



(011/2019)<sup>1</sup>

1.7.2024

## NOTICE TO MEMBERS

**Subject: Principles for immunity cases**

The Committee on Legal Affairs,

- having regard to Articles 7, 8 and 9 of Protocol (No 7) on the Privileges and Immunities of the European Union,
- having regard to Rules 5, 6, 7, 8 and 9 of the Rules of Procedure,
- having regard to the case law of the Court of Justice of the European Union,

has laid down the following principles pursuant to Rule 9(13) of the Rules of Procedure:

### **Part I – General principles**

1. Parliamentary immunity is a guarantee of the independence of Parliament as a whole and of its Members, and is not a Member's personal privilege.
2. The committee is not a court of law.
3. 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.
4. Member States' authorities decide on the guilt or otherwise of the Member whose immunity is under discussion, and on the appropriateness of the court proceedings. The committee does not consider such questions. The committee merely decides whether there is an obstacle to the court proceedings which derives from the need to

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<sup>1</sup> As amended on 30 May 2023 and 19 September 2023.

preserve Parliament's independence.

5. In the context of immunity cases, the committee does not discuss the relative merits of national legal and judicial systems. Alleged deficiencies in national judicial systems cannot serve to justify a decision not to waive, or to defend, the immunity of a Member.

## **Part II – Procedure**

### Position of rapporteur

6. The committee shall appoint a rapporteur for each immunity case.
7. For this purpose, each political group shall indicate one Member to be a standing rapporteur for immunity cases, who should be the coordinator, in order to ensure that immunity cases are dealt with by experienced Members. The political groups shall ensure that they appoint standing rapporteurs of the greatest probity.
8. The position of rapporteur for each immunity case will be rotated on an equal basis between the political groups. However, the rapporteur may not be a member of the same group, or be elected in the same Member State, as the Member whose immunity is under discussion.

### Management of immunity cases

9. The committee and the rapporteur shall endeavour to conclude each immunity case as quickly as possible, bearing in mind the relative complexity of each case.
10. The consideration of each immunity case shall include an initial presentation by the rapporteur, an optional hearing, an exchange of views and a vote on the basis of a draft report presented by the rapporteur.

### Speaking time

11. In view of the limited time available to the committee to consider immunity cases, speaking time for immunity cases shall be strictly regulated by the Chair.
12. The rapporteur may speak briefly at the opening and closing of any discussion to consider an immunity case, for approximately five minutes in each case.
13. Other Members may speak briefly, for approximately two minutes each, during an exchange of views. Where a hearing is held, they may also speak briefly in order to ask questions.

### Hearings

14. Hearings are optional, i.e. a Member may waive his or her right to a hearing in any case. Furthermore, the rapporteur shall advise the Member whose immunity is under discussion that a hearing is not useful in simple or unopposed cases.
15. The Member whose immunity is under discussion has the right to be heard in his or her own language, provided that it is an official language of the European Union.

16. Where a hearing is to take place, the committee shall invite the Member whose immunity is under discussion to be heard at the next possible committee meeting. No regard shall be had to the commitments or preferences of Members other than the Member whose immunity is under discussion and the rapporteur. Where the Member whose immunity is under discussion is unable to be heard within a reasonable time, owing for example to serious medical grounds, the procedure should proceed without such a hearing.
17. Where the Member whose immunity is under discussion is unable to attend the hearing physically on the grounds of deprivation of liberty because of detention or imprisonment, either for a part or for the entire duration of the mandate, and has expressed the will to enjoy his or her right to be heard, the hearing shall take place by means of remote participation via a secured platform provided by the European Parliament. Appropriate measures shall be taken in order to preserve the confidentiality of proceedings and the confidential character of the hearing; in this regard, all the provisions related to hearing in physical presence shall apply *mutatis mutandis*. Where relevant, ad hoc arrangements for such hearing shall be undertaken with Member States' relevant authorities.
18. Rule 9(6), third, fourth and fifth subparagraphs, shall apply to invitations to hearings.
19. There shall be no more than one hearing in each case. However, in exceptionally complex cases, the rapporteur may propose to the committee the holding of a second hearing. The committee will vote on such a proposal.
20. The Member whose immunity is under discussion or the Member representing him or her may speak only during the optional hearing. He or she may make an introductory statement, which should not last longer than approximately fifteen minutes, following which he or she should briefly answer the questions asked by other Members.
21. The Member whose immunity is under discussion may only be represented by another serving Member of the European Parliament, who should not, however, be a member or substitute member of the Committee on Legal Affairs. In this case, the hearing shall take place only in physical presence.
22. For the hearing, the Member whose immunity is under discussion may be accompanied by one lawyer or legal adviser. The lawyer or legal adviser shall not be entitled to take the floor, but may advise the Member whose immunity is under discussion during the hearing. The European Parliament shall not pay the travel expenses of the lawyer or legal adviser.

