

Hans Herbert von Arnim / Martin Schurig

# The Statute for Members of the European Parliament



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Discussion Papers

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### **Abstract\***

The Statute for Members of Parliament, fundamental for defining the relationship between citizens and government, is to be regarded as an integral part of constitutional law. The recently adopted Statute for Members of the European Parliament, which still needs the approval of the Council, has therefore to be discussed within the current context of an emerging European Constitution. Both in its general thrust as well as in specific provisions, this proposed Statute, still largely unknown to the public, cannot be endorsed. The strong effort at standardisation turns out to be a vehicle for a massive pay increase. If passed and implemented, it would severely damage the European idea.

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## I. Introduction

On June 3, 2003, the European Parliament adopted a statute for its members<sup>1</sup> and confirmed this decision, after having sought the opinion of the European Commission, on June 4.<sup>2</sup> Before it becomes official, the Council needs to consent.<sup>3</sup> The Statute is supposed to be put into effect for the new Parliament elected in June 2004.<sup>4</sup> Originally, the Statute should already have been adopted and put into force. This is what the fathers of the idea had in mind when they started the initiative years ago. But several attempts had failed<sup>5</sup> not least due to resistance of the Council, which even presented an alternative draft<sup>6</sup>, thus

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- 1 European Parliament decision on the adoption of a Statute for Members of the European Parliament of 3rd June 2003. The Statute was accepted by 294 votes to 171. There were 59 abstentions. Most members of the big political groups PPE-DE (Group of the European People's Party [Christian Democrats] and European Democrats) and PSE (Group of the Party of European Socialists) agreed to the Statute. Members of the three smaller political groups as the ELDR (Group of the European Liberal Democrat and Reform Party) the Verts/ALE (Group of the Greens/European Free Alliance) and the GUE/NGL (Confederal Group of the European United Left/Nordic Green Left) as well as the British Members of the European Parliament, however, disagreed. The text of the adopted Statute is reproduced in the appendix of this text.
  - 2 European Parliament resolution on the adoption of a Statute of Members of the European Parliament of 4th June 2003. After an appeal of Parliament's President Cox to the Members to strengthen the position of the Parliament against the Council by broad approval of the Statute (Cox, Verbatim Report of proceedings, Sitting of 3 June 2003), the Resolution was accepted by 323 votes to 167. There were 36 abstentions.
  - 3 The legal basis is Art. 190, 5 of the Treaty establishing the European Community. Accordingly, the European Parliament, after seeking an opinion from the Commission and with the approval of the Council lays down the regulations and general conditions governing the performance of the duties of its Members. Since the Treaty of Nice, the Council decides by single majority. Concerning taxation, however, unanimity is still required.
  - 4 For the exact effective date see below under X.
  - 5 See, for example, Resolution on the draft Statute for Members of the European Parliament of 3.12.1998, A4-0426/98.
  - 6 Draft of the Council for a Statute for Members of the European Parliament of 6.4.1999, PE 278.414/BUR.

provoking outrage in the Parliament<sup>7</sup>. “Reform” at this point in time is ill timed: The accession of ten new Member States from Central and Eastern Europe makes obvious the inherent defect which characterises the whole construction from the outset.

## **II. Standardised salaries for Members of the European Parliament?**

### **1. Equality as a criterion**

The introduction of a standardised salary (“allowance”) for all Members of the European Parliament represents the core issue of the Statute. At first, this might seem harmless. It might even seem fair to allocate the same salary to all European MPs. But over the course of the parliamentary discussions on the Statute, the level of salaries has steadily increased and now leads to horrendous consequences, no longer able to be defended to the European electors.<sup>8</sup>

#### *a) Discrimination against national parliamentarians*

Up to now Members of the European Parliament so far have been paid at different rates varying from country to country – i.e., just like their colleagues in national parliaments. In future, however, they shall be paid a standardised allowance of 8,671 Euros per month. Thus, in future, European MPs from countries with a low living standard and

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7 Report on the draft Statute for Members of the European Parliament of 3.5.1999, PE 230.783/end.

