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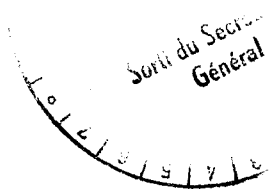
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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 666 final

Brussels, 30 November 1984

Draft for a Protocol
revising the Protocol on the Privileges and Immunities
of the European Communities
of 8 April 1965
in respect of Members of the European Parliament



COM(84) 666 final

Draft

revision of the Protocol on Privileges and Immunities of
8 April 1965 to be submitted by the Commission to the
Council in accordance with Articles 236 EEC, 204 Euratom
and 96 ECSC

(action in response to a request from Parliament dated 14 November 1983)

Explanatory Memorandum

BACKGROUND

1. By letter from its President dated 11 October 1983, Parliament forwarded to the Council its Resolution of 15 September 1983 on the Statute of its members, together with the proposal drawn up by its enlarged Bureau in accordance with paragraph 3 of the Resolution.

The proposal is in two parts :

- Part A : Remuneration and social security benefits;
- Part B : Adaptations to the Protocol on Privileges and Immunities of 8 April 1965.

The Resolution and accompanying proposal are attached at Annex I.

2. Part A contains provisions concerning the social security benefits and emoluments of members of Parliament, on whose behalf Parliament has a right of initiative under Article 13 of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage.

Since Article 13 of the Act provides that the Commission shall be consulted by the Council, the latter sought the Commission's opinion by letter dated 9 December 1983.

The Commission is currently studying the abovementioned provisions and will submit an opinion to the Council in due course.

3. This draft on the other hand, is concerned with part B, which deals with adaptations to the Protocol on Privileges and Immunities of 8 April 1965.

This subject is not covered by Article 13 of the Act of 20 September 1976, so Parliament has no right of initiative. This being so, by letter from its President dated 14 November 1983, Parliament sent part B to the Commission, requesting it to submit the instrument to the Council in accordance with the appropriate procedures.

EXAMINATION OF PARLIAMENT'S REQUEST

1. Content

The revision of the Protocol on Privileges and Immunities called for by Parliament is intended to achieve as far as possible equal treatment of all members of Parliament, by defining their status at Community level rather than by reference to national law. Whereas the wording of the current Protocol is based on freedom of movement for members of the European Parliament from their countries of origin to the places of work in order to take part in Parliament's activities, the proposed Statute takes account of the fact that, like the members and staff of the other Institutions, members of Parliament and their families settle near one of the places of work.

The common Statute should ensure:

- freedom of movement within the Community;
- the right to withhold evidence;
- parliamentary immunity;
- assistance with removals Parliament's places of work.

The text of the provisions which Parliament requests the Commission to insert in a draft revision of the Protocol on Privileges and Immunities which it would submit to the Council is as follows (*):

Article 8

(single paragraph replacing the former first paragraph, the second paragraph being deleted)

No administrative or other restriction shall be imposed on the free movement of Members of the Assembly travelling within the Community.

Article 9

(paragraph 1 stands, paragraph 2 new)

1. (...)
2. Members of the Assembly may withhold evidence insofar as such evidence has a bearing on their activities as Members of the European Parliament. To that extent the impounding of documents shall also be forbidden.

Article 10 (new)

Members of the Assembly shall enjoy in the territory of the Member States immunity from any measure of detention and from legal proceedings.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the Assembly from exercising its right to waive the immunity of one of its Members. Further provisions shall be laid down in the Rules of Procedure of the Assembly.

Article 19a (new)

Article 12, (b) to (e), and Articles 14 and 18 shall also apply to Members of the Assembly.

(*) The current text of the articles in question is set out in full in Annex II.

2. Assessment

Parliament's request seems on the whole justified, provided certain limits to the privileges and immunities are specified and certain improvements are made to the form.

Regarding freedom of movement

The Protocol can ensure the free movement of members of the European Parliament only in so far as such movement takes place in connection with the performance of their duties.

This restriction can be inserted by amending the current Article 8 of the Protocol as follows:

"No administrative or other restriction shall be imposed on the free movement of members of the Assembly travelling within the Community in connection with the performance of their duties."

