

TO THE GENERAL COURT OF THE EUROPEAN UNION

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LODGE

AN APPLICATION FOR INTERIM MEASURES

UNDER ARTICLE 156 OF THE RULES OF PROCEDURE

APPLICATION BASED ON ARTICLE 157(2) OF THE RULES OF PROCEDURE

The present application for interim measures is addressed against the European Parliament.

SUBJECT MATTER OF THE PROCEEDINGS

Application under Article 263 TFEU for annulment of the decisions of the European Parliament, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019, to prevent the applicants, both elected MEPs in the elections held on 26 May 2019, from taking their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting scheduled for 2 July 2019.

This decision is materialised and has binding effects on the applicants through a combination of formal, informal and/or implied actions and failures to act of the Parliament and/or its President, carried out in collusion with the leaders of the main Spanish delegation against the applicants, both members of the opposition and of a national minority.

The European Parliament has thus failed to uphold its integrity as a democratic legislative assembly and to ensure the ability of all its Members to exercise their rights as "representatives of the Union's citizens". The applicants, duly elected and officially declared as Members of the European Parliament (MEPs) in the constituency of Spain, are the victims

of an apparent plan to deny them any effective remedy against the unlawful deprivation of effect their election. Indeed, the Parliament and its President have failed to reply at all the numerous communications and request sent to them by the applicants, while accepting at face value the unlawful acts of the Spanish authorities.

FORM OF ORDER SOUGHT IN THE MAIN ACTION

- a) Annul the Parliament's decision to deny the applicants' access to the special reception service set up for elected Members of Parliament and the Instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declaration required by Rule 3(2) of the Rules of Procedure;
- b) Annul the Parliament's decision not to take note of the results officially declared by Spain of the election to the European Parliament of 26 May 2019, and the subsequent decision to take note of a different and incomplete list of elected Members notified on 17 June 2019 by the Spanish authorities, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), which does not include the applicants;
- c) Annul the Parliament's decision to treat the communication of the Spanish Electoral Commission of 20 June 2019 as depriving of effect the declaration of the applicants as elected MEPs, which amounts to an unlawful declaration of a vacancy that violates Article 13 of the 1976 Electoral Act, attributable to the Parliament;
- d) Annul the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), refusing to guarantee, pursuant to Rule 3(2) of its Rules of Procedure, the right of the applicants to take their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting and until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain;
- e) Annul the President of the Parliament's decision refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure;
- f) Order the defendant to pay all costs of these proceedings, and in accordance with art. 340, second paragraph TFEU, order the defendant to pay compensation for the damages suffered: the loss of monthly salary granted to the members of the European Parliament, plus 1 symbolic € for the moral damages.

Facts relevant to the decision on interim measures referred to the Court:

- 1. The applicants are two political leaders who were ousted as President and Health Minister of the Catalan Government and as Members of the Parliament of Catalonia in October 2017, and have been since living in Belgium. In December 2017, they were re-elected as Members of the Catalan Parliament, and were able to take their seats and enjoy all the rights attaching thereto, despite being under a criminal investigation related to their political activities.
- 2. On 15 April 2019, at the request of Antonio Tajani (the outgoing President of the European Parliament), Mr. Freddy Drexler, the Jurisconsult of the European Parliament, produced a confidential report specifically analysing the candidacy of the

- applicants and the legal implications of their becoming Members of the European Parliament. On 17 April 2019 the said document was leaked to the press.
3. On 22 April 2019 the coalition Lliures per Europa (Junts) registered before the Spanish Central Electoral Commission its list of candidates for the election to the European Parliament of 26 May 2019, led by Mr. Carles Puigdemont and Mr. Antoni Comín as first and second candidates of the said ticket.
 4. On 29 April 2019 the lawyers for Mr. Puigdemont and Mr. Comin sent a letter and requested Mr. Antonio Tajani (EP President) with regard to the above mentioned "report" signed by Mr. Drexler. This letter has never been answered by Mr. Tajani even when it requested the EP President to clarify if it was issued by the EP Legal Department or not and if this was the EP President and the Parliament legal position.
 5. On 29 April 2019 the Spanish Central Electoral Commission (by a majority of 7 to 4 of its members) decided to exclude Mr. Puigdemont, Mr. Comín and Ms. Ponsatí from the electoral list of candidates presented by the coalition Lliures per Europa-Junts (A.6). This decision was challenged by the applicants Mr. Puigdemont and Mr. Comín (as well as Ms. Ponsatí), as well as their coalition's representatives on the 2nd of May (A.7).
 6. On 3 May 2019 the Spanish Prosecutor's Office produced an opinion in favour of the appeal stating, as had been argued by the applicants, that Mr Puigdemont and Mr Comín were eligible to run for a seat in the European Parliament (A.8).
 7. On 5 May 2019 the Spanish Supreme Court issued a decision referring the case to Administrative Courts (A.9). However, on the substance it anticipated a decision in favour of the appeal stating, as had been argued by the applicants, that Mr Puigdemont and Mr Comín were eligible to be candidates for the European Parliament.
 8. On 6 May 2019 the Administrative Courts Numbers 2, 9 and 21 from Madrid ruled in favour of the appeals stating, as argued by the applicants, that Mr Puigdemont and Mr Comín were eligible to run for a seat in the European Parliament (A.10).
 9. Both Partido Popular (EPP) and Ciudadanos (ALDE) lodged appeals against the Administrative Courts' decision before the Spanish Constitutional Court on the 8th of May 2019. On 9 May 2019 the Spanish Constitutional Court confirmed the decisions by declining to even hear the said appeals (A.11).
 10. On 26 May 2019, the coalition Lliures per Europa (Junts), led by Mr. Puigdemont and Mr Comín received 1.018.435 votes and obtained 2 seats in the European Parliament.
 11. On 29 May 2019 Mr. Puigdemont and Mr. Comin, in accordance with the information provided by The Quaestors of the European Parliament, went to the Welcome Village in Brussels in order to take up their duties and make their administrative arrangements with the Parliament as newly elected MEPs. However, Mr. Puigdemont and Mr Comín were prevented from entering the European Parliament premises in Brussels and from fulfilling their administrative duties with the Parliament, including the submission of written declaration required by Rule 3(2) of the Rules of Procedure. On order of the President and/or the Secretary General of the Parliament (Klaus Welle), Mr. Puigdemont and Mr. Comín were denied access to the building.
 12. On the same day, newly elected MEPs from Spain were granted access to the Parliament and given their preliminary accreditations, assigned offices, official email

