

ЕВРОПЕЙСКИ ПАРЛАМЕНТ

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ПРОЕКТОДОКЛАД

за изменение на член 121 от Правилника за дейността на Европейския парламент относно производството пред Съда на Европейските общности (2007/2266(REG))

Комисия по конституционни въпроси

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ПРЕДЛОЖЕНИЕ ЗА РЕШЕНИЕ НА ЕВРОПЕЙСКИЯ ПАРЛАМЕНТ

за изменение на член 121 от Правилника за дейността на Европейския парламент относно производството пред Съда на Европейските общности (2007/2266(REG))

Европейският парламент,

- като взе предвид писмото на председателя на комисията по правни въпроси от 26 септември 2007 г.,
 - като взе предвид членове 201 и 202 от своя правилник,
 - като взе предвид доклада на комисията по конституционни въпроси (A6-0000/2008),
1. реши да внесе в своя правилник следното изменение;
 2. напомня, че настоящото изменение влиза в сила на първия ден от следващата месечна сесия;
 3. възлага на своя председател да предаде за сведение настоящото решение на Съвета и на Комисията.

Изменение 1

Правилник за дейността на Европейския парламент
Член 121 – параграф 4 (нов)

Текст в сила

Изменение

4. Председателят депозира възражения или встъпва в дела пред общностните правораздавателни органи от името на Парламента, след като се консултира с компетентната комисия.

Ако председателят възнамерява да се отклони от становището на компетентната комисия, той информира за това Председателския съвет.

Когато Председателският съвет счете, че няма основание за депозиране на възражения или за встъпване в дело пред Съда на Европейските общности относно

преценка за действителност на съвместно приет акт от Парламента и Съвета, въпросът незабавно се поставя на разглеждане в пленарно заседание.

При необходимост, председателят може да извършва предварителни действия с оглед спазване на определените от Съда на Европейските общности срокове. В такъв случай предвидената в настоящия параграф процедура трябва да се приложи във възможно най-кратък срок.

Or. fr

EXPLANATORY STATEMENT

BACKGROUND

1. By letter dated 26 September 2007, the Chairman of the Committee on Legal Affairs presented a proposal to the Chairman of the Committee on Constitutional Affairs concerning the interpretation of Rule 121 of Parliament's Rules of Procedure. In his letter, Mr Gargani sought clarification from the Committee on Constitutional Affairs as to whether this Rule, and in particular paragraph 3, refers only to actions brought by Parliament before the Court of Justice or whether it can be interpreted so as to also include observations and interventions by Parliament before the Court.
2. Rule 121, entitled 'Proceedings before the Court of Justice', reads as follows:
 1. *Parliament shall, within the time limits specified by the Treaties and the Statute of the Court of Justice for action by the institutions of the Union and by any natural or legal persons, examine Community legislation and the implementing measures to ensure that the Treaties, in particular where Parliament's rights are concerned, have been fully respected.*
 2. *The committee responsible shall report to Parliament, orally if necessary, where it suspects a breach of Community law.*
 3. *The President shall bring an action on behalf of Parliament in accordance with the recommendation of the committee responsible.*

At the start of the following part-session, he may put to plenary the decision on maintaining the action. Should plenary rule against the action by a majority of the votes cast, he shall withdraw it.

Should the President bring an action contrary to the recommendation of the committee responsible, he shall put to plenary, at the start of the following part-session, the decision on maintaining the action".

SCOPE OF THE INTERPRETATION

3. Rule 121 is entitled 'Proceedings before the Court of Justice', while paragraph 3 refers expressly to 'actions' brought before the Court by the President on behalf of Parliament. Therefore, Rule 121(3) applies when Parliament *initiates* judicial proceedings before the Court of Justice. In this case, the President acts upon a recommendation by the Committee on Legal Affairs. If the President decides not to follow such a recommendation, the matter has to be submitted to Plenary for a final decision, although he/she may take provisional action.
4. When Parliament is a *defendant* in proceedings before the Court, it is evident that the President has to defend Parliament's position in accordance with article 19(4) of the Rules of Procedure, which expressly vests in him/her the power to represent Parliament in legal matters.
5. There are also other types of proceedings brought before the Court of Justice in the

course of which Parliament may have an interest to *intervene or submit observations* in accordance with the provisions of the Statute of the Court. This is notably the case in preliminary proceedings where the validity of a legislative act is disputed and in particular where this act has been jointly adopted by the Parliament and the Council by codecision. According to current practice, in such cases the Committee on Legal Affairs is consulted on the appropriateness of presenting observations before the Court of Justice, while the President of Parliament takes the final decision under the powers conferred on him by Rule 19(4).

