Parliament would be incompatible not only with the wording of the Protocol but also with the very objective of that provision, which is intended to ensure immunity for the same period for all Members of the European Parliament, whatever their nationality.

2. Although under the first paragraph of Article 22 of the ECSC Treaty, the first paragraph of Article 139 of the EEC Treaty and the first paragraph of Article 109 of the EAEC Treaty, as amended by Article 27 of the Merger Treaty, the European Parliament is to 'hold an annual session' and 'meet, without requiring to be convened, on the second Tuesday in March', no indication as to the duration of that session can be inferred, even indirectly, from the other provisions of the Treaties concerning the European Parliament. In the absence of any provision in the Treaties on the subject, the determination of the duration of its sessions falls within the European Parliament's power to adopt rules for its own internal organization. The decision on the date of closure of each annual session is therefore within its discretion.

3. Since the activities of the European Parliament and its permanent and temporary organs go far beyond merely holding sessions and continue throughout the year, an interpretation of the word 'session' as used in Article 10 of the Protocol of 8 April 1965 which limited the immunity of Members to the periods when Parliament was actually sitting might prejudice the carrying on of the Parliament's activities as a whole. Since the consistent practice of the Parliament under which a session lasts for the whole year and is closed only on the eve of the opening of a new session is not incompatible with the provisions of the Treaties on the sessions of the Parliament or with the Protocol of 8 April 1965, Article 10 of the Protocol must be interpreted as meaning that the European Parliament must be considered to be in session, even if it is not actually sitting, until the decision is taken closing its annual or extraordinary sessions.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 3 June 1986 *

Mr President,
Members of the Court,

1. When are Members of the Assembly of the European Communities covered by parliamentary immunity? That is the key issue in these proceedings for a preliminary ruling.

Defamation proceedings were brought against Edgar Faure by Roger Wybot before the tribunal de grande instance, Paris; as a Member of the European Parliament, Mr

* Translated from the French.

Faure argued that on the basis of Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (Official Journal 152 of 13 July 1967, p. 13, hereinafter referred to as 'the Protocol') the action should be declared inadmissible.

The court of first instance held that the date on which the writ of summons was served, 27 January 1983, was during the 1982/83 Parliamentary Session. It therefore upheld the objection, although Parliament was not actually sitting on the date in question. The civil claimant in the main proceedings appealed to the cour d'appel, Paris, which referred the following question to the Court:

'On the basis of the present wording of the relevant provisions and the European Parliament's practice, must [Article 10 of the Protocol] be interpreted as granting to Members of the European Parliament permanent immunity for the whole duration of their term of office, subject to waiver of that immunity by the Parliament, or merely immunity during certain periods of the annual sessions?'

2. According to Article 28 of the 'Merger Treaty' of 8 April 1965 (Official Journal 152 of 13 July 1967, p. 2),

'The European Communities shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performances of their tasks, under the conditions laid down in the Protocol annexed to this Treaty.'

Chapter III of the Protocol sets out the privileges and immunities of the Members of the Assembly. Article 8 guarantees their freedom of movement when travelling to or from the Assembly, and frees them from administrative obstacles, in particular those regarding customs and exchange control. Article 9 embodies the principle that Members incur no liability in respect of 'opinions expressed or votes cast by them in the performance of their duties'. Finally, Article 10 provides for what is generally referred to as parliamentary immunity, that is to say the immunity of Members in respect of acts carried out in the territory of their own State or in that of another Member State unrelated to the performance of their duties.

That article is worded as follows:

'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 parliaments;

(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.'

As the tribunal de grande instance pointed out, the Court of Justice has already had occasion, in its judgment of 12 May 1964 in Case 101/63 (*Wagner* v *Fohrmann* [1964] ECR 195), for the precise purpose of determining the temporal extent of parliamentary immunity, to rule on the meaning of the phrase 'during the sessions' as used in

Article 9 of the Protocol on Privileges and Immunities attached to the ECSC, EEC and EAEC Treaties, identical in substance to the present Article 10.