- addresses, etc. After doing so, some of these Spanish MEPs sent a letter to Mr. Tajani asking him to deny the same treatment to Mr. Puigdemont and Mr. Comín. President Tajani fulfilled their request but without having followed any procedure and without having heard the other parties involved, granted the request of the Spanish MEP's which infringed the rights of our clients.
13. Also on the 29th of May 2019, the lawyers for Mr. Puigdemont and Mr. Comín wrote a letter to Mr. Tajani, and the Parliament's Secretary General, demanding an explanation of what had happened and the impediments created to both of them. This letter has never been answered by Mr. Tajani (A.12).
 14. As a result of the controversy, the leaders of the three main Spanish political parties in the European Parliament (PSOE, PP and Cs) sent a letter to Mr. Tajani asking him to suspend the issuance of preliminary accreditations for MEPs elected in the constituency of Spain.
 15. After the above mentioned impediment and letters, on 29 May 2019, the President of the Parliament, Mr. Tajani, issued an instruction ("Instruction of the President of the Parliament of 29 May 2019") ordering the Parliament services to suspend the provision of preliminary accreditations and to withdraw and/or deprive of effects those given to new MEPs elected in Spain until the official results had been declared. This measure was not enforced against all MEPs elected in Spain as the political allies of Mr. Tajani continued the registration process. In fact, it has apparently affected only 3 MEPs elected in Spain who represent opposition parties and belong to the Catalan national minority.
 16. On 30 May 2019 the lawyers of Mr. Puigdemont and Mr. Comín sent a new letter to Mr. Tajani (EP President) urging him to acknowledge and respect their rights as elected MEPs. This letter has also not been answered (A.13).
 17. On 13 June 2019 the Spanish Electoral Commission declared officially the results of the elections held on May 26th. Such decision included the proclamation of Mr. Puigdemont and Mr. Comín, among others, as elected MEPs (A.14).
 18. The official results and the official list of elected and declared MEPs was published in the Spanish Official Gazette on 14 June 2019 (A.15).
 19. On 14 June 2019 Mr. Puigdemont and Mr. Comín sent a letter to Mr. Tajani with the official results as declared and published in the Spanish Official Gazette and demanded to be recognized as elected MEPs (A.16). The said letter has never been acknowledged or replied to by the Parliament and on the same day, Mr. Puigdemont and Mr. Comín were again denied their preliminary accreditation as well as the possibility to complete the administrative arrangements to take their seats in the European Parliament from the day of the first sitting.
 20. On 14 June 2019 the Supreme Court of Spain refused to allow another newly elected MEP, Mr. Oriol Junqueras, who has been in pretrial detention for more than 1.5 years, to attend the session in which all MEPs elected in Spain were invited to swear allegiance to the Spanish Constitution, as required by the Spanish Electoral Law (A.24). The Court argued that if he had been allowed to attend that ceremony then he would have obtained parliamentary immunity.
 21. On 15 June 2019 the Spanish Supreme Court Investigative Judge Mr. Pablo Llarena refused to withdraw the existing national arrest warrants issued against Mr. Puigdemont and Mr. Comín as part of the same proceedings (A.17).
 22. On 17 June 2019 the Spanish Central Electoral Commission refused to accept Mr. Puigdemont and Mr. Comín's pledge of allegiance to the Spanish Constitution

through a written statement done in front of a public notary or through their legal representatives as designated in a notarized document (A. 18 - 19 - 20). The Spanish Senate had accepted a written statement done in front of a notary public as a valid way of pledging allegiance to the Spanish Constitution less than a month before, on 21 May 2019 (A.21)

23. On the same day there was a meeting of the Bureau of the European Parliament in which several Vice-Presidents asked Mr. Tajani what was the basis of his decision to ban elected MEPs from entering into the building and taking part in the special reception service set up for elected Members of Parliament, as well as the Instruction of the President of the Parliament of 29 May 2019 suspending the provision of preliminary accreditations for incoming MEPs.
24. On 17 June 2019 the Spanish Electoral Commission sent to the European Parliament a list of the MEPs elected in Spain which did not include neither Mr. Puigdemont nor Mr. Comín. The said list also omitted the name of Mr. Junqueras, who was Mr. Puigdemont's Vice President between January 2016 and October 2017 and remains in custody in Spain even when the United Nations Working Group on Arbitrary Detention (WGAD) (A.22) issued on 24 April 2019 an opinion concluding that his imprisonment is an arbitrary detention under international law Mr. Junqueras is in the same file and case, at the Spanish Supreme Court, as the applicants.
25. On the same day, the "Unité Administration des Députés" took note of that list of elected MEPs in the constituency of Spain and issued a general communication with their names for public knowledge (A.23).
26. On 20 June 2019 Mr. Puigdemont and Mr Comín sent a new request to Mr Tajani based on Rule 8 of the 1976 Electoral Act, asking the European Parliament, as a matter of urgency, to assert their privileges and immunities. So far, no response to that request has been received (A.24),
27. On 23 June 2019 the applicants found out that, on 20 June 2019, the Spanish Central Electoral Commission had sent a new communication to the Parliament claiming, without legal basis whatsoever, that our clients' privileges and immunities had been suspended and their seats (and that of Mr. Oriol Junqueras) had been left vacant (A.25).
28. The letter sent by the Spanish Central Electoral Commission to the Parliament on 20 June 2019 was different from the document released to the press. As to its content, it has clear contradictions in its own text between paragraphs 2 (declaring the seats vacant and suspending the prerogatives corresponding to elected and declared MEP) and 3 (stating that neither of the applicants have acquired the condition of MEP as declared in the Spanish Official Gazette on the 14th of June 2019).
29. On 24 June 2019, the legal counsel of Mr. Puigdemont and Mr. Comin lodged a formal dispute before the European Parliament and asked that they be allowed to take their seats pending verification of their credentials and resolution of the dispute in accordance with Article 12 of the 1976 Electoral Act and Rule 3 of the European Parliament's Rules of Procedure (A.26).
30. Just today, 28 June 2019, less than six days prior to Parliament's first sitting, the President of the European Parliament has acknowledged and responded to the applicants' letters and requests, albeit with a complete lack of legal reasoning (A.41). This late reply confirms the decisions that are the object of this application, and it is clearly intended to leave them without effective and timely remedies, and hence further proves the decision of the Parliament to prevent the applicants from taking

their seats from the date of the first sitting scheduled for 2 July 2019. In any case the EP President recognized in the said letter that the only valid results are those declared officially by Spain, which we have always sustained, and those were officially declared on the 13.6.2019 (published in the Spanish Official Gazette on 14.6.2019) and they include the applicants as elected MEPs.

Prima facie case

A. Admissibility

31. Article 278 TFEU reads as follows: *“Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.”* Since in certain situations suspension of the operation of the contested decisions does not suffice to prevent irreparable harm to the applicants, Article 279 TFEU further provides that *“the Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.”*
32. In accordance with the relevant case-law, interim measures pursuant to Article 279 TFEU may include the issuance of appropriate injunctions to a Union institution (see, to that effect, the order of the President of the Court of Justice of 5 August 1983, *Muratori v Commission*, C-118/83 R, EU:C:1983:225, para. 53, and the order of the President of the Court of First Instance of 19 July 2007, *Du Pont de Nemours (France) and Others v Commission*, T-31/07 R, EU:T:2007:236, para. 126.
33. As recently decided by the Grand Chamber of the Court of Justice, *“in the system of legal remedies established by the Treaty, a party may not only request, in accordance with Article 278 TFEU, that application of the act contested in the main action be suspended but may also rely on Article 279 TFEU in order to seek the grant of interim measures. Under the latter provision, the Court hearing an application for interim measures may, in particular, issue, on a provisional basis, appropriate directions to the other party”* (see, to that effect, the order of the Grand Chamber of the Court of Justice of 20 November 2017, *Commission v Poland*, C-441/17 R, EU:C:2017:877, para. 96.)
34. As regard to the action for annulment, pursuant to Article 263(1) TFEU, the Court shall review the legality of acts of the European Parliament *“intended to produce legal effects vis-à-vis third parties.”* The grounds upon which an action against such acts may be brought are *“lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers”*: Article 263(2).
35. Pursuant to Article 263(4) TFEU, *“any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them.”*
36. The action of annulment is directed against a combination of express acts, both formal and informal, and implicit decisions by the outgoing Parliament, including its President, in collusion with his Spanish political allies, aimed at preventing the applicants from taking their seats in Parliament with effect from the opening of the first sitting following the elections, scheduled for 2 July 2019.
37. All of the acts against which this action of annulment is directed, including the acts of the President, are attributable to the European Parliament, in accordance with the