8 See the warning of the Council’s president *Haarder* during the session of the European Parliament on 4.12.2002: The discussions about the Statute could “give rise to very damaging debates, especially in the new Member States. It is bad if the electorate treat this Parliament with indifference. There are unfortunately too many people who do just that. This can be seen from the fact that they do not turn up and vote. It will be even worse if, the first time they go to the polls, voters in the new Member States at the same time read about debates on the Members’ Statute on the front pages of their newspapers. In that way, we are in danger of seeing a great many voters treating Parliament not merely with indifference but also with contempt, and that would be the worst thing of all that could happen.”



lower salaries for their MPs will earn the multiple of the entitlements of their colleagues in the national parliaments. Spanish Members of the European Parliament e.g. who have been paid 2,964 Euros so far, which is what members of the national parliament in Madrid receive, will almost triple their income.<sup>9</sup> For the new Member States this increase will even be higher: European MPs from Hungary for example will earn more than ten times as much as their colleagues in the national Hungarian Parliament who earn 805 Euros. In addition, they will earn 25 times as much as the average income in Hungary (339 Euro). In many European countries, in Spain and Finland for example, not to mention the new Member States, European MPs will even earn more than their national cabinet ministers. In the new Member States allowances for European MPs can even exceed the income of prime ministers and presidents.<sup>10</sup> This would really be outrageous.

A uniform allowance for all Members of the European Parliament cannot be justified on grounds of equality and fairness. Equal treatment not only means to treat equal facts alike but also requires consideration of relevant differences, that is to handle unequal facts unequally. The situation of MPs from a country with poorer living conditions and low parliamentary allowances cannot be compared to the situation of Members from a country with much higher rates.

If the Statute comes into force, European MPs from some countries will earn three times as much as the average income of their fellow citizens (as in Great Britain for instance); European MPs from some countries would earn more than 31 times as much as the average income (as in Lithuania and Slovakia).<sup>11</sup> This would simply be indecent and not at all explicable to the people represented.

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9 See the table and chart in the appendix for further information. The sums for the allowances of national MPs are based upon Information provided by the European Parliament (Committee on legal affairs and the internal market – Notice to members No. 1/2003, PE 324.185). In other cases, figures are based upon own inquiries.

10 Cabinet ministers in Estonia receive a monthly allowance of 2,226 Euro, the prime minister earns 2,430 Euro which equals about 26 percent respectively 28 percent of the intended allowance of European MPs. In Poland cabinet ministers receive an allowance of 2,547 Euro (about 29 percent), the prime minister earns 2,942 Euro (about 34 percent).

11 See the table and chart in the appendix for further information.

*b) Already realised: uniform cost reimbursement in Brussels*

Regarding expenditure for cost of living in Brussels, Strasbourg or Luxembourg which is indeed the same for all European MPs, exactly the same reimbursement rules apply anyway: All European MPs, no matter if they come from Italy, Germany, Spain or Denmark (or, in future, from Poland or Hungary) receive the same: 251 Euros per diem allowance for subsistence and overnight accommodation at the seat of the parliament (Art. 11, rule on the reimbursement of costs), reimbursement of travel costs from and to the seat of the parliament (Art. 1-10, rule on the reimbursement of costs), funds for the employment of staff up to 12,052 Euros per month (Art. 14, rule on the reimbursement of costs) plus a monthly expense allowance of 3,546 Euros (Art. 13, rule on the reimbursement of costs) and more.

*c) Unchanged: Varying cost reimbursement at home*

Costs emerging when exercising the mandate in the Member States, however, are supposed to be reimbursed according to national regulations, that is, on the same footing as for members of national parliaments (General consideration No. 48<sup>12</sup>).

Compared with the Statute's intention to standardise, this seems scarcely consistent.<sup>13</sup> On the contrary, it shows again that this intention cannot be realised appropriately and underlines the claim that maintenance of MPs and their families, which predominately occurs in the Member States, should be regulated according to national principles.

German Members of the EU Parliament, for instance, are allowed free travel on public transport in Germany. They receive an annual travel entitlement on the German rail system, airfares are reimbursed;

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12 The following Articles and General considerations are, if not labelled differently, those of the Statute.

13 For a critical point of view towards this regulation see *Hölscheid*, in: Grabitz/Hilf (eds.), *Das Recht der Europäischen Union*, Loseblatt-Kommentar, Kommentierung des Art. 190 EGV, No. 53 (Stand: Januar 2000); also see: *Beschlussempfehlung und Bericht des Bundestagsausschusses für Wahlprüfung, Immunität und Geschäftsordnung vom 18.3.1999*, Bundestagsdrucksache 14/575, S. 4.

moreover, they are entitled to the use of office space in the German Bundestag and to use of its communications facilities and its fleet of cars.

*d) Comparison with civil servants of the EU is not possible*

The regularly cited parallel to European civil servants, who have always received standardised salaries regardless to their country of origin, does not hold water. Habitually, European civil servants and their families reside in Brussels (or in other cities far away from their country of origin) during the whole year. Therefore, their living expenses need to be adapted to the prevailing standards of income and costs of living. Paying them a uniform salary regardless to their country of origin is therefore logical.

