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## **DRAFT REPORT**

on defending Parliament's prerogatives vis-à-vis the national courts  
(2007/2205(INI))

Committee on Legal Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on defending Parliament's prerogatives vis-à-vis the national courts (2007/2205(INI))

*The European Parliament,*

- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Constitutional Affairs (A6-0000/2008),
- A. whereas the European Parliament is the main transnational legislative institution in Europe which, moreover, has no legal personality; whereas as such it is often impeded in protecting its prerogatives from problems that are peculiar to its special nature,
- B. whereas the European Parliament in this regard has a range of remedies available to it under the Treaty which ensure that the aforementioned prerogatives are protected vis-à-vis the other Community institutions, such as proceedings for failure to act (Article 232 of the EC Treaty) or the procedure relating to the annulment of Community acts (Article 230 of the EC Treaty),
- C. whereas, however, the European Parliament does not have the same direct instruments with which to defend these prerogatives before the national courts, especially in the event of a national judgment which runs counter to those prerogatives, since it can neither participate in national legal proceedings nor directly bring an action before the Court of Justice to defend its decisions,
- D. whereas the European Parliament cannot even initiate, as a last resort, infringement proceedings (Article 226 of the EC Treaty) against a Member State, since only the Commission has the power to do so,
- E. whereas the lack of appropriate instruments with which to defend its own decisions can hamper the regular exercise of the activity of the European Parliament as a whole and of its Members in particular,
- F. whereas the principles of loyal cooperation between the institutions of the European Union and those of good administration call for the activity of Community bodies to be governed by rules of transparency and intelligibility in order to clarify the reasons for which a given action was or was not taken,
- G. whereas, in order to obviate the above-mentioned problems, it would be advisable to strengthen the measures to protect parliamentary prerogatives not by amending the EC Treaty, but by attempting to extrapolate from the experience of the national parliaments remedies that are appropriate to the specific requirements of the European Parliament,
- H. whereas the results of the study carried out to that end on a broad cross-section of Member States clearly shows that most national legal orders grant their national parliaments legal remedies aimed at ensuring not only the defence of the interests of the parliament as a

whole, but also of each individual member,

- I. whereas the Member States are subject to the principle of ‘sincere and loyal cooperation’ enshrined in Article 10 of the Treaty establishing the European Community and whereas in the light of the case-law of the Court of Justice those same Member States are required to ‘establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection’<sup>1</sup>,
- J. whereas it would be opportune to grant the European Parliament similar, if not identical, measures to protect its prerogatives vis-à-vis the judicial power, be that power represented by the Court of Justice or by the national courts, by analogy with the safeguards provided for by the national legal orders to the benefit of their national parliaments,
  1. Calls on the Commission to take account of possible requests by the European Parliament to activate the infringement procedure against a State accused of having breached a parliamentary prerogative and urges the Commission therefore to inform it, through the Commissioner responsible or the Director-General of the Legal Service, but always in writing and exhaustively, of its reasons for any decision in this regard, especially should it decide not to take any action;
  2. Suggests that the Statute of the Court of Justice be amended in order to give the European Parliament the right to submit its observations to the Court in all cases in which, directly or indirectly, its prerogatives are called into question, so that the involvement of the European Parliament, where the latter is not formally a party to the proceedings, is not left to the discretion of the Court of Justice as currently provided under Article 24(2) of the Statute;
  3. Urges the application of the legal model under Article 300(6) of the EC Treaty to all those cases in which the prerogatives of the European Parliament are seriously under threat, allowing Parliament to ask the Court of Justice for an opinion on the compatibility of a certain act of national law with primary Community law, without prejudice to the exclusive power of the Commission to decide whether or not to initiate infringement proceedings against the State which may have committed an infringement;
  4. Proposes an amendment to Rule 19 of its Rules of Procedure to the effect that the Chairman of its Committee on Legal Affairs should be expressly appointed to represent the European Parliament in court in all legal proceedings in which its prerogatives are at issue;
  5. Considers it advisable to foster a policy of cooperation between the European Parliament and national judges, which is already producing good results in a number of Member States, by developing court procedures which allow the European Parliament to take part in legal proceedings concerning Parliament’s own prerogatives before national judges;
  6. Calls on the Commission to consider adopting legislative measures concerning the court-related aspects of Parliamentary prerogatives, since these would be necessary in order to ensure the full effectiveness of the rules conferring certain prerogatives on

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<sup>1</sup> Case C-50/00P, Unión de Pequeños Agricultores v. Council (ECR 2002, p. I-6677).

Parliament<sup>1</sup>;

7. Instructs its President to forward this resolution to the Council and Commission, and the governments and parliaments of the Member States.

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<sup>1</sup> cf. Case C-176/2003, Commission v. Council (ECR 2005, p. I-7879): in this case the Court acknowledged that the Community legislator has an ‘implicit’ power to adopt criminal penalties in matters relating to environmental protection, which falls within its own competence.