6. In the above mentioned letter, the Chairman of the Committee on Legal Affairs suggests interpreting Rule 121(3) in such a way that it covers not only actions initiated by Parliament, but also observations and interventions in cases before the Court. In practice this would mean that in cases of disagreement between the President and the Committee on Legal Affairs, the President would refer to Plenary not only the decision on whether to maintain an action but also the decision on whether to submit observations or intervene before the Court. In the view of the Committee on Legal Affairs, such an interpretation could be justified by the fact that in the English and German version of Rule 121 the general term 'proceedings' is used in the title (unlike the French and the other linguistic versions which refer to 'recours').

CONSIDERATIONS OF THE RAPPORTEUR

7. The Rapporteur believes that the confusion created by the different linguistic versions of the title of Rule 121 ('*proceedings*', '*Verfahren*', '*recours*', '*ricorsi*', etc.) does not concern paragraph 3 in which the term 'action' is translated in all languages uniformly ('*Klage*', '*recours*', '*ricorso*', etc.). Furthermore, it should be pointed out that article 121, by stipulating in its first two paragraphs that '*the Parliament shall ... examine Community legislation and the implementing measures to ensure that the Treaties, in particular where Parliament's rights are concerned, have been fully respected*' and that '*the committee responsible shall report to Parliament, orally if necessary, where it suspects a breach of Community law*', is pertinent to cases where Parliament decides to initiate proceedings before the Court, such as an action for annulment, in order to defend its prerogatives or ensure the compliance of community legislation with the Treaties.
8. For the above reasons, the Rapporteur considers that it would not be justifiable to extend the scope of the *terminus technicus* 'action' ('*recours*', '*Klage*', '*ricorso*', etc), which is used in article 121(3), merely by virtue of the wider meaning of the term used in some linguistic versions of the Rule's title. It seems clear that the scope of paragraph 3 is limited to 'actions' initiated by Parliament. Thus, Rule 121(3) could not be interpreted widely so as to also include observations and interventions by Parliament before the Court, which are qualitatively different actions.
9. It could be argued that there might still be a legitimate reason for establishing a specific procedure to decide whether Parliament should lodge observations or

intervene before the Court in cases of disagreement between the President and the committee responsible. It is generally understood that once Parliament has adopted a legal act, it has the responsibility to defend its validity before the Court of Justice. This principle is enshrined in a letter of 10 December 1997 by the Chairman of the Committee on Legal Affairs and Citizens' Rights, Mr Willy de Clercq, to the President of the European Parliament, Mr José Maria Gil-Robles, determining the criteria that should be followed by the European Parliament when deciding whether to submit observations in preliminary proceedings related to a legal act adopted by codecision. The principle established thereby is that Parliament should submit observations in preliminary proceedings when the validity of an act is in question and not take action in proceedings concerning the interpretation of a legal act.

10. Nevertheless, the Rapporteur is aware of two cases where the Committee on Legal Affairs advised the President not to defend the validity of an act adopted by codecision before the Court of Justice. In both of these cases, the President decided to take an action contrary to the recommendation of the committee responsible:

- In 1999, President José Maria Gil-Robles decided to submit observations before the Court of Justice in order to defend the legality of Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

- In 2005, President Josep Borrell-Fontelles decided to defend before the Court of Justice the validity of Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering.

11. In both cases the President's decision derived from the established practice of defending the validity of legal acts adopted by codecision in conformity with the criteria determined by the Committee on Legal Affairs. It should be noted that although paragraph 3 of article 121 was already in force in the second case, the President did not ask the Plenary to confirm his decision; this paragraph was correctly interpreted as referring only to 'actions' brought by the President on behalf of Parliament.

12. The Rapporteur is not in a position to evaluate the legal reasoning behind the decision of the committee responsible to advise the President not to submit observations in the above cases. He believes that, as a matter of principle, Parliament should defend the validity of its acts in cases brought before the Court of Justice in accordance with the presumption of legality and the principle of loyal cooperation vis-à-vis its co-legislator (the Council).