Regarding the transfer of residence

For purposes of clarification and in keeping with Parliament's objective, which seems to be to grant the right of transfer of residence only as far as its own places of work are concerned (cf. page 3, point 6 c of its proposal : "the possibility of permanently residing at the place (or places) at which the institution concerned undertakes its activities"), the following wording might be considered:

"Article 12 (b) to (e) and Article 14 shall apply to members of the Assembly who take up residence at one of the places of work of the Assembly."

Moreover, this provision belongs more in the chapter entitled "Members of the Assembly" than in the general provisions.

It is therefore proposed that the above text be inserted in Article 8 in lieu of the second paragraph, instead of turning it into an Article 19 as requested by Parliament.

The reference in Parliament's text to Article 18 would be replaced by an amendment of that article, with the addition of "and to members of the Assembly" after "other servants of the Communities".

Summary

The amendments would thus affect Articles 8, 9, 10 and 18, without the addition of a new Article 19a.

A draft revision is attached (Annex III).

IMPROVEMENT OF THE WORDING OF THE PROTOCOL WHICH MIGHT BE ACHIEVED AT THIS JUNCTURE

Article 15 of the Protocol is now superseded by Article 24 of the Treaty establishing a Single Council and a Single Commission of the European Communities. It is considered advisable to take the opportunity afforded by the draft amendment to adapt Article 15.

ANNEXES

- | | |
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| ANNEX I | Request from the European Parliament |
| ANNEX II | Relevant articles of the Protocol on Privileges and Immunities |
| ANNEX III | Draft revision of the Protocol on Privileges and Immunities |

REQUEST FROM THE EUROPEAN PARLIAMENT

European Parliament

The President

Strasbourg, 14 November 1983

Mr Gaston THORN
President of the Commission
Commission of the
European Communities
200, rue de la Loi
B - 1040 Brussels

Sir,

Following a resolution adopted by Parliament on 15 September, the enlarged Bureau, at its meeting on 29 September, approved a draft Statute amending the Protocol on Privileges and Immunities of 8 April 1965. This draft was sent to the Council on 11 October.

I have the honour to forward to you this proposal and request the Commission to submit to the Council, in accordance with the appropriate procedures, the text concerning the amendments to the Protocol on Privileges and Immunities.

(Complimentary close)

P. DANKERT

Annexes

EUROPEAN PARLIAMENT

ENLARGED BUREAU

PROPOSAL

for a

common Statute

of

Members of the European Parliament

Part B : Adaptations to the Protocol on Privileges and Immunities
of 8 April 1965

29 September 1983

PE 67.748

1. At the commencement of its activities, the Working Party already found that the provisions¹ relating to Members of the European Parliament in the Protocol on Privileges and Immunities of 8 April 1965 required certain changes and additions. On 19 September 1980 the Working Party decided to define the necessary changes in detail to enable the European Parliament to submit appropriate proposals if necessary to the Member States.

2. From the procedural angle it will be noted that the Protocol on the Privileges and Immunities of the European Communities is directly linked with the Merger Treaty and thus constitutes a treaty between the Member States which can only be amended by a further treaty between the Member States.

In formal terms the Commission (pursuant to Article 236 EEC) is empowered to propose amendments to treaties and also to a protocol. Parliament need only be consulted on proposed amendments of this kind. However it is certainly possible for Parliament to draft proposed texts and submit them to the Commission to enable the latter to initiate the procedure under Article 236 EEC which requires the assent of the parliaments of all the Member States.

3. Chapter III of the Protocol headed 'Members of the Assembly' deals only with certain areas of the Statute of Members:

- Protection against legal proceedings in respect of the performance of parliamentary duties (Article 9)
- Immunity against legal proceedings (Article 10)
- Facilities during travel (Article 8).

4. A comparison with the status defined in the Protocol for permanent members of other institutions (i.e. members of the Commission, Court of Auditors and Court of Justice) shows immediately that provisions applicable in the past to Members of the European Parliament were based on a fundamentally different approach:

When the Protocol was drafted all Members of the European Parliament were necessarily members of a national parliament. Their status in the European Parliament was derived from their national status. It was therefore justifiable to view the Community provisions on their status as a mere addition by reason of the fact that activities in the European Parliament were only secondary.

