing. To put it briefly, the proposal envisages that for the period of maternity leave a Member's mandate is withdrawn and she is replaced by another Member – appointed by the competent national authorities – and that such substitution ceases when the replaced Member returns. It is precisely this mechanism which merits several legal remarks.

First, apart from the fact that it would be more terminologically correct to refer to 'suspension' of the term of office, the wording of the proposal is open to a kind of interpretative short-circuit where it initially refers to temporary replacement, then to the ending of the term of office and finally to reappointment to describe the same facts.

Secondly, the mechanism described appears to be incompatible with Article 13 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage of 20 September 1976 (hereinafter 'the 1976 Act'), as amended by the Council Decisions of 25 June and 23 September 2002<sup>1</sup>.

The incompatibility arises from the following:

- (a) the vacancy of a seat – i.e. the lack of a Member – takes effect with the withdrawal of the mandate, duly ascertained by the European Parliament (Article 13(1) of the 1976 Act): this means that a seat is either vacant or filled by its Member (*tertium non datur*), and that hybrid situations such as the suspension of the mandate are therefore not admissible.

This absolute, elementary principle is derived from constitutional norms which are common to all the countries comprising the European Union and relates to the inviolability of the democratic mandate that a popularly elected representative must exercise unconditionally and without limitations;

- (b) it is true that each Member State may make provision for the withdrawal of the mandate (Article 13(3) and for appropriate procedures for filling vacant seats (Article 13(2)), but this must take place in accordance with the provisions of the 1976 Act, which therefore takes precedence over the relevant national legislation (Article 13(2));
- (c) a Member whose term of office has come to an end may not be replaced for the periods freely laid down by national legislation, but only for the remainder of the parliamentary

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<sup>1</sup> OJ L 283, 21.10.2002, p. 1.

term (Article 13(2)): in other words, temporary or time-limited replacements, i.e. those intended to end with the resumption by the replaced Member of his/her seat, appear to be inadmissible, because the natural term of any substitution is the end of the parliamentary term.

Thirdly, a number of practical consequences should not be ignored: for instance, a Member on maternity leave whose mandate has been withdrawn will not enjoy parliamentary immunity; there would also be problems with the Statute for Members, especially with regard to the calculation of the old-age or incapacity pension and the payment of the transitional allowance, since the amounts in question are calculated for *'each full year's exercise of a mandate'* (Articles 13-15 of the Statute).

The alternative might actually be to apply the Statute's financial rules to both Members simultaneously; this solution, however, appears to be incompatible with the Statute. Yet in this way the end result would be to place the Member on parental leave (a situation to be protected) in a different, and worse, situation than that of other Members.

Fourthly, the different way in which female and male Members are treated is incomprehensible: the arrangements arising from temporary replacement are envisaged only for female Members. Furthermore, the text is silent about cases of adoption.

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**In conclusion**, Committee on Legal Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to take account of the points set out below.

The Committee on Legal Affairs wholeheartedly endorses the proposed amendment to Rule 8 of the European Parliament's Rules of Procedure; however, it has doubts about the legal compatibility of the proposed amendment to Rule 4(4) of the Rules of Procedure with the Act concerning the election of the representatives of the European Parliament by direct universal suffrage of 20 September 1976, the provisions of which do not cover hybrid situations such as the temporary suspension of a parliamentary mandate.

The committee also notes the risk of a paradoxical situation resulting from the proposed amendment to Rule 4(4) of the Rules of Procedure since, by withdrawing the mandate, the end result would be to place a Member on maternity leave (a situation to be protected, of course) in a worse situation than that of other Members with regard to her economic and social rights, as laid down in the Statute for Members, and also in terms of her privileges and immunities.

## PROCEDURE

<b>Title</b>	Rules applying to Members in the event of maternity or paternity
<b>Procedure number</b>	2006/2025(REG)
<b>Committee responsible</b>	AFCO
<b>Opinion by</b> Date announced in plenary	JURI 28.9.2006
<b>Enhanced cooperation – date announced in plenary</b>	
<b>Drafts(wo)man</b> Date appointed	Giuseppe Gargani 11.9.2006
<b>Previous drafts(wo)man</b>	
<b>Discussed in committee</b>	2.10.2006    20.11.2006
<b>Date adopted</b>	20.11.2006
<b>Result of final vote</b>	+ :                    15 - :                    0 0 :                    0
<b>Members present for the final vote</b>	Maria Berger, Carlo Casini, Rosa Díez González, Giuseppe Gargani, Katalin Lévai, Antonio López-Istúriz White, Achille Occhetto, Aloyzas Sakalas, Gabriele Stauner, Diana Wallis, Nicola Zingaretti, Jaroslav Zvěřina
<b>Substitute(s) present for the final vote</b>	Nicole Fontaine, Eva Lichtenberger, Manuel Medina Ortega
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	
<b>Comments (available in one language only)</b>	...