Life and work of Members of the European Parliament, however, are still centred in their home country where their families live. In most cases, standards vary considerably from those at the seat of the European Parliament (where MPs are in any case reimbursed uniformly). In addition, Members of Parliament, unlike civil servants, are elected by the citizens and function as their representatives. Excessive allowances for Members of the European Parliament would even further widen the distance between the EU and its citizens, especially in poorer countries. Of all European institutions, the parliament should really have the most direct contact with citizens.

*e) A Parliament of twenty-five nations*

That the standardisation of salaries for the Members of the European Parliament does not really blend with the system of the European treaties, is paralleled by the fact that the European Parliament does not represent an integrated European Nation. The European Parliament, on the contrary, consists of “representatives of the peoples of the States brought together in the Community” as explicitly stated in Art. 189 of the Treaty establishing the European Community.<sup>14</sup> Hence, German Members of the European Parliament represent the German

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14 Art. 190 of the Treaty also speaks of peoples brought together in the Community and not of a European people.

people, French MPs represent the French people and Polish MPs will represent the Polish people. Therefore, allowances for MPs should also refer to the national frame of reference and not to a desired European standard, which exists just as little as a uniform European Nation does.

*f) Twenty-five varieties of electoral law*

There is not even a standardised electoral law for the Members of the European Parliament.

European MPs are, on the contrary, elected according to 15 (and in future 25) different national electoral laws.<sup>15</sup> The principle of equality in treatment is obviously not respected and therefore consciously not mentioned in the Act concerning the election of the representatives of the European Parliament.<sup>16</sup> Being from different countries, the Members of the European Parliament in fact represent a varying number of citizens and this system will be maintained after implementation of the new Act concerning the election of the representatives of the European Parliament adopted in 2002. Thus, the representatives from different countries are not treated equally in the most important of all democratic acts, namely the electoral process. Equality between the MPs from different countries therefore does not exist. Equality only exists in the respective national contexts. Consequently, the principle of equality in treatment can only be truly applied to the allowances of MPs within one individual Member State. The standardisation of allowances proposed by the Statute stands in contradiction to this argument.

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15 General consideration No. 3, claiming that a uniform electoral procedure had been established, is misleading.

16 See Act concerning the election of the representatives of the European Parliament by direct universal suffrage of 20 September 1976, Official Journal L 278, 8.10.1976, p. 15, as well as Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, Official Journal L 283, 21.10.2002, p. 1.

g) *Conclusion:*  
*No violation of the principle of equality in treatment*

To sum up, it has to be observed that, contrary to the opinion of the European Parliament which refers to the prohibition of discrimination on grounds of nationality (Art. 12 of the treaty), varying allowances are not in themselves discriminatory. Differences for Members with lower salaries – as for every violation of the principle of equality in treatment<sup>17</sup> – can only be discriminatory if they are *unjustified* – but they obviously are not.<sup>18</sup> Correspondingly, the principle of equality in treatment does not imply standardised allowances, but is rather a counter-argument to standardisation.

## **2. Abandoning the original idea through preservation of differences**

The European Parliament itself recently admitted the incoherency of the intended standardised allowance at a high level with regard to MPs from poorer countries. A passage incorporated into the Statute just before it was adopted, gives the ten new Member States the option to pay their representatives in Brussels an allowance on the footing of their national regulations for a transition period of two legislative periods (Art. 37). MPs from Central and Eastern Europe may, therefore, not be paid according to the new Statute, but rather at the same rate as their colleagues in national legislatures. In this case and as an exception, however, allowances for European MPs are then paid from the respective national budget (Art. 37,3). As a consequence, countries which decide to pay their European MPs significantly less than the 8,671 Euros envisaged in the Statute, will be fiscally penalised for doing so. The intention behind this is clear: New Member States are

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17 For the categorisation of the prohibition of discrimination according to Art. 12 of the Treaty under the general principle of equal treatment see *Michael Holoubek*, in: Jürgen Schwarze (ed.), EU-Kommentar, 2000, Art. 12 EGV, No. 6.

18 Not to mention that a discrimination in the sense of Art. 12 can only exist when committed by one and the same supreme power. See *Astrid Epiney*, in: Christian Callies/Matthias Ruffert (eds.), Kommentar des Vertrages über die Europäische Union und des Vertrages zur Gründung der Europäischen Gemeinschaft, 2. Aufl., 2002, Art. 12 EGV, No. 5.

to be discouraged from making use of this option. At the same time, it gives them the possibility to justify their European MPs' huge allowances: Preservation of the national budget. German European MP Willi Rothley, *rapporteur* on the Statute in the European Parliament, defends this newly integrated option for the new Member States with the argument that otherwise the European Parliament would "fall into disrepute in these countries straight away".<sup>19</sup> He is certainly right there, but it seems doubtful whether his concern was expressed seriously when actually making use of the option is fiscally punished.