- case-law of the General Court (see, to that effect, order of 5 September 2012, T-564/11, *Farage v European Parliament and Buzek*, EU:T:2012:403, paragraph 18.)
38. Certainly, Parliament has made an effort in order not to document its own decisions as regards the applicants. However, in accordance with the case-law of the Court of Justice, ***“the form in which such acts or decisions are cast is, in principle, immaterial as regards the question of whether they are open to challenge”*** (see, to this effect, judgment of 11 November 1981, C-60/81, *IBM*, EU:C:1981:264, paragraph 9.)
 39. The General Court held that ***“the fact that the existence of a measure intended to produce legal effects vis-à-vis third parties was revealed by means of a press release or that it took the form of a statement does not preclude the possibility of finding that such a measure exists or, therefore, the jurisdiction of the European Union Courts to review the legality of such a measure pursuant to Article 263 TFEU, provided that it emanates from an institution, body, office or agency of the European Union”*** (see, to this effect, order of the General Court of 28 February 2017, *NM v European Council*, T-257/16, EU:T:2017:130, paragraph 41, and judgment of 30 June 1993, *Parliament v Council and Commission*, C-181/91 and C-248/91, EU:C:1993:271, paragraph 14).
 40. The documents of the European Parliament that show the existence of the contested decisions are:
 - a. An answer to a citizen by the Citizens’ Enquiries Unit of 13 June 2019 (A.27);
 - b. A “communication” of 17 June 2019 on the Members of the European Parliament elected in Spain issued by the Directorate-General for the Presidency of the European Parliament (A.28);
 - c. An undated document on the line-to-take instructions as regards the situation of the applicants issued by the Spokesperson’s Unit of the European Parliament (A.29).
 - d. A letter without legal basis of the President of the Parliament of 27 June 2019 (A.41),
 41. In the answer to a citizen of 13 June 2019 by the Citizens’ Enquiries Unit, the European Parliament reveals the existence of the Parliament’s decision to deny the applicants’ access to the special reception service set up for elected Members of Parliament of 28 May 2019 and the Instruction of the President of the Parliament of 29 May 2019.
 42. The “communication” of 17 June 2019 on the MEPs elected in Spain issued by the Directorate-General for the Presidency of the European Parliament reveals the existence of a Parliament’s decision not to take note of the results officially declared by Spain of the election to the European Parliament of 26 May 2019, and to take note of a different and incomplete list of elected Members notified on 17 June 2019 by the Spanish authorities, which does not include the applicants.
 43. The undated document with instructions on the line-to-take as regards the situation of the applicants issued by the Spokesperson’s Unit of the European Parliament is of particular importance, as is an evidence of the existence of most of the decisions contested.
 44. Regardless of the position of the Parliament in the above-mentioned undated document with instructions on the line-to-take issued by the Spokesperson’s Unit, the contested acts have all been adopted by the European Parliament, even if in collusion with the Spanish political allies of its outgoing President.

45. Parliament's failure to react until 27 June 2019 to the applicants' letters of 29 (A.30) and 30 May 2019 (A.31), and 14 (A. 32), 20 (A.33) and 24 June 2010 (A.34) is to be read as the result of the contested acts. Parliament's remarkable silence (even though it has a line-to-take is at odds with the swift response that the President of the European Parliament gave to the letter sent by his Spanish political allies on 28 May 2019 requesting the applicants not to be granted access to the Parliament and denied their preliminary accreditation. This decisions have been confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41).
46. All of the contested acts of direct an individual concern to the applicants, since they are aimed at preventing the applicants from taking their seats in Parliament with effect from the opening of the first sitting following the elections, scheduled for 2 July 2019.

B. Substance

47. The right to stand for election, which includes the right to sit in Parliament once elected, is protected both under Article 39(2) of the Charter of Fundamental Rights of the European Union and Article 14(3) of the Treaty of the European Union. It is also protected under Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
48. To this effect, Article 6(3) of the Treaty of the European Union provides that *"fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."* Furthermore, Article 52(3) of the Charter provides that *"in so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention."*
49. Under the case-law of the Court of Justice, *"according to the explanations relating to the Charter (...) Article 39(2) takes over the basic principles of the electoral system in a democratic State"* (see, to that effect, judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 41.) These explanations shall be given due regard in accordance with Article 52(7) of the Charter.
50. Under the case-law of the European Court of Human Rights, the right to stand for election *"is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, [which] would only be illusory if one could be arbitrarily deprived of it at any moment."* (see, to that effect, judgment of 9 April 2002, *Podkolzina v Latvia*, 46726/99, paragraph 35.)
51. A necessary corollary of the right to stand for election is the right to take one's seat once elected. Thus, the European Commission of Human Rights recognised that *"it is not enough that an individual has the right to stand for election, he must also have a right to sit as a member once he has been elected by the people. To take the opposite view would render the right to stand for election meaningless"* (see, to that effect, decision of 7 March 1984, *M. v United Kingdom*) This view has since then been assumed by the European Court of Human Rights.
52. On several occasions, **the European Court of Human Rights has also examined the lack of an effective remedy in the context of the electoral process under Article 13 of the Convention**, which provides that *"everyone whose rights and*

freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” In particular, the ECtHR has addressed the issue of authorities which, “through deliberate actions and omissions, prevent a parliamentary candidate from running.”

53. In such a situation, according to the ECtHR, if States were allowed not to put in place *“effective procedures ensuring the proper unfolding of the democratic process, it would be possible in some cases for the authorities to arbitrarily deprive candidates of their electoral rights (see, by way of example, Podkolzina; Melnychenko; and Krasnov and Skuratov, §§ 18-34, 42 and 52-67, all cited above) and even to rig elections. Were that to be the case, the right to stand for Parliament, which along with the other rights guaranteed by Article 3 of Protocol No. 1 is crucial to establishing and preserving the foundations of a meaningful democracy (see, as a recent authority, The Georgian Labour Party v. Georgia, no. 9103/04, § 101, 8 July 2008), would be ineffective in practice.”*
54. Article 47 of the Charter of Fundamental Rights provides that *“everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.”* In accordance with Article 52(3), *“the meaning and scope of those rights shall be the same as those laid down by the said Convention.”*
55. Therefore, Article 47 of the Charter of Fundamental Rights shall be construed in accordance with Article 13 of the European Court of Human Rights (hereinafter, ECtHR). When a violation of a right that is *“crucial to establishing and preserving the foundations of a meaningful democracy”* under Article 39(2) of the Charter of Fundamental Rights such as the right to sit in Parliament is the direct result of the decisions of the European Parliament as regards the relevant provisions of the 1976 Electoral Act and of the Rules of Procedure of the European Parliament, not having an effective remedy would amount to a violation of Article 47 of the Charter too.
56. Certainly, Article 52(1) of the Charter authorizes limitations on the exercise of the rights and freedoms recognised by this Charter, as long as those limitations are *“provided for by law and respect the essence of those rights and freedoms.”* Pursuant to Article 52(1), such restrictions must be subject to the principle of proportionality. Finally, limitations *“may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”* None of the decisions adopted by the Parliament which have restricted the right of the applicants to sit as Members of the European Parliament meet any of the requirements under Article 52(1) of the Charter.
57. In this context, Article 2 and Articles 10(1), (2) and (3) of the Treaty of the European Union shall also be given due regard. In accordance with Article 2 of the Treaty, *“the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”*
58. As recalled above, Article 10(1) of the Treaty of the European Union (TEU) provides as follows: *“The functioning of the Union shall be founded on representative democracy.”* Article 10(2) TEU provides that *“citizens are directly represented at Union level in the European Parliament.”*
59. Under Article 14(3) TEU, *“the members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.”*

Moreover, Article 5(1) of the 1976 Electoral Act concerning the election of the MEPs by direct universal suffrage specifies the following: ***“The five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election.”***