¹ The text is reproduced in an annex.
Articles 8-12 apply to Members of the European Parliament.

5. This situation has undergone a fundamental change since direct elections but the Protocol has not been adapted accordingly:

The overwhelming majority of Members no longer belong to a national parliament and for a great many Members of the European Parliament their activities in that parliament are their principal occupation. It should also be noted that the mandate of these Members is no longer derived from a decision of the national parliaments but from direct election by all the citizens of the Community Member States.

6. It follows from this change in circumstances due to the direct elections that the Members of the European Parliament are now appointed to their office in a similar manner to the members of the other institutions who hold and exercise their mandates for a definite period of time. On the basis of the legal status accorded by the Protocol on Privileges and Immunities to Members of the Commission, Court of Justice and Court of Auditors, the following conclusions can be drawn:

- (a) The status of fully employed member of a Community institution necessitates as far as possible equal treatment of all members of the institution and a definition of their status at Community level.
- (b) The status of full-time member of a Community institution requires the maximum freedom of movement within the Community to enable the persons concerned to effectively perform the duties attributed to their institution.
- (c) Finally the status of full-time member of a Community institution necessitates the possibility of permanently residing at the place (or places) at which the institution concerned undertakes its activities without hindrance from taxation, currency, labour law and other administrative provisions.

7. In the case of Members of the European Parliament, there are at present many shortcomings in this status:

The principle of equal treatment does not apply to parliamentary immunity². Article 10 of the Protocol admittedly grants a specific Community immunity from legal proceedings to Members of the European Parliament but this immunity is essentially based on the immunity 'of their own state'. The European Parliament must therefore examine in each case which law of immunity is applicable in the Member State whose nationality the Member of Parliament concerned has when an application for immunity to be lifted is made. However,

² The problem of equal financial treatment has already been discussed by the Working Party, see report by Mr Simpson, Doc. PE 63.928/rev.

since procedural law forms part of the national law of immunity, the European Parliament is obliged to examine in each case whether the national procedures (which naturally differ) are observed. This is not only time-consuming but also entails a risk of incorrect interpretation of the relevant national law. For this reason alone the creation of a Community Law on Immunity is imperative³.

8. Freedom of movement of Members of the European Parliament within the Community as a whole has also not yet been achieved in a manner appropriate to the European mandate. Article 8(1) of the Protocol only exempts the Member from administrative and other limitations on the journey to and from the place of meeting of the Assembly. On all other journeys the general provisions on entry and residence applicable to EC citizens also apply to Members of the European Parliament. This means for instance that a Member who is not travelling to the place of meeting of Parliament can be refused entry by invoking reasons of public security and public order.

Since the journeys effected by Members of the European Parliament in the context of their manifold duties cannot be confined to travel to and from the place of meeting, the Protocol should be amended by deleting the words 'to or from the place of meeting of the Assembly' in Article 8.

9. The wording of Article 8 of the Protocol is moreover clearly based on the assumption that Members of the European Parliament only travel abroad 'temporarily'.

In practice however an increasing number of Members find it necessary to establish a residence outside their home country at the place of work of Parliament. In the case of Members of the Commission - who are only appointed for a four-year term of office - the Protocol obviously assumes that they will have to move their residence to the place of work.

³ The special status of judges of the European Court of Justice appears from Article 3 of the Statute of the Court which reads as follows:

'The judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

The Court, sitting in plenary session, may waive the immunity.

Where immunity has been waived and criminal proceedings are instituted against a judge, he shall be tried, in any of the Member States, only by the Court competent to judge the members of the highest national judiciary.'

This transfer of residence to another country necessitated by reasons of the mandate is accompanied by a number of special rules laid down in Articles 12 and 14 of the Protocol and hitherto applicable only to officials and Members of the Commission, Court of Justice, Court of Auditors and to Members of the Bank⁴.