#### Supporting documents

23. Under the authority of the rapporteur, the secretariat shall have those documents which are relevant to the committee's decision translated into the committee's working languages. In most cases, this will be restricted to the formal request for waiver or defence, accompanied by the act of accusation or statement of claim.
24. The Member whose immunity is under discussion may submit documents relating to his or her case in addition to any documents already supplied by the national authorities.

25. Any documents deemed not relevant to the committee's decision shall not be translated.
26. The final decision as to whether a given document should be translated or not lies with the rapporteur. When taking that decision, he or she should bear in mind the cost of translation into the committee's working languages.

### **Part III - Confidentiality**

27. When dealing with immunity cases, the committee shall automatically apply the confidential procedure laid down in Rule 227.

#### **Access to room**

28. Immunity cases shall always be considered in camera. The secretariat, with the assistance of the ushers, shall ensure that only the following are present in the room:
  - a) members and substitute members of the Committee on Legal Affairs;
  - b) where a hearing is held, the Member whose immunity is under discussion or, if he or she is unable to attend, the Member representing him or her, and, if applicable, the lawyer or legal adviser of the Member whose immunity is under discussion, as well as any other Member of the European Parliament, in each case for the duration of the hearing only;
  - b (new) where a vote is taken, substitutes as referred to in Rule 216(7) duly appointed in writing by a full committee member and communicated in writing to the Chair before the start of the committee meeting, for the duration of the vote only; the Chair may exceptionally allow for the substitute as referred to in Rule 216(7) to be present during consideration of the draft report scheduled in the draft agenda to immediately precede the vote; in such case the substitute as referred to in Rule 216(7) shall not take part in the discussion and no documents concerning the case should be sent to him or her;
  - c) the staff of the secretariat of the Committee on Legal Affairs, and any other staff of the General Secretariat of the European Parliament whose work strictly requires their presence for the proper conduct of the meeting;
  - d) staff of the political groups and the non-attached Members' secretariat who habitually follow the business of the Committee on Legal Affairs, whose work strictly requires their presence and whose names have been notified in writing to the secretariat of the Committee on Legal Affairs;
  - e) one accredited parliamentary assistant of the Chair and the standing rapporteurs for immunities whose work strictly requires their presence and whose names have been notified in writing to the secretariat of the Committee on Legal Affairs.

For the purposes of letters c) - e) of point 28, trainees shall not be considered staff or accredited parliamentary assistants and shall not be given access.
29. No other person shall be given access. That restriction on access shall apply, in

particular, to assistants of the Member whose immunity is under discussion. The Chair may, in exceptional circumstances, allow individual exceptions to this rule.

30. Attendees may not make any audio or video recordings when immunity cases are being discussed. The minutes shall not detail the content of any debates, but shall record any decision reached.

#### Access to documents

31. Documents translated for the purposes of consideration by the committee shall be circulated, in the form of a notice to members, by the secretariat, in advance of each meeting at which the specific immunity case is to be discussed. The notice to members shall be circulated only to the Chair (in case of chairing replacement for the meeting, the notice to members will be sent also to the vice-Chair chairing the meeting), the standing rapporteurs for immunity cases, one staff member of the political groups for each group and one member of the secretariat of the non-attached Members who follows the immunity cases, two members of the Legal Service dealing with immunity cases and members of the secretariat of the Committee on Legal Affairs dealing with immunity cases. The same shall apply to any further notices to members which could be produced in relation to a given immunity case. The notice to members shall not be circulated to anyone else. The circulation shall be made via password-protected email.