60. Furthermore, Article 3(2) of the European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament provides that ***“the number of representatives in the European Parliament per Member State taking up office shall be the one provided for in Article 3 of the European Council Decision 2013/312/EU until the withdrawal of the United Kingdom from the Union becomes legally effective.”***
61. As per Article 12 of the 1976 Electoral Act, ***“the European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.”***
62. When shall Parliament take note of the results declared officially by the Member States is not explicitly defined in Article 12 of the 1976 Electoral Act. However, in the light of Article 5(1) of the 1976 Act, it follows that Parliament must take note of the results declared officially by the Member States before the first session following each election.
63. Any other interpretation would either make impossible that the five-year term for which MEPs begins at the opening of the first session following each election in accordance with Article 5(1) of the 1976 Act, or result in a lack of legal certainty as to which representatives may take their seats at the Parliament’s first sitting.
64. In two relevant precedents to this case, the Court of Justice set forth that ***“the use of the expression ‘take note’ in the context of the 1976 [Electoral] Act must be interpreted as indicating the Parliament’s complete lack of discretion in the matter”*** (see, to this effect, judgment of 7 July 2005, *Le Pen v Parliament*, C-208/03 P, EU:C:2005:429, paragraph 50, and judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 55.)
65. In *Donnici*, the Court of Justice established that ***“by virtue of Article 12 of the 1976 [Electoral] Act, the Parliament was required to take note of the declaration made by the National Electoral Office and did not have the power to depart from it on account of the alleged irregularities affecting that national measure.”*** (see, to that effect, judgment of 7 July 2005, *Le Pen v Parliament*, C-208/03 P, EU:C:2005:429, paragraph 50, and judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 75.)
66. On 13 June 2019, the competent authorities of Spain declared the official results of the elections to the European Parliament of 26 May 2019, including the names of the elected Members of the European Parliament. Such results, including the declaration of the applicants as elected MEPs, were published in the Spanish Official Gazette on 14 June 2019. (A.35). The applicants delivered a copy of such declaration to the President of the European Parliament attached to their letter of 14 June 2019.
67. As provided in *Donnici*, ***“that declaration is the result of a decision-making process which complies with the national procedures (...) and therefore constitutes a pre-existing legal situation.”*** (see, to this effect, judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 55.)

68. The applicants are aware that Rule 3(1) of the Rules of Procedure of the European Parliament (*"the President shall invite the competent authorities of the Member States to notify Parliament without delay of the names of the elected Members"*), Rule 3(2) (*"Members whose election has been notified to Parliament"*), and Rule 3(4) (*"The committee's report shall be based on the official notification by each Member State of the full results of the election, specifying the names of the candidates elected and those of any substitutes, together with their ranking in accordance with the results of the vote"*) refer to the notification of the results made by the States (A.36).
69. Nevertheless, pursuant to Article 12 of the 1976 Electoral Act, and in accordance with the case-law of the Court of Justice, Parliament shall take note of the results officially declared by the Member States.
70. While the notification provided for in Rule 3(1), (2) and (4) of the Rules of Procedure of the European Parliament can be read as an expression of the principle of sincere cooperation between the Union and the Member States, in case of a discrepancy between such notification and the results declared officially by a Member State, the latter shall prevail, since in accordance with the case-law of the Court of Justice, *"pursuant to the principle of hierarchy of norms, the Parliament may not rely on a provision of its Rules of Procedure and its alleged practice in this area to interpret (...) the 1976 [Electoral] Act in a manner which is contra legem"* (see, to that effect, the judgment in *Italy and Donnici v Parliament*, paragraph 47.)
71. Holding otherwise would amount to a breach of the political rights of applicants and the voters that elected them as Members of the European Parliament (Articles 10(2) TEU and 39(2) of the Charter), and would undermine one of the most precious values on which the Union is founded: representative democracy (Articles 2 and 10(1) TEU.)
72. The procedure by which the European Parliament takes note of the results of the election declared officially by Member States, as well as the process of verification of credentials, has often been conducted by Parliament in an informal way. Even less formal and transparent is the act of Parliament of taking note of the results declared officially by the Member States in accordance with Article 12 of the 1976 Electoral Act. In practice, the body of Parliament which does so is the Directorate-General for the Presidency of the European Parliament, one per Member State¹.
73. The decision to take note of an incomplete list of Members of the European Parliament, as confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), is a reviewable act insofar as it departs from the results declared officially by Spain, as long as Parliament, despite having no discretion in the matter in accordance with the case-law of the Court of Justice, decides to disregard the results as declared officially by the competent Spanish authorities. Such decision has clear legally binding effects *vis-à-vis* the applicants and is also of direct and individual concern to the applicants, inasmuch Parliament refuses to take note of their election.
74. In the document of Directorate-General for the Presidency of 17 June 2019, the European Parliament even acknowledges, through a footnote, that it is not taking note of the results declared officially by Spain, including the names of all the Members of European Parliament elected in Spain, but of a list of an incomplete list notified by

¹http://www.europarl.europa.eu/france/resource/static/files/import/deputes_europeens_elus_en_france_2019/notification-officielle-elus-fr_2019.pdf

- the Spanish authorities (see, to that effect, the “communication” of 17 June 2019 on the Members of the European Parliament elected in Spain. (A.13 mentioned above))
75. Parliament is therefore, in breach of Article 12 of the 1976 Electoral Act, not taking note of the “**of the results declared officially by the Member States**” (those published in the Spanish Official Gazette on 14 June 2019) but of an incomplete list of elected MEPSs notified by the Spanish authorities, as confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41).
 76. As the Parliament itself concedes in a footnote of its “communication” of 17 June 2019 on the Members of the European Parliament elected in Spain issued by the Directorate-General for the Presidency of the European Parliament, the list of names which has taken note of does not include the 54 elected Members in Spain that, according to Article 3(2) of the European Council Decision (EU) 2018/937 of 28 June 2018, shall take up office on 2 July 2019. By failing to take note of the results officially declared by Spain (which are those published in the Spanish *Official Gazette* of 14 June 2019) before the opening of the first session following the election, and taking note of such incomplete list, has breached its obligation under Article 12 of the 1976 Electoral Act.
 77. Where (as here) the competent authorities of a Member State fail to notify a complete list, thereby violating the disregard obligation of sincere cooperation under Article 4(3) TEU, it is incumbent on the European Parliament as confirmed by Article 12 of the 1976 Electoral Act, to take note of the results officially declared by Spain (as published in this case in the Spanish Official Gazette on the 14 June 2019), in order not to infringe the applicants’ right to stand for election or the rights of the citizens of the Union who they represent.
 78. By failing to do so, Parliament has relied on its alleged practice in this area to interpret the 1976 Electoral Act in a manner which is *contra legem* (see the judgment in *Italy and Donnici v Parliament*, paragraph 47) infringing the political rights of the applicants and of the citizens of the Union they represent under Article 14(3) TEU
 79. On 20 June 2019, the Spanish authorities communicated to the President of the European Parliament a declaration of suspension (*sic*) of the privileges and immunities of the applicants (A. 37). As is clear from the undated document with instructions on the line-to-take as regards the situation of the applicants issued by its Spokesperson’s Unit, the European Parliament has decided to treat such communication as a withdrawal of the applicant’s mandates.
 80. Such decision of the European Parliament misapplies Article 13 of the 1976 Electoral Act and amounts to an establishment of a vacancy attributable to the Parliament itself, in circumstances other than the ones provided for in the 1976 Electoral Act.
 81. As mentioned, Parliament’s decision to treat such communication as a withdrawal of the applicant’s mandate infringes Article 13 of the 1976 Electoral Act, but also the rights of the applicants to be elected and to sit in Parliament under Article 39(2) of the Charter, and the sovereign power of the votes that elected them as Members of the European Parliament in accordance with article 10(2) and 10(3) TEU.
 82. Certainly, the Court of Justice held in *Donnici* that “Article 12(2) of the 1976 [Electoral] Act in its original version excluded any discretion by the Parliament even in the event of withdrawal of the mandate of one of its members resulting from the application of national provisions which have an effect on the existing composition of that institution” (see, to that effect, judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 56.)