The following points are particularly relevant to Members of Parliament who have to change their place of residence to one of the places of work of the Community Institutions for the duration of their mandate:

- the right to freely import furniture and personal effects including a motor vehicle,
- the right to transfer currency without restriction,
- exemption from immigration restrictions and formalities for the registration of aliens,
- place of residence for taxation purposes remaining in the country of origin (for purposes of income tax, capital tax and death duties).

It would seem appropriate to make these provisions of the Protocol applicable to Members of the European Parliament through an addition to the text of the Protocol.

10. Provisions not so far embodied in the Protocol but applicable in the parliamentary law of certain Member States include the right to withhold evidence⁵. A Member of Parliament may invoke this right if he is called to account in the courts for matters which have become known to him in his capacity as a Member of Parliament. It would seem desirable to incorporate a corresponding provision in the Protocol on Privileges and Immunities.

11. If the Working Party approves the amendments and additions outlined above to the Protocol on Privileges and Immunities, the following legal text might be adopted in the form of a resolution of the European Parliament and forwarded to the Commission, Council and governments of the Member States in order to open the procedure necessary to amend the existing Protocol:

⁴ See text of Articles 12 and 14 in the annex.

⁵ See e.g. Article 47 of the German Basic Law: Members of Parliament shall be entitled to withhold evidence concerning persons with whom they have had dealings in their capacity as Members of Parliament or to whom they have divulged facts in that same capacity as well as evidence in respect of the facts themselves. To the extent covered by this right to withhold evidence, the impounding of documents shall be prohibited.

(for the articles which are to be amended, see Annex II, column. 2)

Protocol on the
Privileges and Immunities of the
European Communities

CURRENT TEXT

CHAPTER III

MEMBERS OF THE ASSEMBLY

Article 8

No administrative or other restriction shall be imposed on the free movement of members of the Assembly travelling to or from the place of meeting of the Assembly.

Members of the Assembly shall, in respect of customs and exchange control, be accorded:

(a) by their own Government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the Governments of other Member States, the same facilities as those accorded to representatives of foreign Governments on temporary official missions.

PARLIAMENT'S REQUEST

Article 8 (paragraph 1 new, remainder deleted)

No administrative or other restriction shall be imposed on the free movement of Members of the Assembly travelling within the Community.

COMMISSION PROPOSAL

Article 1

Article 8 is replaced by the following :

"No administrative or other restriction shall be imposed on the free movement of members of the Assembly travelling within the Community in connection with the performance of their duties."

Article 12 (b) to (e) and Article 14 shall apply to members of the Assembly who take up residence at one of the places of work of the Community institutions."

See
page
II. 5

Protocol on the
Privileges and Immunities of the
European Communities

CURRENT TEXT

Article 9

Members of the Assembly shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

PARLIAMENT'S REQUEST

Article 9 (paragraph 1 stands, paragraph 2 new)

1.
2. Members of the Assembly may withhold evidence insofar as such evidence has a bearing on their activities as Members of the European Parliament. To that extent the impounding of documents shall also be forbidden.

COMMISSION PROPOSAL

Article 2.

The following paragraph is added to Article 9 :

(cf. Parliament's request)

Privileges and Immunities of the
European Communities

CURRENT TEXT

Article 10

During the sessions of the Assembly, its members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to members while they are travelling to and from the place of meeting of the Assembly.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the Assembly from exercising its right to waive the immunity of one of its members.

PARLIAMENT'S REQUEST

Article 10 (new)

Members of the Assembly shall enjoy in the territory of the Member States immunity from any measure of detention and from legal proceedings.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the Assembly from exercising its right to waive the immunity of one of its Members. Further provisions shall be laid down in the Rules of Procedure of the Assembly.

COMMISSION PROPOSAL

Article 3

Article 10 is replaced by the following :

(cf. Parliament's request)

Protocol on the
Privileges and Immunities of the
European Communities

CURRENT TEXT

CHAPTER VII

GENERAL PROVISIONS

Article 18

Privileges, immunities and facilities shall be accorded to officials and other servants of the Communities solely in the interests of the Communities.

Each institution of the Communities shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Communities.

PARLIAMENT'S REQUEST

COMMISSION PROPOSAL

Article 5

In Article 18, after the words "other servants of the Communities", are added the words "and to members of the Assembly".