That judgment must be viewed in the context of the particular legal framework which then governed the sessions of the Assembly. Until the adoption of the Merger Treaty, Article 22 of the ECSC Treaty placed a time-limit on the sessions of the Parliament, providing that the session was to end 'at the latest at the end of the current financial year', while Article 139 of the EEC Treaty and Article 109 of the EAEC Treaty simply indicated the date of commencement of the sessions.

The Court therefore arrived at the following twofold conclusion:

First of all, 'the Assembly holds an "annual session" on the second Tuesday in May ending at the end of the ECSC financial year at the latest, that is, 30 June, and another annual session beginning on the third Tuesday in October',

however, 'in the intervals between these "annual sessions", the Assembly may also, under the same articles, meet in "extraordinary session" for one or other of the three Communities . . . '.

(Case 101/63 *Wagner*, referred to above, at p. 201).

In his Opinion in that case, Mr Advocate General Lagrange compared the Assembly's practice of holding an annual session which was never closed but only adjourned with the provisions referred to above.

That system did not appear to him to be contrary to the Treaties. The Treaties did not provide for the *closure* of a session. Furthermore, the fact that sessions were adjourned, under the Assembly's rules of procedure, clearly excluded a system of permanent sessions. Mr Lagrange concluded that during such adjournments the Parliament was to be regarded as not in session and Members thus did not enjoy immunity from proceedings.

The Court did not adopt that interpretation but considered that since neither Article 139 of the EEC Treaty nor Article 109 of the EAEC Treaty contained any express provision such as that in Article 22 of the ECSC Treaty setting a limit on the annual session, to identify 'the expression "adjournment" with the concept of closure would be a distortion of the meaning of the former', so that

'subject to the dates of opening and closure of the annual session determined by Article 22 of the ECSC Treaty, the *European Assembly must be considered in session, even if it is not actually sitting, up to the time of the closure of the annual or extraordinary sessions*'. (Case 101/63, referred to above, at p. 202; my emphasis).

3. The judgment of the cour d'appel, Paris, and the observations submitted to the Court raise the question whether that interpretation is still entirely valid, in view in particular of the subsequent amendments to the relevant provisions.

First of all, Article 27 of the 1965 Merger Treaty repealed the first paragraph of Article 22 of the ECSC Treaty, the first paragraph of Article 139 of the EEC Treaty and the first paragraph of Article 109 of the EAEC Treaty and substituted the following provision:

'The Assembly shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March'.

The new wording thus omits any reference to a final date for the closure of the session, such as existed in the ECSC Treaty.

Secondly, although the Rules of Procedure of the European Parliament, as adopted in their revised form on 26 March 1981 (Official Journal 1981, C 90, p. 49), state, as did their predecessors, that the Parliament alone has the power of decision with regard to adjournment of its sessions (Article 9 (2)), they provide, in accordance with the 'Act concerning the election of the representatives of the Assembly by direct universal suffrage' of 20 September 1976 (Official Journal 1976, L 278, hereinafter referred to as 'the Act'), that

(a) the '*electoral period* shall run concurrently with the term of office of Members provided for in the Act of 20 September 1976', that is to say, five years, pursuant to Article 3 (1) of the Act,

(b) the '*session* shall be the annual period' laid down in the Act (Article 10 (3)) and the Treaties (Article 27 of the Merger Treaty, quoted above),

(c) the '*part-session* shall be the meeting of the European Parliament convened as a rule each month and subdivided into *daily sittings*'

(Article 9 (1); my emphasis).

I should add, finally, that Article 4 (2) of the Act makes the Protocol applicable to representatives elected by direct universal suffrage.

Those provisions establish the context in which the observations of the parties in the main proceedings and of the Commission and the reply of the European Parliament to the question put to it by the Court must be examined.

4. According to the civil claimant in the main proceedings, the *Wagner* judgment is based on provisions which necessarily imply a break in the continuity of the sessions (ECSC on the one hand, EEC and EAEC on the other) from 30 June until the second Tuesday in October of each year, and it cannot therefore be applied in the present situation, where there is no longer a date set for the end of the Assembly's annual session. The Treaty no longer lays down a period during which the Assembly necessarily cannot be in session. Indeed, in practice there is now no interval between annual sessions, since the closure of one session merely precedes the opening of the following one.