83. However, that does not mean that the Parliament is obliged to treat a purported suspension of privileges by a Member State which clearly infringes Article 6(2) of the 1976 Electoral Act in connection with Article 9 of Protocol No 7 as a declaration of vacancy, regardless of its wording in Spanish law, when such vacancy does not fall into one of the categories provided for in Article 13(1) of the 1976 Electoral Act.
84. Article 12(2) of the 1976 Electoral Act, in its original version, provided that *“where a seat falls vacant pursuant to national provisions in force in a Member State, the latter shall inform the Assembly, which shall take note of that fact. In all other cases, the Assembly shall establish that there is a vacancy and inform the Member State thereof.”* Under the version of the 1976 Electoral Act in force before Council Decision 2002/772 of 25 June 2002 and 23 September 2002, Member States were allowed to declare vacancies in any sort of circumstances, including but not limited to withdrawals of mandates, and Parliament was obliged to take note of such decision.
85. Council Decision 2002/772 of 25 June 2002 and 23 September 2002 modified that situation. Under new Article 13(1) of the 1976 Electoral Act, *“a seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.”* Thus, under current Article 13(1) of the 1976 Electoral Act, a seat shall only fall in those circumstances.
86. Parliament is not allowed to treat a suspension of privileges and immunities which clearly does not imply the withdrawal of the mandate, as the Spanish authorities themselves made clear in their communication of 20 June 2019, as if the seat had fallen vacant. The Spanish authorities communication of 20 June 2019 could not have any effect in the internal sphere of the Parliament.
87. First, because neither the Treaties nor the 1976 Electoral Act allow the laws of the Member States to suspend the privileges and immunities of the MEPs.
88. Second, because a Member State can only declare that a seat has fallen vacant in the event of a withdrawal of the mandate in accordance to Article 13(3) of the 1976 Electoral Act. It is clear that a withdrawal of the mandate does not arise when national law does not lay down appropriate procedures for filling the vacant seat in accordance to Article 13(2) of the 1976 Electoral Act, as it is the applicants’ case.
89. As long as the suspension communicated by the Spanish authorities does not amount to a withdrawal of the mandate of the applicants in the sense of Article 13 of the 1976 Electoral Act, it should have been treated as a non-existent act as for the 1976 Act and the Parliament should have refused to establish the vacancy in accordance to Rule 4(7) of the Rules of Procedure. As long as the Parliament has decided to take note of the communication of the Spanish authorities of 20 June 2019 and to treat such communication as a withdrawal of the mandate of the applicants, which it was not, in a situation not provided for in either the 1976 Electoral Act nor in the Treaties, the decision to declare vacant the seats of the applicants is attributable to the Parliament.
90. In accordance with the case-law of the Court of Justice, Parliament is not allowed under Article 12 of the 1976 Electoral Act to rule on whether the communication of the Spanish authorities of 20 June 2019 is valid under Spanish law or even under Union law as a whole. But Parliament is obliged under the 1976 Electoral Act to assess whether a communication by a Member State is capable of producing legally binding effects in the composition of the Parliament in accordance with the provisions of Article 13 of the 1976 Electoral Act, especially when, as it is the case, the communication of the Spanish authorities is silent about the matter and does not mention what is the legal basis of such communication under the 1976 Electoral Act.

91. Holding otherwise would mean that Parliament would be obliged to give effect to any communication by a Member States even where a Member States acts clearly outside its competence under the 1976 Electoral Act. It is clear that Parliament is not obliged to take note of communications of the Member States on issues (such as a declaration of suspension of privileges) which are not of the competence of the Member States.
92. In any event, in case there is a dispute as regards the results of the election which falls under the 1976 Electoral Act, Rule 3(2) of the Rules of Procedure of the European Parliament obliges Parliament to allow all the elected Members to take up their duties until there is a ruling on such dispute, as will be developed in the fourth plea in law.
93. **Rule 3(2) of the Rules of Procedure provides that “until such time as Members’ credentials have been verified or a ruling has been given on any dispute, and provided that they have previously signed the above-mentioned declaration, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto.”**
94. Rule 3(2) of the Rules of Procedure has been as such in the Rules of Procedure of the European Parliament since 26 March 1981, although at the time it was Rule 6(3). In its current version, it was introduced when a general revision of the Rules of Procedure was adopted, on the basis of the Luster report (Doc. 1-926/80), as a consequence of the first elections to the European Parliament held in 1979. However, Rule 3(2) finds its roots in Rule 4(5) the Rules of Procedure of the European Parliamentary Assembly of 23 June 1958.
95. Rule 3(2) of the Rules of Procedure, in its current version, has a clear connection with Article 12 of the 1976 Electoral Act. It has also a clear connection with Article 5(1) of the 1976 Electoral Act, which provides that *“the five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election.”* This provision would become meaningless if the existence of a dispute could have as a consequence a vacated seat in the European Parliament until such dispute is settled.
96. **Moreover, due consideration shall be given to the fact that in this case there is no dispute between two contenders, but a dispute on whether two elected Members of Parliament are allowed to take up their seats.**
97. Also, it has to be taken into account that the right of elected Members pursuant to Rule 3(2) of the Rules of Procedure of the European Parliament to take their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto until such time a ruling has been given on any dispute is an expression of the fundamental right to stand for election and to sit in Parliament once elected enshrined in Article 39(2) of the Charter of Fundamental Rights.
98. Certainly, since the adoption of the European Parliament decision on the amendment of Rules 3 and 4 of Parliament's Rules of Procedure (2005/2036(REG)), Rule 3(2) has been introduced by the phrase *“every Member whose election has been notified to Parliament.”* However, such amendment did not intend to restrain the scope of Rule 3(2), but to make the right to take the seat in Parliament and on its bodies and to enjoy all the rights attaching thereto *“subject to the prior delivery of a declaration that the elected Member does not hold any office incompatible with that of a Member of the European Parliament within the meaning of Article 7(1) and (2)”* of 1976 Electoral Act, and to implement *“the existing practice of addressing the Member States’ authorities in order to draw attention to the need for timely notification in*

order to ensure the proper functioning of the newly elected Parliament as from its constituent session."²

99. In any event, "*pursuant to the principle of hierarchy of norms, the Parliament may not rely on a provision of its Rules of Procedure and its alleged practice in this area to interpret (...) the 1976 [Electoral] Act in a manner which is contra legem*" (see, to that effect, the judgment in *Italy and Donnici v Parliament*, paragraph 47.)
100. In this case, **the applicants have brought different disputes both before the European Parliament and before the judicial authorities of Spain**, in accordance with the distribution of competences established in Articles 8 and 12 of the 1976 Electoral Act and the relevant case-law of the Court of Justice.
101. On 24 June 2019, the applicants lodged a dispute to the European Parliament pursuant to the provisions of the 1976 Electoral Act as regards Parliament's failure to take note of the results of the election declared officially by Spain, and the subsequent decision to take note of an incomplete list of elected Members notified by the Spanish authorities on 17 June 2019. The dispute lodged to the European Parliament also challenges the effects of the unprecedented communication of the Spanish authorities of 20 June 2019.
102. The dispute referred to the European Parliament under Article 12 of the 1976 Act and Rule 3(3) of its Rules of Procedure relied on the following arguments.
103. First, that Parliament's failure to take note of the results of the election declared officially by Spain, and its subsequent decision to take note of an incomplete list of elected Members notified by the Spanish authorities breaches Article 12 of the 1976 Electoral Act itself, which clearly provides that Parliament is obliged to take note of the "*results declared officially by the Member States.*" The only results declared officially by Spain are the ones published in the Spanish Official Gazette on 14 June 2019.
104. The applicants' representatives argued that Parliament's failure to take note of the results of the election declared officially by Spain breaches the case-law of the Court of Justice, which states that "*the use of the expression 'take note' in the context of the 1976 [Electoral] Act must be interpreted as indicating the Parliament's complete lack of discretion in the matter*" (see, to that effect, judgment of 7 July 2005, *Le Pen v Parliament*, C-208/03 P, EU:C:2005:429, paragraph 50, and judgment of 30 April 2009, *Italy and Donnici v Parliament*, C-397/07 and C-9/08 P, EU:C:2009:44, paragraph 55.)
105. Second, that the Spanish authorities communication of 20 June 2019 could not produce any binding effect on the composition of the European Parliament under Articles 1(3), 5(1), 6(1) and (2), 8, 12 and 13 of the 1976 Electoral Act, and Rule 4(7) of the Rules of Procedure.
106. The referral in Article 8 of the 1976 Electoral Act to national law with regard to the electoral procedure of the elections to the European Parliament does not allow Member States to create additional requirements for the elected Members of the European Parliament to be able to take up their duties in Parliament, other than the additional incompatibilities referred to in Article 7(3) of the 1976 Electoral Act, once the official results of the election have been declared in accordance with Article 12 of the 1976 Electoral. Under Article 5(1) of the 1976 Electoral Act, new MEPs shall be able to take their duties as of the opening of the first session following each election.