## EXPLANATORY STATEMENT

The European Parliament has often found it – and still finds it – impossible to effectively protect the prerogatives which the Treaties and the European Court of Human Rights itself expressly grant it. There is therefore the risk that rights and powers that are enshrined at Community and European level remain on paper, without being effectively safeguarded. Under the existing Treaties, therefore, it is necessary to seek out and enhance the means that Parliament can exploit with a view to genuinely protecting its own prerogatives which were established as a guarantee of its independence and functionality.

At an abstract level, one of the instruments which can be used by the European Parliament in case of an infringement of its prerogatives is action for failure to act under Article 227 EC.

In the event of an infringement of one of its rights that are protected by Community law, Parliament can call on the Commission to undertake infringement proceedings pursuant to Article 226 EC. In practice, however, this cannot ensure the full protection of Parliament's prerogatives in that the decision on whether or not to start formal proceedings is left to the Commission's discretion.

Should the Commission decide not to take any action, in accordance with principles such as those of good administration, transparency and cooperation between institutions, Parliament must demand the reasons for such a decision to be clarified. Parliament is entitled, if not to demand action from the Commission, at least to know the reasons for which it has decided not to act, so that it can assess whether the Commission is exercising its discretion in a proper manner and understand the criteria guiding its decisions.

As regards the representation of the European Parliament in court, it would be appropriate to officially confer on the Chairman of the Committee on Legal Affairs the legal capacity to take part in court proceedings, where these involve the prerogatives of the European Parliament, representing Parliament as a whole. To that end, an amendment to Rule 19 of Parliament's Rules of Procedure would be desirable, to the effect that the Chairman of the Committee on Legal Affairs should be expressly appointed to represent the European Parliament in court in all legal proceedings in which its prerogatives are at issue.

With reference, in particular, to participation in proceedings before the Court of Justice of the European Communities, under Article 23 of the Court's Statute, Parliament may submit observations in applications for a preliminary ruling which concern the validity or interpretation of acts adopted under the codecision procedure. However, as the Rules of Procedure of the European Parliament are not included among such acts, it is to be hoped that the Court of Justice may encourage the involvement of the European Parliament where its prerogatives are at issue, on the basis of Article 24(2) which states: 'The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings'.

It would, however, be advisable to amend the Statute so that the European Parliament's power to submit its own observations may be extended to all cases in which, directly or indirectly, parliamentary prerogatives are being debated.

But it is in the national courts that, without a doubt, an urgent need is felt for a strong European Parliament presence. Direct participation of the European Parliament in proceedings before the national judges in which its own prerogatives are at issue would have several advantages. It would, in fact, help to limit cases of possible infringement proceedings or referrals for a preliminary ruling, to foster greater efficiency in the courts and, lastly, to avoid forms of discrimination between national and European parliamentarians.

First of all, it is essential to foster a policy of cooperation between the European Parliament and national judges. Good practices in this regard have already been developed with the judicial authorities of several Member States. The aim is to implement those practices and launch them successfully with those countries which up to now have not been so receptive to the issue.

In this connection it would be useful to note Article 8 of Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty establishing the European Community, according to which: ‘The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 230 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof’.

Since the Community legal order recognises the right of national parliaments to take action before the Court of Justice should the principle of subsidiarity be infringed, it would be illogical not to accept, conversely, the European Parliament’s right to take legal action, or in any case to take part in proceedings which concern its own prerogatives before the national courts.

Where national legal orders were not to recognise this right of the European Parliament, serious doubts would arise as to compliance with and enforcement of the ‘principle of sincere and loyal cooperation’ enshrined in Article 10 of the Treaty establishing the European Community.

Moreover, the case-law of the Court of Justice recognises an implicit power in respect of any legislative measures that are necessary to ensure the full effectiveness of rules laid down in an area falling within the competence of the Community legislator (for example, criminal penalties in matters relating to the infringement of environmental protection rules)<sup>1</sup>; your rapporteur therefore considers that rules concerning the court-related aspects of parliamentary prerogatives could also fall within such implicit competence, given that they are necessary to ensure the full effectiveness of the rules conferring certain prerogatives on Parliament (see, for example, the rules laid down in Protocol No 36 on the Privileges and Immunities of the European Communities).

Should, however, the Community legislator not consider it necessary to adopt legislative measures in this regard, it cannot ignore the decision in which the Court of Justice ruled that ‘it is for the Member States to establish a system of legal remedies and procedures which

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<sup>1</sup> CJEC C-176/03, Commission v. Council, 2005

ensure respect for the right to effective judicial protection'.<sup>1</sup>

In the light of that judgment and, more generally, of the principle of sincere and loyal cooperation enshrined in Article 10 of the EC Treaty, your rapporteur considers that the national legal orders in general, and national judges in particular, are required to accept the participation of the European Parliament in all court proceedings in which Parliament's legally recognised prerogatives are in question.

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<sup>1</sup> CJEC C-50/00P, Unión de Pequeños Agricultores v. Council, 2002.