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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

PROTOCOL
ON THE PREPARATION OF URGENT OPINIONS

Endorsed by the Venice Commission
At its 116th Plenary Session
(Venice, 19-20 October 2018)

The Commission will normally follow this procedure for the preparation of urgent opinions. However, there may be special circumstances which prompt a different course of action: the Bureau or the Commission will decide accordingly.

1. Urgent opinions must respond to the need for the Commission to be sufficiently flexible to cater for specific needs of domestic timelines, whenever it is not feasible or would be prejudicial to await formal adoption at one of the Commission's four Plenary Sessions. If the Commission's opinions are to matter, they need to be issued in a timely manner. The Commission has always been mindful of the domestic context and calendar, not only by speeding up the adoption of an opinion but also by occasionally delaying it, for example in order to avoid it having an unwarranted impact on national elections.¹
2. Nonetheless, urgent opinions deviate from ordinary opinions in two important respects: first, the government of the country concerned does not have the ordinary opportunity to comment on the draft opinion and to participate in an exchange of views with the Commission members at a Plenary Session before the opinion is adopted; and second, the Commission Plenary does not normally amend the urgent opinion that already has been issued and published under the responsibility of the rapporteurs, which limits the possibilities for members to contribute to the opinion and to discuss new issues thoroughly.
3. This protocol takes into account the need for urgent opinions and the two gaps identified at paragraph 2.
4. Revised Article 14a of the Rules of Procedure reads as follows:

Urgent opinions

1. *In urgent cases, with the authorisation of the Bureau in consultation with the rapporteurs, an urgent opinion may be issued and published prior to its consideration by the Commission at a Plenary Session.*
2. *Prior to its issuing and publication, the urgent opinion shall be submitted to the Bureau and the Chairs and Vice-Chairs of the Sub-Commissions. On occasion, the Commission may at a plenary session give specific directions for a planned urgent opinion.*
3. *Such urgent opinion shall be submitted to the Commission at its next session. The Commission may, depending on the circumstances,*
 - *take note of the urgent opinion;*
 - *endorse the urgent opinion;*
 - *adopt an (ordinary) opinion based on the urgent opinion; or*
 - *decide to postpone consideration of the opinion to a forthcoming session.*
5. When the Secretariat receives a request for an opinion which must exceptionally be dealt with on an urgent basis prior to the next plenary session, the Secretary of the Commission shall inform the Bureau and the rapporteurs of the reasons for the urgency and ask the Bureau to decide on the adoption of an urgent opinion. If the next Plenary Session is imminent, so that there is no time to submit the opinion for adoption but the opinion cannot wait until the following Plenary Session, the request for the urgent procedure shall be presented to the Enlarged Bureau and the rapporteurs no later than on the eve of the Plenary Session and it shall then be submitted to the Commission for decision. In this case, if possible, a preliminary discussion on

¹ See Venice Commission Preliminary Opinions, Note prepared by the Secretariat, CDL-WM(2017)002.

the substance of the opinion shall also be held during the Plenary Session, in order to provide the rapporteurs with some indication of the Commission's views, and to allow the Commission to give specific directions if required.

6. The request for urgency may be made by the party requesting the opinion. If the request for urgency has been made not by the relevant State, but by another requesting body (such as the Parliamentary Assembly of the Council of Europe or by another stakeholder), or is based on a determination by the Bureau, the Secretariat shall inform the authorities of the State concerned.

7. If possible, a larger number of members or experts than usual shall act as rapporteurs for urgent opinions. As is the case for ordinary opinions, the rapporteurs' visit to the country concerned shall be organised by the Secretariat to the extent possible, in co-operation with the domestic authorities.

8. Once the urgent opinion has been prepared, unless the Commission has given more specific directions, the draft text shall be sent by email to the Bureau and to the Chairs and Vice-Chairs of the Sub-Commissions, who within the specified deadline, may submit comments and proposals for amendment. They will have been previously informed of the upcoming urgent opinion at an early stage of the procedure and given an indication of the timeframe for the preparation of the urgent opinion. The recipients of the draft urgent opinion shall be reminded that at this stage the text is still restricted. While the ultimate responsibility for finalising the text lies with the rapporteurs, the latter shall provide the Bureau, Chairs and Vice-Chairs of the Sub-commissions with an explanation of their reasons to the extent that substantive proposals made by the recipients are not accepted.

9. Pursuant to Articles 3a.4 and 13.1 of the Commission's Rules of procedure, the member of the country concerned and any members who appear to have a conflict of interest shall not be involved in the consultation process. The rapporteurs may ask the national member to provide information in response to specific questions.

10. After the consultation process, the urgent opinion shall be provided to the domestic authorities, who shall be given a short deadline to correct possible mistakes or inaccuracies and to become acquainted with the text.

11. The urgent opinion subsequently shall be circulated to all members, posted on the Commission's website and made public. The cover page will bear the following title: "Urgent Opinion on, issued pursuant to Article 14a of the Venice Commission's Rules of Procedure, on the basis of comments by (names of the rapporteurs)". The grounds for the urgency, the procedure followed and reference to the present protocol shall be included in the introductory part of the urgent opinion.

12. At the subsequent Plenary Session, the urgent opinion shall be put on the agenda and the Commission may:

- take note of an urgent opinion: this may happen when the matter is of no relevance anymore, for example because the relevant text has been abandoned;
- endorse the urgent opinion, in principle with no changes other than technical or editorial ones: this will happen in most cases, when the cause for urgency has materialised and it is no longer relevant for the Commission to pursue the examination of the matter;
- adopt the urgent opinion as an ordinary opinion: in particular, when the reason of urgency which had prompted the publication of the urgent opinion has not materialised before the subsequent Plenary Session, so that there is still scope for the authorities and for the Commission to discuss the opinion further, or where there are no obstacles

to fully discussing the urgent opinion at the Plenary, in dialogue with the authorities, so that the text may be substantively amended. In this case, the Commission adopts an ordinary opinion, based on the previously published urgent opinion;

- postpone the examination of the matter to a forthcoming plenary session, if complex new developments need being examined.

13. The urgent opinion shall state that it has been “taken note of” or “endorsed by” as appropriate to the cover page of the urgent opinion. If instead the Commission adopts an opinion, the opinion shall state “based on the urgent opinion issued on ...” will be put on the cover page.

14. As a result of the limited contributions by members, the Commission shall not accord to an urgent opinion the same weight that it gives to an ordinary opinion when considering its implications for other ordinary opinions.

15. In case the Commission has simply been asked to endorse an urgent opinion, the Commission will refrain from entering into substantive discussions and amend the text accordingly; however, the Commission will retain the possibility of revisiting novel issues addressed in the urgent opinion on a future occasion.