In those circumstances, the civil claimant in the main proceedings argues that to continue to hold that the Parliament is in session when it is not actually sitting would give rise to four inconsistencies.

(1) The provision making it possible to convene extraordinary sessions would have no effect, since by definition it can only come into play during the interval between two ordinary annual sessions. That would be contrary to the judgment referred to, in which the Court held that:

'The concept of "annual sessions" must . . . be regarded in such a way as to reconcile it with the possibility of extraordinary sessions, which no provision prohibits from being fixed a long time in advance'. (Case 101/63, *Wagner*, referred to above, at p. 201).

Article 9 (5) of the Rules of Procedure of the Parliament, according to which 'exceptionally, the President shall . . . convene Parliament' at the request of the Members, would also become meaningless.

(2) The duration of parliamentary immunity would coincide *de facto* with the term of office of a Member of the Assembly of the European Communities. Since the Assembly has the sole power to waive the immunity of a Member, the result would be that for five years it alone would be able to decide on the expediency of legal proceedings brought against a Member. That would constitute a transfer to the European Parliament of prerogatives of national sovereignty the possibility of which has been expressly excluded by the French Conseil Constitutionnel [Constitutional Council].

(3) The rule that Members of the European Parliament must be treated in the same manner as members of national parliaments, which follows from the reference to national provisions on parliamentary immunity, would not be observed in France, where that protection corresponds to sessions, not to the term of office of a member.

(4) Finally, the provision regarding the immunity of Members travelling to or from meetings of the Assembly would no longer serve any purpose.

The civil claimant in the main proceedings concludes that the European Parliament should not therefore be regarded as being in session during adjournments of the session, that is to say, during the period between two actual sittings.

5. According to the defendant in the main proceedings and the Commission, no new factor has arisen since 1965 of such a nature as to call in question the interpretation of the concept of sessions of the European Assembly given in Case 101/63.

According to the *Commission*, a comparative analysis of the rules applicable both before and after 1965 shows that the independence of the European Parliament in deciding on the holding, the duration and the closing of sessions has remained unchanged. The possibility of inserting an extraordinary session has been maintained. The concept of 'session' has retained the same meaning despite the amendments to the relevant provisions. In practice, the conditions governing the opening, closing and adjournment of sessions have remained the same, and annual sessions follow each other without a break; that has the effect of making it unnecessary to hold extraordinary sessions.

In short, it must be concluded that a Member of the European Parliament enjoys immunity for the whole duration of the annual session, and that immunity can neither be restricted to the periods or part-sessions nor extended to cover the whole electoral period.

6. The *European Parliament*, asked by the Court to state its views on the effects of the relevant provisions and of its own practice, considers that since the session is continuous and the activity of Members is uninterrupted, Article 10 of the Protocol must be applicable to them throughout the year.

In support of its interpretation it submits four arguments. It points out in the first place that parliamentary immunity,

inasmuch as it guarantees the independence of the institution, constitutes a principle common to the Member States, and it is only its extent that may vary.

Secondly, it argues that under the Treaties and the Act the Assembly has a discretionary power to determine the duration of its sessions; its sole constraint is the opening date of the annual session, the second Tuesday in March, laid down by Article 27 of the Merger Treaty. Accordingly, Article 9 of the Rules of Procedure lays down rules regarding the organization of the annual session, taking into account the requirements of the Assembly's work. Furthermore, the Court has held that the Parliament has the independence necessary to carry out its duties.

Thirdly, the European Parliament states that immunity of this kind corresponding to the term of office is in no way contrary to the *Wagner* judgment since the sole limit on the duration of sessions, contained in the ECSC Treaty, was repealed by Article 27 of the Merger Treaty, referred to above, and the Act sets the duration of an electoral period at five years but does not affect the Assembly's power to organize its own activities. The Parliament states that at its prompting the Commission has submitted to the Council a 'Draft for a Protocol' revising the Protocol, dated 30 November 1984, which would amend Article 10 by removing any reference to the duration of sessions.