- 31a.(new) Political groups and the secretariat of the non-attached Members shall notify the Committee secretariat the name of the political advisor/member of the secretariat of the non-attached Members responsible for immunity cases and in particular for each given immunity case. The Legal Service shall notify the Committee secretariat the names of its two members who deal with immunity cases and shall receive the notice to members.

- 31b.(new) An **information note to Members** shall be circulated to all members or substitute members of the Committee on Legal Affairs, staff of the political groups and the secretariat of the non-attached Members who habitually follow the business of the Committee on Legal Affairs and to any other relevant staff of the General Secretariat of the European Parliament; the information note shall mention the following:

a) in case of requests for the waiver of immunity: the competent authority of the Member State or EPPO requesting the waiver of immunity (Rule 9(1)), the competent authority to transmit the request to EP or EPPO (Rule 9(12)) as well as the charges imputable to the Member whose immunity is under discussion;

b) in case of requests for the defence of immunity: the name of the Member or former Member concerned and the author of the request (Rule 9(1) and (2)) and the summary of the content of the request.

32. The complete file may be consulted in person by members or substitute members of the Committee on Legal Affairs, and by the Member whose immunity is under discussion, in the secretariat's premises in Brussels, by appointment only. It may not be borrowed, and no copies under any form may be made. No other person may have access to the file, unless they are the Member representing the Member whose immunity is under discussion or the lawyer or legal adviser of the Member whose

immunity is under discussion. In the last two instances, decisions on the consultation of the file shall be taken by the Chair.

For the purpose of consultation of the file, a reading room shall be set in the secretariat's premises in Brussels and be available, by appointment only, from 9.00 to 18.00 from Monday to Thursday, and from 9.00 to 14.00 on Friday, from the 5th working day before the date of the committee meeting where a given immunity case is put on the agenda of the Committee, to the day after the Committee adopts a draft report in that immunity case.

#### Respect for confidentiality of proceedings

33. The confidentiality of immunity proceedings shall be respected. In particular, every effort shall be made to maintain utmost discretion as to immunity hearings. The relevant provisions under Rule 227, of the Rules of Procedure and the relevant disciplinary provisions under the Staff Regulations apply.

#### **Part IV – Decisions on immunity cases**

##### Draft report and vote

34. The rapporteur shall prepare a draft report for consideration by the committee as soon as the progress made in the procedure allows. In this context, the rapporteur should bear in mind the time needed for translation and reflection before the vote.
35. The committee shall then proceed to vote at the earliest opportunity, i.e. as soon as possible following the exchange of views and/or any hearing, having regard to the circumstances of the case.
36. In view of the specific nature of immunity procedures, the committee's convention is that no amendments are tabled to a draft report. It shall only be possible to vote for or against the proposal contained in a draft report.
37. Only members or substitute members of the Committee on Legal Affairs may take part in the vote. Substitutes as referred to in Rule 216(7) must be appointed in writing by a full committee member and communicated to the Chair before the meeting.
38. Where a majority of members votes against the proposal contained in the draft report, the contrary decision shall be deemed adopted. The final report shall be re-worded accordingly, under the authority of the Chair.
39. Adopted reports shall be put on the agenda of the next plenary sitting.

##### Waiver of immunity

40. Requests for the waiver of immunity are based on Article 9 of the Protocol. Where proceedings are taking place in the Member State of election, the law of that Member State shall apply in the same way as it would if the Member whose immunity is under discussion were a member of the national parliament. In the case of proceedings in another Member State, Members have immunity from any measures of detention and

from legal proceedings. Where the proceedings take place in the Member State of election, it is therefore a question of national law as to whether a request for waiver of immunity is required.