The flagrant contradiction running through the Statute is in reality even more fundamental: Why should the countries concerned be given the choice of refusing or accepting the high, standardised European allowances in the first place? Why should the provision be valid only for two legislative periods? And above all: Why should the concern about the European Parliament falling into disrepute because of excessive allowances of its Members not be valid for Spain and Portugal? No transition period is foreseen for these countries even though allowances for their representatives in Brussels are lower than those of their Slovenian counterparts, for whom the temporary arrangement applies.<sup>20</sup> How shall one explain to Spanish citizens that their European MPs are going to earn three times as much as their national MPs in Madrid? Who is supposed to convey to Finnish or Spanish citizens that their European MPs are going to earn even more than their national cabinet ministers?<sup>21</sup>

The European Parliament is not in any case seriously concerned with the original idea of standardisation anyway: European MPs (from Italy,<sup>22</sup> for example), whose allowances have already been higher than the 8,671 Euros now agreed, will be allowed to keep up their current

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19 Quoted from *Ralf Joas*, Einheits-Diäten für die Europaabgeordneten, „Rhein-Pfalz“ of 6.6.2003.

20 Members of Parliament in Slovenia receive a parliamentary allowance of 4.074 Euros per month while Spanish MPs receive 2,964 Euros, and Portuguese MPs receive 4,024 Euros per month. In Finland (4,541 Euros) as well as in Sweden (4,800 Euros) parliamentary allowances are not much higher (see table in the appendix).

21 See the table and chart in the appendix for further information.

22 In addition to Italy (11,779 Euros) this is also the case in Austria: Austrian MPs receive 7,500 Euros per month. Parliamentary allowances in Austria are paid 14 times a year which equals a monthly allowance of 8,750 Euros.

salary. For current MPs, the new Statute explicitly provides the right to opt either for the prevailing or the new system (Art. 33).<sup>23</sup>

Taking into account what has been stated above, we find that in reality, the Statute does not achieve standardisation at all. Consequently, the whole idea, which explicitly underlies the Statute, gradually erodes. Differences between European MPs will remain. The reimbursement of costs occurring in the Member States, for example, will be permanently regulated by different national authorities. Furthermore, differences will prevail – at least during long transition periods – between current European MPs and those joining the Parliament for the first time, between MPs from old and from new Member States. But the whole system of regulations will be much more complex, less transparent and less comprehensible than it used to be.

### III. Pay increase as key issue

The erosion of the original idea, however, does not seem to worry the supporters. In reality, they are pursuing something quite different. A massive pay increase for the Members of the European Parliament seems to be the implicit key issue of the whole reform. European MPs have always been jealous about the high salaries for European civil servants, which automatically increase year after year. Civil servants in Brussels have a much higher net income than comparable civil servants in Germany for instance. Even though Members of Parliament and civil servants can hardly be compared with respect to what they earn, European MPs do not seem to hesitate before allotting themselves a much higher salary than their colleagues in the national parliaments receive.

The fact that standardisation is merely a vehicle for massive pay increase, becomes obvious when we examine the discussion on the Statute: In the first draft an amount of 5,677 Euros was mentioned<sup>24</sup> for the parliamentary allowance. Then, a carefully selected “Group of Eminent Persons” was asked for advice. At first, they started out from

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23 The inconsistency of such a regulation is also criticised by *Hölscheidt*, op. cit., No. 53.

24 Report on the draft Statute for Members of the European Parliament of 18.11.1998, PE 228.308/end.

6,226 Euros as basis<sup>25</sup> but then proposed 7,420 Euros.<sup>26</sup> Parliament, however, ignored their majority vote and increased the planned allowance by 1,000 Euros to 8,420 Euros per month.<sup>27</sup> Bench marks were changed accordingly: Initially the average allowance of all 15 Member States was taken as a basis (5,677 Euros),<sup>28</sup> then the weighted average (6,226 Euros),<sup>29</sup> then the average allowance in the four biggest Member States (Germany, France, Italy and Great Britain (7,420 Euros)<sup>30</sup>), then the amount of 8,420 Euros<sup>31</sup> and finally half of the basic salary of a judge at the Court of Justice of the European Communities (8,671 Euros)<sup>32</sup>. The result is something completely different from the initially announced average allowance.<sup>33</sup> With exception of Italian and

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25 Recommendation of the Group of Eminent Persons on the Statute for Members of 6. 6. 2000, PE 290.755/BUR, p. 25.