Finally, it emphasizes that the requirements of its activities impose a particularly full work schedule on its Members. The workload connected with, for example, the budgetary procedure and the examination of agricultural prices is increased by the constraints inherent in the Parliament's supervisory functions and the need to provide for preparatory meetings of committees and political groups.

Those are the main arguments submitted to the Court by the parties in the main proceedings and by the Commission and the Parliament.

7. It appears from the information provided by the European Parliament that it sits for one week each month, except in August. Those 'part-sessions', according to the definition in Article 9 of its Rules of Procedure, are separated by adjournments which allow time in particular for meetings of parliamentary committees and political groups. The President of the European Parliament closes each annual session on the eve of the opening of the following session: in practice, therefore, there is no break in continuity between annual sessions within one electoral period.

That practice is consistent with the legal framework outlined by the Court in the *Wagner* case, with regard to the interpretation of the phrase 'during the sessions of the Assembly' in Article 10 of the Protocol. It is clear that the Assembly considers itself to be in session, even if it is not actually sitting, so long as the President has not formally closed the session so that, like the annual session itself, the immunity of Members of the European Parliament continues without a break.

In order to determine when the Members enjoy the immunity provided for by Article 10 of the Protocol, is it sufficient to find that the practice described is consistent with the Court's interpretation? An examination of the observations submitted to the Court shows that the debate focuses on two questions, obviously linked by the Parliament's practice as described above, namely whether the principles laid down in the Court's judgment in Case 101/63 are

still applicable and whether that practice is in conformity with Community law. Before going into those questions, it is necessary to examine the preliminary issues whether the concept of 'sessions' is a concept of Community law and whether the power to organize its own activities granted to the Assembly by the Treaties permits it to determine the duration of its sessions.

8. According to the civil claimant in the main proceedings, if the period of Members' immunity corresponded to their term of office that would place French Members of the European Parliament in a more privileged situation than members of the French parliament, who enjoy immunity only during the two annual sessions of the parliament. Such discrimination, he says, is contrary to Article 10 (a) of the Protocol which lays down the principle of equal treatment for members of parliaments.

That argument runs counter to the wording, the scheme and the purpose of Article 10 of the Protocol. That provision refers to national law only in relation to the *substantive* extent of the immunity of Members of the European Parliament. It establishes a system of immunity which varies according to the nationality of the Member when proceedings are brought against him in his own country but is *common* to all Members in respect of proceedings brought in other Member States.

The content of the immunity is determined in the one case by reference to national law and in the other by exemption from any measure of detention or legal proceedings. Its duration, on the other hand, depends on that of the 'sessions of the Assembly', that is to say, it is determined by reference to the organization by the Parliament of its own activities.

Article 10 of the Protocol thus distinguishes between the *temporal and substantive extent* of immunity. That differentiation reflects the desire of the Community legislature to ensure institutional independence for the European Assembly. Article 28 of the Merger Treaty, inasmuch as it expressly refers to the Protocol, makes immunity a condition for the European Parliament's performance of its tasks. Another fundamental condition is the freedom which the Parliament must have to organize its own activities. As we shall see, the Treaties have provided for that by giving the Parliament full power to establish its own rules of procedure.

It follows that the duration of immunity, which is made necessary in order for Parliament to carry out its activities, must be the same for all Members concerned: the period of immunity is a Community matter.

It is therefore in primary Community law that the meaning of the phrase 'during the sessions of the Assembly' must be found.

9. Article 10 of the Protocol provides no further assistance in that regard. Reference must therefore be made to the Assembly's power to organize its own activities, granted to it by the Treaties. From the Treaties, and from the Court's case-law, it must be inferred that the Assembly has full discretion to decide when to hold its sessions and how long they should last.

That conclusion is based first of all on the identical provisions in the first paragraph of Article 25 of the ECSC Treaty, the first paragraph of Article 142 of the EEC Treaty and the first paragraph of Article 112 of the EAEC Treaty, according to which:

'The Assembly shall adopt its rules of procedure, acting by a majority of its Members.'