² See Report of the Committee on Constitutional Affairs of 14 September 2006 (A.38)

The opposite conclusion would undermine the functioning of the Union as a representative democracy, as provided for in Article 10(1) TEU.

107. As long as the power to suspend or waive the immunity of its elected Members is of the sole competence of the European Parliament under Article 6(2) of the 1976 Electoral Act, in connection with Article 9 of Protocol (No 7), the suspension of the privileges and immunities of the applicants declared in the communication of the Spanish authorities' communication of 20 June 2019 cannot produce any binding effect on Parliament.
108. Furthermore, the declaration of suspension (*sic*) of privileges and immunities declared in the communication from the Spanish authorities of 20 June 2019 does not amount to an actual vacancy in the sense of Article 13(1) of the 1976 Electoral Act, since the declared suspension does not constitute a withdrawal of the mandate pursuant to Article 13(3). This is not the case, as expressly established in the communication from the Spanish authorities of 20 June 2019, and therefore the Spanish authorities' communication of 20 June 2019 cannot produce any binding effect on Parliament.
109. The dispute brought before Parliament under Article 12 of the 1976 Electoral Act also recalled Parliament, in accordance with the recent case-law of the Court of Justice in *Delvigne*, Article 39(2) of the Charter "**Article 39(2) takes over the basic principles of the electoral system in a democratic State.**" Article 1(3) of the 1976 Electoral Act has substantially the same content as Article 39(2) of the Charter, as acknowledged by the Court of Justice in *Delvigne* (see, to that effect, judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraphs 41 and 44.)
110. The dispute brought before Parliament on 24 June 2019 has not yet been settled pursuant to Article 12 of the 1976 Act and Rule 3(3) of the Rules of Procedure. It is important to underline that the dispute brought before Parliament does not intend that Parliament rules on disputes based on the national laws arising out exclusively of the national provisions to which the 1976 Electoral Act refers, or even under Union law as a whole. The applicants are aware of the case-law of the Court of Justice in *Donnici*, which states that such a request would exceed the powers of the Parliament.
111. The scope of the dispute is constrained to the obligation of Parliament under the act to take note of the results declared officially by the Member States, and challenges the effects that the Spanish authorities' communication of 20 June 2019 is able to produce as regards the composition of the European Parliament pursuant to the provisions of the 1976 Electoral Act.
112. In accordance with Article 12 of the 1976 Electoral Act and with Rule 3(3) of the Rules of Procedure of the European Parliament, the applicants have also brought the disputes falling exclusively under the national provisions to which the 1976 Electoral Act refers before the Supreme Court of Spain (A.39). The disputes brought before the Spanish judicial authorities have not been settled yet either.³

³ The applicants have challenged all decisions of the Spanish Electoral Commission and the Supreme Court which are aimed at preventing them from taking their seats at the European Parliament. First by failing to notify properly the results of the elections. Secondly, by requiring the applicants to swear allegiance to the Spanish Constitution and to do so personally in Madrid. And finally by refusing to acknowledge the immunities granted to Members of the European Parliament and maintaining the national arrest warrants against the applicants. In other words, by imposing on the applicants an additional condition to become MEPs and taking all the necessary measures to prevent them from meeting the said condition. The claims also include the lack of impartiality of the Electoral Commission, with the majority of members having tried to prevent the applicants

113. Therefore, pursuant to Rule 3(2) of the Rules of Procedure, in connection with Article 5(1) of the 1976 Electoral Act and the right to stand for election and sit in Parliament once elected protected under Article 39(2) of the Charter of Fundamental Rights, as interpreted in accordance with the case-law of the European Court of Human Rights, shall be allowed to take their seats in Parliament and on its bodies and shall enjoy all the rights attaching thereto until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain.
114. The right of elected Members of Parliament to take up their duties is "*subject to the prior delivery of a declaration that the elected Member does not hold any office incompatible with that of a Member of the European Parliament within the meaning of Article 7(1) and (2)*" of the 1976 Electoral Act.
115. Rule 3(2) of the Rules of Procedure also provides that "*following general elections, the declaration shall be made, where possible, no later than six days prior to Parliament's first sitting following the elections.*"
116. This time limit was introduced as a result of an amendment by Member of the European Parliament Mr. Demetriou under the justification that "*it is important that the written declaration of the Member is made some days prior to the first meeting of the Parliament following elections in order to allow for some time for the necessary bureaucratic first view and procedure to be completed. This way, we provide for this additional safety net to be verified before the first meeting of the Parliament following elections, in order to ensure the validity of the [sic] any decisions taken in this first meeting, for example, the election of the President.*" (A.40)
117. Parliament's decision not to abide by the right under Rule 3(2) of the Rules of Procedure and not to allow the applicants to make the said declarations, even when formally requested to do so in a letter on 24 June 2019, as confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), amounts to a breach attributable to the European Parliament of the fundamental right to stand for election and to sit in Parliament once elected which is attributable to Parliament.
118. Pursuant to Rule 3(2) of the Rules of Procedure of the European Parliament, new Members "*shall declare in writing, before taking their seat in Parliament, that they do not hold any office incompatible with that of Member of the European Parliament within the meaning of Article 7(1) or (2) of the Act of 20 September 1976. Following general elections, the declaration shall be made, where possible, no later than six days prior to Parliament's first sitting following the elections.*"
119. In these circumstances, the expiry of the maximum period before the opening session of the European Parliament provided for in Rule 3(2) of its Rules of Procedure without Mr Puigdemont and Mr Comín being permitted to make the written declarations envisaged in that Rule makes clear the existence of an act of refusal to guarantee that right under the Rules of Procedure, the effect of which is to prevent them from taking their seats as elected Members of Parliament, in accordance with the case-law in *Eurocoton*.⁴ This decision of the European Parliament is final, as confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), in the sense that, if not suspended, as a direct result of it, the applicants

from standing as candidates in the first place, and the complete lack of transparency in the way they conduct business.

⁴ See, to this effect, C-76/01 P, *Eurocoton and Others v Council*, paragraph 63.

will not be able to begin their term of office on 2 July 2019, until the disputes brought before Parliament and before the judicial authorities of Spain are settled. Therefore, it has had legally binding effects and is of the applicants' individual and direct concern.

120. In light of Rule 3(2) of the Rules of Procedure of the European Parliament, in connection with Article 5(1) of the 1976 Electoral Act and Article 39(2) of the Charter of Fundamental Rights, shall be stayed and Parliament ought to have allowed Mr. Puigdemont and Mr Comin to make the written declarations provided for in Rule 3(2) and to take their seats accordingly from the date of the first sitting, at least until this action for annulment is decided.