26 Recommendation of the Group of Eminent Persons on the Statute for Members of 6. 6. 2000, PE 290.755/BUR, p. 26.

27 Art. 8, Draft Statute for Members of the European Parliament of 26. 10. 2000, PE 296.525/BUR.

28 Report on the draft Statute for Members of the European Parliament of 18. 11.1998, PE 228.308/end., S. 13.

29 Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6. 2000, PE 290.755/BUR, p. 25.

30 Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6.2000, PE 290.755/BUR, p. 26.

31 Art. 8, Draft Statute for Members of the European Parliament of 26. 10. 2000, PE 296.525/BUR

32 Art. 16, European Parliament decision on the adoption of a statute for Members of the European Parliament of 3.6. 2003. – Judges at the Court of Justice of the European Communities receive a monthly salary of 17,341 Euros. This equals 112,5% of the basic salary of an official of the European Communities on the last step of Grade A 1 (= 15.414 Euros). Half of the amount of 17,341 Euros equals 8,671 Euros. See Regulation (ECSC, EEC, Euratom) No 1546/73 of the Council of 4 June 1973 amending Regulation No 422/67/EEC, No 5/67/Euratom determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice, Official Journal L 155, 11.6.1973, p.8.

33 In its first draft the European Parliament itself had explicitly considered it to be the fairest approach to define the parliamentary allowance by calculating the average monthly allowance of all Members. Report on the draft Statute for Members of the European Parliament of 18.11.1998, PE 228.308/end., p. 13.



Austrian<sup>34</sup> MPs, who are allowed to keep their higher standards, the now proposed allowance represents a huge pay increase.

The absurdity of the regulation becomes obvious when looking at European MPs from Germany. In future, they will earn monthly 1,662 Euros more than at present and will outdo Members of the German Bundestag who earn 7,009 Euros.<sup>35</sup> A crazy situation when one considers that the European Parliament has far less competencies than national Parliaments. The Council still remains the dominant organ in the European legislative process while the European Commission is the initiating organ. This division will remain unchanged even after the proposals for a new European constitution.

The Netherlands have therefore drawn their own conclusions: Their Members of the European Parliament by design earn far less than Members in the national Parliament in The Hague.<sup>36</sup> Through the new Statute, however, European MPs from the Netherlands will then exceed by far what their national colleagues receive.

As regards German Members of the European Parliament, there is the added fact that most of them are completely unknown to the public. Due to the electoral law, none of them has been elected directly but all of them are elected according to the list system where not even all candidates are mentioned.<sup>37</sup> The remoteness of the European Parliament from its electorate, facilitated by the electoral law which is not likely to change in the near future, has led it to become something of

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34 See above, footnote 20.

35 Comparing the two allowances the following has to be considered: According to the Statute, European MPs are going to take part in the financing of their pensions (see under V) which is not the case for German MPs. On the other hand European parliamentary allowances will be taxed considerably lower than in Germany (see under VI 1). Both effects more or less compensate each other so that European MPs from Germany will net earn about 1,700 Euros per month more when the Statute is put into force. However tax privileges for other income of European MPs or their spouses (see under VI 2) are not taken into account in this calculation, not to mention tax privileges for European MPs concerning pensions or transitional allowances (VI ).

36 General consideration No. 5.

37 See *Hans Herbert von Arnim*, Wählen wir unsere Abgeordneten unmittelbar?, *Juristenzeitung* 2002, p. 578 (579).

an escape resort for former politicians in national parliaments.<sup>38</sup> This might contribute to the fact that in the public's perception the European Parliament has little more weight than some country councils or provincial assemblies which is reflected in the alarmingly low voter turnout. During the last European elections, poll participation in some Member States even fell below 25%.<sup>39</sup>

The example set by Brussels might also have flow-on effects on the allowances of members of national Parliaments. Massive pay increase in this context will then only be a question of time. The new Statute for Members of the European Parliament therefore threatens to trigger a wave of pay increases for practically all politicians throughout Europe.