As the Court emphasized in its judgment in Case 230/81 (*Luxembourg* v *Parliament* [1983] ECR 255, paragraph 38), the Parliament

'is authorized, pursuant to the power to determine its own internal organization [given to it by the abovementioned provisions], to adopt appropriate measures to ensure the due functioning and conduct of its proceedings'.

That power to organize its own activities is an aspect of the European Parliament's institutional independence and in so far as it concerns the determination of the duration of sessions it is not limited to any great extent by the Treaties.

Article 22 of the ECSC Treaty, Article 139 of the EEC Treaty and Article 109 of the EAEC Treaty, as amended by the Merger Treaty, state that:

(i) the Parliament 'shall hold an annual session',

(ii) it 'shall meet, without requiring to be convened, on the second Tuesday in March',

(iii) it may meet in extraordinary session at the request of the majority of its Members, of the Council or of the Comission.

There are thus two principles which govern the internal rules which the Parliament may adopt in this respect:

(i) there is to be a single session, unless an extraordinary session is held,

(ii) a session is to be held each year, and is to begin in March.

On the other hand, the Treaties do not impose on the Assembly any time limit for ending the single annual session. The latitude which it thus enjoys permits the Parliament to decide, in its own discretion and according to the needs of its activities, when each annual session is to be closed.

10. That second conclusion makes it possible to define more closely the basic elements of the problem of interpretation with which we are faced. According to what criterion must the duration of a Member's immunity be determined?

In the *Wagner* case the Court based its decision on a criterion drawn from primary Community law which left the Assembly absolute discretion, at least with regard to the EEC and the EAEC, to decide when to close its ordinary and extraordinary sessions.

Unlike the civil claimant in the main proceedings, I think that the purpose of parliamentary immunity on the one hand and the compatibility with the Treaty of the Parliament's practice on the other are grounds for upholding the Court's previous interpretation.

The object of the immunity of Members of the Parliament is to prevent any interference with the proper functioning of that institution, that is to say with the exercise of its powers, and particularly its supervisory powers.

Taking a strict view, one might conclude from that that a Member should be protected only where his participation in sittings of the Assembly might be jeopardized by legal proceedings brought against him. Such a restrictive approach hardly seems to me to be justified. It tends to ignore the diversity of the Parliament's activities, which stems in particular from the

increasing need to keep the Community executive under constant supervision. Thus the Assembly's activities include not only its sittings, where proposed legislation is discussed, but also the meetings of the various permanent and *ad hoc* parliamentary committees.

As may be seen, the Court's criterion based on the wording of the Treaties conforms as closely as possible to the actual functioning of the institution. The immunity enjoyed by a Member of the European Parliament must correspond to his parliamentary activities in the broadest sense, since the Parliament's role cannot be reduced merely to the sum of its actual sittings.

That, moreover, is the accepted view in most Member States of the Community in which members of parliament enjoy immunity. In Germany, Denmark, Italy, Spain, Greece and Portugal members of parliament are exempt from legal proceedings throughout their term of office. The same principle applies *de facto* in Belgium and Luxembourg, by the operation of a practice similar to that of the European Parliament. In the case of France, although Article 26 of the Constitution limits parliamentary immunity to the duration of the session strictly so-called, it does make the arrest of a member outside the periods of session subject to the permission of the assembly of which he is a member, and the assembly may have a detention order or any legal proceedings against a member suspended.

As may be seen, therefore, those national systems differ only in their details.

11. In view of the purpose of immunity, is that view contrary to primary Community law, as the civil claimant contends, taking into account the practice of holding annual sessions which succeed each other without a break?

In that regard the argument concerning extraordinary sessions requires particular attention. Mr Wybot argues that before 1965 the Assembly was not in session between the end of the ECSC session in June each year and the opening of the EEC/EAEC session in October. That period constituted the 'interval' during which, as the Court stated in Case 101/63, extraordinary sessions might be held. Since the unification resulting from the 1965 Merger Treaty, all mention of the closure of sessions has been removed and in order to maintain the possibility of extraordinary sessions the Court's position as set out in *Wagner* must be modified so as to define the term 'session' by reference to the periods during which Parliament is actually sitting.