Urgency and balancing of interests

121. The opening session of the European Parliament for the 2019-2024 parliamentary term **will begin on 2 July 2019. This justifies the application for interim measures pursuant to Article 157(2) of the Rules of Procedure of the General Court.**
122. If the operation of the contested acts, as confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), is not suspended and appropriate directions are not issued to the European Parliament in accordance with Article 279 TFEU, the applicants and the people that elected them will suffer serious and irreparable harm as long as will be deprived of their term of office as elected MEPs as a direct result of the contested decisions, therefore being prevented from carrying out the tasks with which they have been entrusted by their voters in accordance with Article 39(2) of the Charter of Fundamental Rights.
123. In particular, applicants would be deprived of their right to take their seats in Parliament in accordance with Rule 3(2) of the Rules of Procedure of the European Parliament, which provides that *"until such time as Members' credentials have been verified or a ruling has been given on any dispute, and provided that they have previously signed the above-mentioned written declaration, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto."*
124. Being Rule 3(2) of the Rules of Procedure of the European Parliament a provision of a temporary nature that just operates *"until such time as Members' credentials have been verified or a ruling has been given on any dispute,"* it is conceivable that a judgment on the merits might be delivered in favour of the applicants at a date after Members' credentials have been verified or a ruling has been given on the dispute brought by the applicants. In such a case, the judgment on the merits would be delivered at a time when the damage as a result of the breach of that provision would have materialised in an irreversible way. In other words: the possible annulment of the act in question by the Court giving judgment in the main action would not make it possible to reverse the situation that would have been brought about by the immediate implementation of Parliament's decision not to abide by Rule 3(2).
125. Moreover, in relevant precedents to this case it was decided that *"given that the term of office of a member of the Parliament is restricted to five years (Article 3(1) of the 1976 Act) and that the disqualification of the applicant from holding office as a result of the contested act makes it impossible for him to carry out his duties as a Member of the European Parliament, it is clear that, if the contested act is annulled by the Court in the main proceedings, the harm suffered by the applicant would be irreparable in the absence of suspension of the operation of that act"* (see order of the President of the Court of First Instance of 26 January 2001, T-353/00 R, *Le Pen v*

European Parliament, EU:T:2001:21, paragraph 96, see also to this effect order of the judge hearing the application for interim measures of 15 November 2007, Case T-215/07 R, *Donnici v Parliament*, EU:T:2007:344, paragraph 104.)

126. Therefore, because of the serious and irreparable harm that the immediate implementation of the contested Parliament's decision would imply, **the condition of urgency is satisfied.**
127. However, even when urgency has been established, it remains necessary to weigh the applicants' interest in obtaining the interim relief sought against that of the Parliament in the maintenance in force of the contested decisions, as confirmed by a letter without legal basis of the President of the Parliament of 27 June 2019 (A.41). It is settled case-law that serious and irreparable harm, one of the criteria for establishing urgency, also constitutes the first element in the comparison carried out in assessing the balance of interests.
128. As provided in the above-mentioned precedents, **there is "general interest that the composition of the Parliament be in accordance with [Union] law."** This interest is not at odds with the general interest, which is also the applicants' interest, that *"its members are allowed to carry out the duties entrusted to them by their electors for the entire duration of their term of office, unless that term is brought to an end in conformity with the applicable rules of law"* (see, to this, effect, order of the President of the Court of First Instance of 26 January 2001, T-353/00 R, *Le Pen v European Parliament*, EU:T:2001:21, paragraph 101.) **In this case, both interests are coincident.**
129. As regards the general interest in that the composition of the Parliament be in accordance with Union law, pursuant to Article 3(2) of the European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament, *"in the event that the United Kingdom is still a Member State of the Union at the beginning of the 2019-2024 parliamentary term, the number of representatives in the European Parliament per Member State taking up office shall be the one provided for in Article 3 of the European Council Decision 2013/312/EU until the withdrawal of the United Kingdom from the Union becomes legally effective."*
130. There is therefore a general interest in that the number of representatives of the Union's citizens taking up their duties as elected Members of the European Parliament on 2 July 2019 are 751. **If the application for interest measures is dismissed, the contested acts would have an effect on the composition of Parliament, including, but not limited to, in the election of the President and the Board of the new Parliament on 2 July 2019.**
131. In this sense, it is important to underline that, **contrary to what would have happened in both *Le Pen* and *Donnici*, in case this application for interim measures was dismissed, the seats of the applicants would not be filled, but would remain vacant for an indefinite period until a decision on the merits is delivered by the General Court.** Therefore, contrary to the situation in *Donnici*, the applicants' interests are here not evenly matched with the interests of any other potential candidate to fill those seats (see, to this effect, order of the judge hearing the application for interim measures of 15 November 2007, Case T-215/07 R, *Donnici v Parliament*, EU:T:2007:344, paragraph 109.)
132. As regards the general interest that Members are allowed to carry out the duties entrusted to them by their voters for the entire duration of their term of office, unless

the term is brought to an end in conformity with the applicable rules of law, it is undisputed that the applicants were elected Members of the European Parliament at the election to the European Parliament of 26 May 2019, and so was declared officially by the Spanish competent authorities on 13 June 2019, and published on the Spanish Official Gazette on 14 June 2019. In the election, the applicants received more than a million votes and are members and represent a national minority.

133. If Parliament's decision not to take note of the results declared officially by Spain in accordance with Article 12 of the 1976 Act, and the subsequent decision to take note of the incomplete list elected list of Members notified by the Spanish authorities disregarding that provision, are not suspended, that will result in serious and irreparable damages.
134. In particular, as stated before, it will prevent the applicants from taking their seats in the European Parliament, not only in its first part-session after the election on 2 July 2019, but until the case is decided by the General Court. The longer the applicants are prevented from carrying out the mandate, the greater will be the harm, by its nature irreparable, sustained by them (see, to this effect, order of the President of the Court of First Instance of 26 January 2001, T-353/00 R, *Le Pen v European Parliament*, EU:T:2001:21, paragraph 96.)
135. These damages would not only be to the applicants and to the Union's citizens that elected them on 26 May 2019, but to the Union as a whole as a representative democracy under Article 10(1) TEU.
136. **Furthermore, it is important to note that the two applicants are the only 2 elected Members of Parliament of the coalition *Lliures per Europa (Junts)*, which ran in the constituency of Spain to the election to the European Parliament on 26 May 2019. If the applicants are deprived from taking up their duties and attending the sessions of the European Parliament, more than a million voters that voted for the list of *Lliures per Europa (Junts)* will be absolutely deprived of any kind of representation at the new European Parliament for the parliamentary term 2019-2024 pending a ruling on the main action.**
137. In those circumstances, any interest of the Parliament in preventing the applicants from holding office pursuant to its particular interpretation (*contra legem*) of its obligation to take note of the results declared officially by Spain in accordance with Article 12 of the 1976 Electoral Act, or any interest by the Parliament or by Spain in all Members of Parliament pledging allegiance to the Spanish Constitution, or any interest by the European Parliament on the maintenance of its decision not to abide by the temporary right under Rule 3(2) of the Rules of Procedure of the European Parliament, **however important may those interests be, cannot prevail, pending a ruling on the main action, over the specific interest of the applicants in taking up their duties in the Parliament until the decision of the Court on the action for annulment lodged of the case in the main proceedings, and until a ruling has been given on any dispute** (see, to this effect, order of the President of the Court of First Instance of 26 January 2001, T-353/00 R, *Le Pen v European Parliament*, EU:T:2001:21, paragraphs 103 and 104.)

INTERIM MEASURES APPLIED FOR

The applicants claim that the Court should, pending a ruling on the main action:

- Suspend, pursuant to Article 157(2) of the Rules of Procedure of the General Court, or in the alternative pursuant to Article 156 of such Rules, the Parliament's decision not to take note of the results officially declared by Spain of the election to the European Parliament of 26 May 2019, and the subsequent decision to take note of a different and incomplete list of elected Members notified on 17 June 2019 by the Spanish authorities, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), insofar as it does not include the applicants, pending a ruling on the main action;

- Suspend, pursuant to Article 157(2) of the Rules of Procedure of the General Court, pursuant to Article 157(2) of such Rules, or in the alternative pursuant to Article 156 of the same Rules, the Parliament's decision to treat the communication of the Spanish Electoral Commission of 20 June 2019 as depriving of effect the declaration of the applicants as elected MEPs, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), which amounts to an unlawful declaration of a vacancy attributable to the Parliament, pending a ruling on the main action;

- Suspend, pursuant to Article 157(2) of the Rules of Procedure of the General Court, or in the alternative pursuant to Article 156 of such Rules, the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019 (A.41), refusing to guarantee, pursuant to Rule 3(2) of its Rules of Procedure, the right of the applicants to take their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting and until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain, pending a ruling on the main action;