#### IV. Linkage to the salary of judges

In 1995, the attempt by German national MPs to increase their income massively by linking it to the salary of high court judges<sup>40</sup> cau-

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38 Some examples among the current European MPs from Germany shall be quoted: *Alfred Gomolka*, former Minister-President of Mecklenburg-Vorpommern (1990-1992); former CDU-politician *Werner Langen*, who paralysed the CDU in Rhineland-Palatinate during a dispute with *Hans-Otto Wilhelm*. *Langen* was "banished" to the European Parliament, *Wilhelm* to the Bundestag. *Hartmut Nassauer*, for many years Member of the Landtag in Rhineland-Palatinate (1974-1994, the last four years as Vice-President) and cabinet minister in Hesse for half a year (November 1990 to April 1991); *Jo Leinen*, former cabinet minister of Saarland (1985-1994); *Willi Görlach*, former member of Landtag (1970-1989) and cabinet minister (1979-1980 and 1986-1987) in Hesse; PDS-politician *Hans Modrow*, last Prime Minister of the German Democratic Republic and former Member of the Bundestag (1990-1994). As one of the first nominations for the elections of the European Parliament in June 2004 *Cem Özdemir* was nominated by the Greens in Baden-Württemberg. *Özdemir* had lost his mandate as Member of the German Bundestag in 2002 due to an affair concerning false travel claims.

39 As for example in the UK where voter turn out was only 24%. Information of the European Parliament, accessible under <http://www.europarl.eu.int>

40 See *Hans Herbert von Arnim*, „Der Staat sind wir!“ Politische Klasse ohne Kontrolle? Das neue Diätengesetz, 1995. Or *Hans Herbert von Arnim*, Das neue Abgeordnetengesetz – Inhalt, Verfahren, Kritik und Irreführung der Öffentlichkeit, Speyerer Forschungsbericht Nr. 169, Speyer 1997.

sed a public scandal – and failed. Now the same principle is to be pushed through for Members of the European Parliament. Linking parliamentary allowances to the basic salary of judges at the Court of Justice of the European Communities entails automatic yearly pay increases escaping public notice.<sup>41</sup>

Linking MPs allowances to the salaries of judges at the European Court of Justice seems inappropriate for yet another reason: While judges in principle are not allowed to take up a second occupation, this restriction does not apply to MPs. They are free to continue working or to take on other jobs and thereby earn an additional income which in fact many European MPs do. It is even possible for them to be paid as lobbyists – examples of this also exist.<sup>42</sup>

Consequently, the official reason for the higher allowance in return for “denying themselves a private career” (General consideration No. 38) does not apply, or only partly applies to the many cases where MPs have other jobs at the same time. For lobbyists in reverse their “private career” is in reality often even dependent on their mandate as MPs.

## V. Pensions

### 1. Overview

The huge increase in parliamentary allowances directly affects transitional allowances, old-age pensions, survivor’s pensions as well as pensions due to disablement. What has been said with respect to basic allowances applies to pensions to an even greater extent: Standardisation of the amount at an enhanced level without taking into account the MPs’ countries of origin is even more absurd. Old-age pensions, survivor’s pensions and transitional allowances are all received by persons who are no longer active as MPs in the European Parliament in Brussels, Strasbourg or Luxembourg, but now as former MPs generally live in their country of origin. For them and their fami-

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41 According to German law this would be unconstitutional. See BVerfGE 40, 296 (316 f.).

42 Der Spiegel Nr. 39/1997, p. 46. Also see *Hans Herbert von Arnim*, *Diener vieler Herren*, 1998, p. 48 f.

lies, life is usually centred in their home country. Therefore, the benchmark of reference for their income is even more clearly the level of income of citizens and MPs in the respective country which varies considerably from country to country. Consequently, equal treatment of former European MPs (and their survivors) living in different countries is inadequate. The uniform allowance at a high level will, on the contrary, cause former European MPs and even their survivors to earn a lot more money than active national MPs in many countries. In some cases former European MPs will even earn more than national cabinet ministers or prime ministers.<sup>43</sup> Old-age pensions, survivor's pensions and transitional allowances thus give rise to rather lordly living circumstances for former MPs and their surviving next of kin in many countries.

## 2. Old-age pension and survivor's pension

According to the Statute, old-age pensions will be paid without any waiting period at the age of 60 (Art. 20). For every year of membership in the European Parliament Members can claim 3.5% of the basic allowance. (The Council as well as the "Group of Eminent Persons" had favoured payment from the age of 65 onwards.<sup>44</sup> In addition, the "Group of Eminent Persons" had suggested a minimum of five years' membership in the European Parliament.<sup>45</sup>) After having served 20 years as a Member all European MPs can claim the maximum of 70 percent of the allowance, i.e. 6,070 Euros to date, which is more than *active* European MPs receive today in two thirds of the current Member States, without even mentioning the ten new Member States. No waiting period being defined in the Statute, European MPs earn a retirement pension of 7 percent after two years' membership, which presently corresponds to 607 Euros, thus exceeding the average income in many of the new Member States. Furthermore, in cases of incapability MPs receive an immediate pension of 35 percent of the

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43 See Footnote 10.