That reasoning, and the solution it leads to, must be rejected. First of all, as I have already pointed out, the Court's judgment stated that the annual EEC/EAEC session came to an end only when the Assembly adopted the decision closing the session. Consequently, even at that time there was nothing to prevent the Parliament from meeting without a break and closing the annual session on the eve of the following session.

That, furthermore, was the hypothesis underlying the Opinion of Mr Advocate General Lagrange.

As he pointed out,

'the system adopted by the European Parliament is . . . based on the existence of an annual session, which is never closed

(nor moreover suspended) but is 'adjourned' on dates and for a period fixed by the Assembly itself and exceptionally under certain conditions by the "enlarged Bureau" '.

He went on to raise the question of the compatibility of permanent sessions with

'the institution of a system of extraordinary sessions provided for by the Treaties'. (Case 101/63, cited above, Opinion, at pp. 206 and 207).

As may be seen, the nature of the problem of interpretation with which the Court was then faced was the same as that now before it.

That conclusion is not, however, sufficient. We must be certain that the Assembly's practice does not preclude the possibility of meeting in extraordinary session.

In that regard I would make the following two observations.

The rules laid down in the Treaty are binding on the Parliament just as they are on any other institution. The Rules of Procedure expressly comply with those rules since, in Article 9 (5), they provide that the Parliament may be convened 'exceptionally'. Moreover, the European Assembly is not the only body with the power to call extraordinary sessions, since they may be convened not only at the request of Members but also at the request of the Council or the Commission. The Parliament's practice cannot, therefore, deprive those institutions of a prerogative granted to them by the Treaties.

Leaving aside those questions of principle, let me add that the holding of extraordinary sessions is far from being a mere theoretical possibility. An extraordinary session is not intended merely to prolong the work of the Parliament for an additional period after the end of the ordinary session. It may also be an appropriate means of emphasizing the importance of the issues on its agenda. That is the explanation for the possibility aforded by Article 9 (5) and the rights given by the Treaties to the Council and the Commission, in addition to the provisions of the Rules of Procedure of the European Parliament regarding topical and urgent debates (Articles 48 and 57). The Court referred to that, in relation to the essential procedural requirement of consultation of the Parliament by the Council, in the *Roquette* case, where it is stated that

'the Council could have made use of the possibility it had under Article 139 of the Treaty to ask for an extraordinary session of the Assembly *especially as the Bureau of the Parliament on 1 March and 10 May 1979 drew its attention to that possibility*' (Case 138/79 [1980] ECR 3333, paragraphe 36, my emphasis).

It is thus conceivable that the Parliament might, in order to hold an extraordinary session, close the annual session early. Indeed, in Case 101/63 the Court held that 'no provision prohibits [extraordinary sessions] from being fixed a long time in advance' ([1964] ECR at p. 201).

Whatever the current practice may be, the existence of a continuous ordinary session does not prevent the Parliament from creating the intervals necessary for holding an extraordinary session and even requires it

to do so when the conditions laid down in the Treaties are met.

12. I shall deal much more briefly with the last two arguments advanced by the civil claimant in the main proceedings.

With regard, first of all, to the need to attach some useful effect to the second paragraph of Article 10, according to which immunity also applies to Members 'while they are travelling to and from the place of meeting of the Assembly', the following observation is called for. I have said that the result of the Parliament's practice is to give Members permanent immunity. That, however, is merely a practice which the Parliament may alter by closing its session at such a time as to leave an interval before the next. It is in those circumstances that 'travel immunity' might apply. Far from being contrary to it, the provision in question is explained by the Parliament's freedom of action under the Treaty.

As far as the European Assembly's power to waive the immunity of its Members is concerned, it will suffice to say that it stems from primary Community law and that the extent of its effects is merely an indication of the Parliament's institutional autonomy.

I therefore propose that the Court reaffirm the principles laid down in the *Wagner* case by ruling that:

For the purpose of applying the opening phrase in Article 10 of the Protocol on Privileges and Immunities, 'During the sessions of the Assembly', the European Parliament must be considered to be in session, even if it is not actually sitting, until the decision is taken closing its annual or extraordinary sessions.