41. The committee shall not waive the immunity of a Member if the inquiry, detention or legal proceedings are in respect of opinions expressed or votes cast in the performance of their duties, as laid down by Article 8 of the Protocol, as a request for waiver would be inadmissible in such a case.
42. An opinion is considered to be expressed in the performance of a Member's duties if it is expressed within the very precincts of the European Parliament. In accordance with the case law of the Court of Justice, an opinion may also be considered to have been expressed in the performance of a Member's duties if it was a subjective appraisal expressed outside Parliament having a direct and obvious connection with his or her duties as a Member of the European Parliament. To establish the existence of such a direct and obvious connection, regard should be had to the character and content of the subjective appraisal in question.
43. Where the proceedings in question do not concern opinions expressed or votes cast in the performance of a Member's duties, immunity should be waived unless it appears that the intention underlying the legal proceedings may be to damage a Member's political activity and thus Parliament's independence (*fumus persecutionis*).
44. Where a request for waiver of immunity has been received but it becomes apparent that the Member concerned by the request does not benefit from any immunity in the specific case, the request should be deemed inadmissible. The committee shall not issue a report, but shall send a letter to the President recommending that he or she deem the request inadmissible. The committee shall vote on the letter. If the President agrees with the committee's assessment, he or she shall announce this in Plenary and the case shall be closed with no further action being taken by the committee.

#### Defence of privileges and immunities

45. Requests for defence of the immunity of a Member or former Member must refer to a breach of privileges or immunities conferred by Articles 7, 8 and 9 of the Protocol. Such requests must therefore concern:
  - a) an administrative or other restriction imposed on the free movement of a Member travelling to or from a place of meeting of the European Parliament;
  - b) a failure to accord the appropriate facilities in respect of customs and exchange control;
  - c) an inquiry, detention or legal proceedings in respect of opinions expressed or votes cast in the performance of a Member's parliamentary duties; or
  - d) a failure by a Member State's authorities to make a request for waiver of immunity under Article 9 of the Protocol when they were obliged to do so.
46. Save in exceptional cases, a request for defence of privileges and immunities shall not be granted unless it concerns opinions expressed or votes cast in the performance of a Member's parliamentary duties, or where national authorities failed to make a request for waiver of immunity despite being obliged to do so.
47. An opinion is considered to be expressed in the performance of a Member's duties if it

is expressed within the very precincts of the European Parliament. In accordance with the case law of the Court of Justice, an opinion may also be considered to have been expressed in the performance of a Member's duties if it was a subjective appraisal expressed outside Parliament having a direct and obvious connection with his or her duties as a Member of the European Parliament. To establish the existence of such a direct and obvious connection, regard should be had to the character and content of the subjective appraisal in question.

48. In accordance with the case law of the Court of Justice of the European Union, a decision to defend the immunity of a Member does not have any binding legal effects for national law enforcement or judicial authorities. However, such authorities are obliged to stay proceedings and to take note of such a decision.
49. A request for defence of privileges and immunities shall not be admissible where a request for waiver of immunity has already been made, or been decided upon, in relation to the same facts. A request for defence which is under consideration shall be closed if a request for waiver is received in respect of the same facts.
50. In addition, a request for defence of privileges and immunities shall not be admissible where a request for defence of immunity has already been made, or been decided upon. The only exception concerns a request for reconsideration of such a decision, submitted together with new substantial evidence showing the existence of a breach of privileges or immunities conferred by the Protocol.<sup>2</sup>
51. Where the committee considers that a request is inadmissible pursuant to the above points, it shall not issue a report, but shall send a letter to the President recommending that he or she deem the request inadmissible. The committee shall vote on the letter. If the President agrees with the committee's assessment, he or she shall announce this in Plenary and the case shall be closed with no further action being taken by the committee.
52. Where the committee considers, however, that a request for reconsideration is admissible and is accompanied by new substantial evidence, it shall inform the President and deal with the request following the procedures it would follow if it were a new case.

## **Part V – Conclusions**

53. This Notice to Members replaces all previous notices and any other documents of the Committee on Legal Affairs regarding its practices and modalities of work in the field of immunities.

Adopted on 6 November 2019.

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<sup>2</sup> OJ C 310/261