44 See Art. 11 of the Draft of the Council for a Statute for Members of the European Parliament of. 6.4.1999, PE 278.414/BUR.; also see Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6.2000, PE 290.755/BUR, p. 19.

45 Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6. 2000, PE 290.755/BUR, p. 19.

allowance (3,035 Euros) (Art. 21). A generous survivor's pension is provided for the spouse (Art. 23) which is not affected in case of re-marriage (Art. 23, 3) and will also be allocated to partners of relationships recognised in the Member States (Art. 23, 9). While the "Group of Eminent Persons" started from the assumption that additional sources of income available to surviving next of kin should be taken into account<sup>46</sup>, no such regulation exists in the Statute.

To finance the pensions, MPs are supposed to contribute one third of the costs (Art. 24, 2). Their contributions as well as Parliaments' subsidies will not be subject to any tax (Art. 24, 4; Art. 31; Art. 35, 2).

The majority of MPs does not seem interested in discussing the question whether such a system of pensions harmonises with the general political landscape. In many Member States of the European Union the financing of pensions is jeopardised – due to demographic change and general weakness of economic growth – so that retrenchments and economies have to ensure their continuing payment. While in Austria and France even strikes occurred as a protest against these retrenchments, it is just at this point in time that European MPs have awarded themselves generous pensions.

### 3. Transitional allowances

Depending on the period of membership in the Parliament, transitional allowances are supposed to be paid to the amount of 8,671 Euros for 6 to 24 months (Art. 19). (Initially a maximum duration of one year had been planned.<sup>47</sup>) No such entitlement arises when taking over another mandate as MP or a public office (Art. 19, 3); while the European old-age pension is taken into account (Art. 22), other income is not. As a consequence, transitional allowance intended "to bridge the period between the end of a Member's term of office and his/her taking up a new post" (General consideration No. 40) will in reality also be paid, even if a departing MP has an adequate level of income and no temporary financial problem whatsoever. Nor are pen-

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46 Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6. 2000, PE 290.755/BUR, p. 20.

47 Art. 6, Report on the draft Statute for Members of the European Parliament of 18.11.1998, PE 228.308/end.

sions resulting from former offices or mandates taken into account, even though transitional allowances into retirement are completely unnecessary.

## VI. Taxation

That the Statute leads to a massive increase of (net) allowances for Members of the European Parliament, can also be shown from the inspection of tax regulations. European civil servants are covered by a Taxation Statute of their own<sup>48</sup>, which now is to be extended to take in allowances, old-age pensions, survivor's pensions and transitional allowances of European MPs (Art. 18; Art. 19, 4; Art. 20, 4; Art. 21, 4; Art. 23, 10). Until now European MPs have been liable to national taxation. (Reimbursements of costs have not been, and will not be subject to any taxation anyway<sup>49</sup>.) If the regulations of the European Taxation Statute are applied to parliamentary allowances, further privileges will be granted, especially for the following reasons:

### 1. Taxation divided by 2

First, the European taxation system is more advantageous in several respects, than for example, the German tax law. Consequently, following the European taxation scheme, a German Member of the European Parliament would only pay half the taxes on the proposed 8,671 Euros than would be due according to German tax law. He would then save about 1,500 Euros in taxes monthly.<sup>50</sup>

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48 Regulation (EEC, Euratom, ECSC) No. 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities, Official Journal L 056, 4.3.1968, p. 8.

49 For the German case this is laid down in § 3 No. 12 Einkommenssteuergesetz. The Court of Justice of the European Communities has also accepted the tax exemption of cost reimbursements. See ECJ, Judgement of 15.9.1981, Case 208/80 Lord Bruce, ECR 2205.

50 The basis of this calculation is a single MP or a married MP who is assessed separately for taxation. For married MPs who file a joint income tax with their spouses and do not have additional income, tax relief will be lower

## **2. Low taxation of additional income**

Taxation of additional income earned above the parliamentary allowance by European MPs or their spouses will bring further benefits. Here we may point to various kinds of income, such as that earned from self-employment, rents, or dividends and interest. This revenue is subject to national tax regulations, but is treated as if the parliamentary allowance did not exist. According to German tax law, European MPs and their spouses consequently receive tax allowances for both of them even though the MPs' parliamentary income also benefits from lower tax rates. Furthermore, tax progression for MPs and their spouses is much lower than it would be if the total of allowance and additional income were calculated. Given an additional income of 3,000 Euros, for example, the result would be a reduction of tax up to 1,000 Euros. This tax privilege heavily favours European MPs because it is far easier for them to earn an additional income in their country of origin than it is for European civil servants who regularly live in Brussels or somewhere else abroad and for whom the European taxation system actually was erected. In addition, European MPs – unlike European civil servants – are not subject to restrictions as far as additional income is concerned. They can even take on highly remunerated jobs as lobbyists on behalf of firms or unions (see above IV). On the basis of the new Statute, this demoralising additional income is even going to be privileged taxwise !