See
page
II.5

Protocol on the
Privileges and Immunities of the
European Communities

CURRENT TEXT

PARLIAMENT'S REQUEST

Article 19a (new)

Article 12, (b) to (e), and Articles 14 and 18 shall also apply to
Members of the Assembly.

(1)

(2)

COMMISSION PROPOSAL

(1)

see page II.1

(2)

see page II.4

Draft for a Protocol
revising the Protocol on the Privileges and Immunities
of the European Communities
of 8 April 1965
in respect of Members of the European Parliament

His Majesty the King of the Belgians,
Her Majesty the Queen of Denmark,
The President of the Federal Republic of Germany,
The President of the Hellenic Republic,
The President of the French Republic,
The President of Ireland,
The President of the Italian Republic,
His Royal Highness the Grand Duke of Luxembourg,
Her Majesty the Queen of the Netherlands,
Her Majesty the Queen of the United Kingdom of Great Britain and
Northern Ireland,

Having regard to Article 96 of the Treaty establishing the European Coal
and Steel Community,

Having regard to Article 236 of the Treaty establishing the European Economic
Community,

Having regard to Article 204 of Treaty establishing the European Atomic
Energy Community,

Having regard to the Resolution of the European Parliament of 15 September 1983
on the Statute of Members of the European Parliament¹,

¹ OJ No C 277, 17.10.1983, p. 135

Whereas when the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 was drafted all the members of the European Parliament were appointed by a national parliament and necessarily members thereof; whereas the direct election of members of the Parliament has altered that situation, but the Protocol has not been adapted accordingly;

Whereas freedom of movement within the Community and the possibility of residing, without administrative restrictions, at the places where the institution carries on its activities, which are already guaranteed by the said Protocol in the case of the members of the other institutions of the Community, are also necessary for members of the Parliament in the performance of their duties in order to ensure the effectiveness of the institution;

Whereas it also appears necessary to confer on members of the Assembly the right to withhold evidence from a court regarding facts of which they have become aware in their capacity as members;

Whereas on the occasion of an amendment of the said Protocol it is necessary to harmonize the wording of Article 15 thereof with that of Article 24 of the Treaty establishing a Single Council and a Single Commission of the European Communities,

HAVE DECIDED to amend Articles 8, 9, 10, 15 and 18 of the Protocol on the Privileges and Immunities of the European Communities, and to this end HAVE DESIGNATED as their Plenipotentiaries:

His Majesty the King of the Belgians

.....

Her Majesty the Queen of Denmark

.....

The President of the Federal Republic of Germany

.....

The President of the Hellenic Republic

.....

The President of the French Republic

.....

The President of Ireland

.....

The President of the Italian Republic

.....

His Royal Highness the Grand Duke of Luxembourg

.....

Her Majesty the Queen of the Netherlands

.....

Her Majesty the Queen of the United Kingdom of Great Britain and
Northern Ireland

.....

WHO, having exchanged their Full Powers, found in good and due form,
HAVE AGREED as follows:

Sole Article

The Protocol on the Privileges and Immunities of the European Communities is hereby amended as follows:

1. Article 8 is replaced by the following:

"Article 8

No administrative or other restriction shall be imposed on the free movement of members of the Assembly travelling within the Community in connection with the performance of their duties.

Article 12 (b) (c), (d) and (e) and Article 14 shall apply to members of the Assembly who take up residence at one of the places of work of the Assembly."

2. The following paragraph is added to Article 9:

"Members of the Assembly may withhold evidence in so far as such evidence has a bearing on their activities as Members of the Assembly. To that extent the impounding of documents shall also be forbidden."

3. Article 10 is replaced by the following:

"Article 10

"Members of the Assembly shall enjoy in the territory of the Member States immunity from any measure of detention and from legal proceedings.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the Assembly from exercising its right to waive the immunity of one of its members. Further provisions shall be laid down in the Rules of Procedure of the Assembly."

4. In Article 15, the word "unanimously" is replaced by the expression "by a qualified majority".

5. In Article 18, after the words "other servants of the Communities" are added the words "and to members of the Assembly".

IN WITNESS THEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Brussels,.....