- **Order the European Parliament**, pursuant to Article 157(2) of the Rules of Procedure of the General Court, or in the alternative pursuant to Article 156 of such Rules, **to take all the necessary measures, including the assertion of their privileges and immunities under Article 9 of the Protocol, to enable Mr. Carles Puigdemont i Casamajó and Mr. Antoni Comín i Oliveres to take their seats in the European Parliament from the opening of the first sitting following the elections, on 2 July 2019, pending a ruling on the main action.**

In Luxembourg, 28 June 2019


Paul BEKAERT


Ben EMMERSON


Gonzalo BOYE


Simon BEKAERT

LIST OF ANNEXES

Annex number	Description	Number of pages (incl. cover)	Placement in the document (page and paragraph)
A.1 (pages 1-2)	Power of Attorney	2	1

A.2 (pages 3-4)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Paul Bekaert.	2	1
A.3 (pages 5-6)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Ben Emmerson.	2	1
A.4 (pages 7-8)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Gonzalo Boye.	2	1
A.5 (pag 9-10)	Document that accredits the faculty to practice as a lawyer before a Court of Mr. Simon Bekaert.	2	1
A.6 (pages 11-17)	Spanish Electoral Commission's decision 29.4.19, excluding Mr. Puigdemont, Mr. Comín and Ms. Ponsatí from the electoral list of candidates.	7	3 (par.5)
A.7 (pages 18-63)	Challenge of the decision of de Spanish Electoral Commission by the applicants Mr. Puigdemont and Mr. Comín , as well as their coalition's representatives 2.5.2019	46	3 (par. 5)
A.8 (pages 64-72)	Report Spanish Prosecutor's Office (3.5.2019), in favour of the appeal, stating that Mr. Puigdemont and Mr. Comín could apply for a seat in the European Parliament.	9	3 (par. 6)
A.9 (p. 73-90)	Spanish Supreme Court's decision referring the case to Administrative Courts (5.5.2019)	18	3 (par. 7)
A.10 (pages 91-100)	Resolution on the 6.5.19 of the Administrative Courts Numbers 2 from Madrid in favor of the appeals, stating that Mr. Puigdemont and Mr. Comín were eligible to run for MEP.	10	3 (par. 8)
A.11 (101-103)	Resolution (9.5.2019) Constitutional Court deciding not to even hear the said appeals.	3	3 (par. 9)
A.12 (pages 104-108)	Letter from the lawyers of applicants (29.5.2019) to Mr. Tajani and the Parliament's Secretary General, demanding an explanation of impediments created to both of them.	5	4 (par. 13)
A.13 (pages 109-112)	Letter from the lawyers of applicants (30.5.2019) to Mr. Tajani, urging him to acknowledge and respect their rights as elected MEPs.	4	4 (par. 16)

A.14 (pages 113-116)	Decision of the Spanish Electoral Commission officially declaring the results of the elections held on May 26 (13.6.2019).	4	4 (par. 17)
A.15 (pages 117-134)	Spanish Official Gazette on 14.6.2019 publishing official results and the official list of declared as elected MEPs.	18	4 (par. 18)
A.16 (pages 135-137)	Letter to Mr. Tajani from applicants (14.6.2019), with the official results as declared and published in the Spanish Official Gazette and demanding to be recognized as elected MEPs.	3	4 (par. 19)
A.17 (pages 138-160)	Resolution of the Spanish Supreme Court Investigative Judge Mr. Pablo Llarena (15.6.2019) refusing to withdraw the existing national arrest warrants against applicants	23	4 (par. 21)
A.18 (pages 161-176)	Mr. Puigdemont's pledge of allegiance to the Spanish Constitution through a written statement done in front of a public notary through their legal representatives.	16	4 (par. 22)
A.19 (pages 177-192)	Mr. Comín's pledge of allegiance to the Spanish Constitution through a written statement done in front of a public notary through their legal representatives.	16	4 (par. 22)
A.20 (pages 193-197)	Decision of the Spanish Central Electoral Commission on 20.6.2019, refusing to accept Mr. Puigdemont and Mr. Comín's pledge of allegiance to the Spanish Constitution.	5	4 (par. 22)
A.21 (pages 198-241)	Journal of Spanish Senate sessions of 21.5.2019 (page 15) accepting written statement as a way of pledging allegiance to the Spanish Constitution.	44	5 (par. 22)
A.22 (pages 242-261)	Report United Nations Working Group on Arbitrary Detention issued on 24.4.2019.	20	5 (par. 24)
A.23 (pages 262-268)	General communication issued from the "Unité Administration des Députés", with the list of names of the elected MEPs, for public knowledge.	7	5 (par. 25)

A.24 (pages 269-298)	Request sent from Mr. Puigdemont and Mr. Comín to Mr. Tajani on 20.6.2019, based on article 8 of the Act of 1976, asking the European Parliament, as a matter of urgency, to assert their privileges and immunities.	30	5 (par. 26)
A.25 (pages 299-303)	Communication of the Spanish Central Electoral Commission to the European Parliament on 20.6.2019 claiming that our clients' privileges and immunities had been suspended and their seats (and that of Mr. Oriol Junqueras) had been left vacant.	5	5 (par. 27)
A.26 (pages 304-317)	Formal dispute lodged by the legal counsel of Mr. Puigdemont and Mr. Comín a before the European Parliament (24.6.2019) asking that they be allowed to take their seats pending verification of their credentials and resolution of the dispute in accordance with Rule 3 of the European Parliament's Rules of Procedure.	14	5 (par. 29)
A.27 (318-321)	Answer to a citizen by the Citizens' Enquiries Unit of 13 June 2019.	4	7 (par. 40)
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A.30 (pages 336-340)	Letter from the lawyers for Mr. Puigdemont and Mr. Comín on the 29.5.2019 to Mr. Tajani and the Parliament's Secretary General, demanding an explanation of what had happened and the impediments created to both of them.	5	7 (par. 45)
A.31 (pages 341-344)	Letter from the lawyers for Mr. Puigdemont and Mr. Comín on the 30.5.2019 to Mr. Tajani, urging him to acknowledge and respect their rights as elected MEPs.	4	7 (par. 45)
A.32 (pages 345-347)	Letter sent to Mr. Tajani from Mr. Puigdemont and Mr. Comín on the 14th of June 2019, with the official results as declared and published in	3	7 (par. 45)

	the Spanish Official Gazette and demanding to be recognized as elected MEPs.		
A.33 (pages 348-377)	Request from applicants to Mr. Tajani on 20 June 2019, article 8 of the Act of 1976, asking European Parliament, as a matter of urgency, to assert their privileges and immunities.	30	7 (par. 45)
A.34 (pages 378-391)	Formal dispute lodged by the legal counsel of Mr. Puigdemont and Mr. Comin a before the European Parliament On 24 June 2019, asking that they be allowed to take their seats pending verification of their credentials and resolution of the dispute in accordance with Rule 3 of the European Parliament's Rules of Procedure.	14	7 (par. 45)
A.35 (pages 392-409)	Spanish Official Gazette on 14.6.2019 in which published the official results and the official list of elected MEPs.	18	10 (par. 66)
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A.37 (pages 415-419)	Communication of the Spanish Central Electoral Commission to the European Parliament on 20.6.2019 claiming that our clients' privileges and immunities had been suspended and their seats (and that of Mr. Oriol Junqueras) had been left vacant.	5	12 (par. 79)
A.38 (pages 420-433)	Report of the Committee on Constitutional Affairs on the amendment of Rules 3 and 4 of Parliament's Rules of Procedure (2005/2036(REG)).	14	15 (par. 104)
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A.40 (pages 523-525)	Amendment of Rules 3 and 4 of the European Parliament's Rules of Procedure (2005/2036(REG)).	3	17 (par. 116)
A.41 (pages 526-527)	Letter from Mr. Antonio Tajani to Mr. Carles Puigdemont and Mr. Antoni Comín, on 27th June 2019.	1	7 (par.400)
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