13. The Rapporteur, however, considers that there might be exceptional cases where the Parliament could be empowered to take a different view from that taken in the codecision procedure, provided that there has been an *important change of legal circumstances* (e.g. Treaty reform, entry into force of the EU Charter of Fundamental Rights, case-law) which may render an act incompatible with the Union's primary law.

Such an act would remain in force as adopted under the previous legal framework, but the Parliament, lacking the right of initiative, would not be in a position to modify it in order to render it compatible with the new legal circumstances. It can be argued that, in that particular case, Parliament could have a legitimate reason to decide not to submit observations or intervene before the Court.¹

14. Bearing in mind that the Rules of Procedure currently remain silent as to the internal procedure to be followed by Parliament when deciding upon the appropriateness of acting by means of observations or intervention before the Court in cases of a divergence of views between the President and the Committee on Legal Affairs, the Rapporteur is of the opinion that there are two questions on which the AFCO Committee has to take a stance. Firstly: is it better to resolve the issue by interpretation and therefore simply confirm that the President of the Parliament is entitled, according to the existing practice, to take a decision contrary to the recommendation of the committee responsible? And secondly: were it to be considered preferable to regulate the matter by complementing Rule 121, to which body and under which procedure should the right of decision be given?

CONCLUSIONS AND RECOMMENDATIONS

15. The Rapporteur would like to reiterate that in order to respect the principle of legality - and to safeguard its own credibility as a co-legislator - Parliament should only in exceptional circumstances, and only on the basis of due legal consideration, be enabled to decide, in the course of preliminary proceedings, to take a different stance from the one held during the codecision procedure.
16. It appears evident that Rule 121(3) in its present form applies only to 'actions' initiated by Parliament and does not cover 'observations' or 'interventions' in judicial procedures. Should the Rule remain in its current form, the Rapporteur would have to propose to the Committee the adoption of an explicit interpretation under which, for the submission of observations or interventions before the Court, the power to decide would always lie with the President of the Parliament.
17. For reasons of completeness and legal certainty, the Rapporteur considers that a new paragraph should be added to Rule 121 in order to incorporate in the Rules of Procedure the established practice of the President to submit observations or intervene before the Court on behalf of Parliament upon a recommendation of the Committee on Legal Affairs. The new paragraph shall also lay down the procedure to be followed when a divergence of views arises between the President and the committee responsible.
18. The Rapporteur considers that in case of disagreement the decision should be taken through a procedure ensuring enhanced democratic legitimacy. Due to the nature of

¹ It is also worth noting that article 34 of Parliament's Rules of Procedure stipulates that *"during the examination of a legislative proposal, Parliament shall pay particular attention to respect for fundamental rights and in particular that the legislative act is in conformity with the European Union Charter of Fundamental Rights, the principles of subsidiarity and proportionality and the rule of law"*.

the matter, he puts forward the idea that the decision should be initially referred to the Conference of Presidents, a body which reflects the *rapport de forces* of the whole Parliament whilst also being in a position to consider the matter on its legal merits after having heard the different views and taken into consideration the opinion of Parliament's legal service. If the Conference of Presidents concludes that Parliament should not submit observations or intervene before the Court in order to defend the validity of a legal act adopted by codecision, the matter would have to be referred to Plenary. Members of Parliament should have at their disposal all relevant documents or information in order to be able to thoroughly examine the issue and take a decision.¹

19. In exceptional cases where the Committee on Legal Affairs is not in a position to deliver its opinion within the time limits required by the Statute of the Court of Justice, the Rapporteur suggests that the President should be able to lodge observations or intervene in cases before the Court without prior consultation. This could in particular be the case in the recently introduced urgent preliminary ruling procedure in the freedom, security and justice area -applicable as from 1 March 2008-, which provides for a shorter period for the submission of written observations. In such cases, the consultation of the committee responsible could take place at a later stage and the President should withdraw the observations if Plenary so decides.

¹ The Rapporteur considers that in proceedings where Parliament exceptionally decides not to defend the validity of a legislative act adopted jointly by the Parliament and the Council, the decision should be taken if it secures the votes of a majority of the component Members of Parliament. This would be in line with voting requirements in place when Parliament rejects or amends the common position of the Council under Article 251 of the EC Treaty. However, given that applying the absolute majority requirement would not be possible under Article 198 of the EC Treaty, the Rapporteur suggests an exceptional procedure where the matter is initially referred to the Conference of Presidents, a body reflecting the majority opinion of the component Members of Parliament, whilst Plenary, as Parliament's supreme body, should take the final decision.