## **3. Tax privileges for former MPs and their families**

Tax privileges are not only planned for European MPs' income, but also for old-age pensions, survivor's pensions and transitional allowances (see above V). In these cases also only half the tax burden is incurred when compared with German national tax regulations, for example. Privileges here become even more obvious than for active MPs. The lower tax burden on additional income has greater consequences because former MPs and their families can earn their living with greater ease than during the time they held a parliamentary seat. As retired MPs are no longer engaged in activities in Brussels or Strasbourg, and their lives are generally centred in their country of origin, it

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(about 700 Euros). But these cases are rare and therefore not representative.

is incomprehensible why their taxation should be privileged as compared with what their fellow citizens pay.

#### 4. The political delicacy of taxation issues

Privileging European MPs is especially delicate because, according to democratic principles, representatives should be treated the same way as those represented – especially in taxation. Tax privileges therefore seem particularly inopportune. This is the reason why Scandinavian countries as well as Great Britain already rejected previous drafts of the Statute.<sup>51</sup> Even though the Treaty of Nice changed voting requirements in the Council from an unanimous vote to a majority vote, modification of tax regulations still requires unanimity.

Trying to take the edge off the tax issue, the Statute now provides the Member States with the right to take the allowance into account in determining the tax to be levied on additional income (Art. 18, 2).<sup>52</sup> It remains incomprehensible, however, why the privileges of MPs of other countries, which do not choose to avail themselves of this possibility, should be maintained, even though they are equally unjustified. But this proviso only cancels out privileges relating to additional income. Privileges concerning the allowance and pensions themselves remain untouched.

In its alternative draft the Council suggested that individual Member States should have the possibility to regulate allowances and further elements of parliamentary income through national tax regulations.<sup>53</sup> This proviso was taken up by a following draft of the Statute presented by the European Parliament but was explicitly limited to four Member States. Accordingly, only Denmark, Finland, Sweden and Great Britain would have been entitled to treat European parliamentary allowances in conformity with national tax regulations.<sup>54</sup> The

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51 Committee on legal affairs and the internal market – Notice to members No. 25/2000, PE 298.370, p. 3.

52 See ECJ, Judgement of 16.12.1960, Case 6/60, ECR 1163.

53 See Draft of the Council for a Statute for Members of the European Parliament of 6.4.1999, PE 278.414/BUR. Also see ECJ, Judgement of 24.2.1988, Case 260/86, ECR 955.

54 See Art. 3 of the Annex of the Draft opinion of the Committee on Legal Affairs and the Internal Market of 30.8.2001, PE 294.967/REV.



Statute in its present form contains neither of these proposals. National tax regulations are thus not meant to be applied in any of the Member States and, therefore, taxation of the allowance of European MPs will be privileged.

## **VII. Income from other sources is not considered**

MPs' income from other sources, even from public funds, is rarely taken into account.<sup>55</sup> According to the Statute, only allowances from current mandates in another parliament shall be offset against the allowance. Old-age pensions, entitlements from service as a civil servant or from functions as cabinet minister will not be taken into account. Therefore, former national office-holders will be able to cumulate old-age pensions from their national office with parliamentary allowances received as a European MP and therewith outdo active cabinet ministers in terms of income.

In addition, old-age pensions for European MPs will be paid "irrespective of any other pension" (Art. 20, 3). In its alternative draft the Council had proposed at least to take into account old-age pensions simultaneously obtained with pensions received from having held a seat in the European Parliament.<sup>56</sup> This proposal was rejected by the European Parliament as a "purely malicious act".<sup>57</sup> MPs who have a right to pensions from former posts as civil servants or cabinet ministers, can therefore cumulate both entitlements without qualification.

Moreover "any term of office served in the European Parliament or in a national parliament which under national arrangements does not give rise to any pension entitlement shall be taken into account in calculating the pension based upon this Statute" (Art. 36, 2).

Current European MPs will even have the possibility of being paid out of the voluntary pension fund according to the old system and, at the same time, to receive the new pension according to the Statute

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55 Even for the survivor's pensions other income is not taken into account.

56 See Art. 11,4, Draft of the Council for a Statute for Members of the European Parliament of 6.4.1999, PE 278.414/BUR.

57 See MEP *Klaus Lehne*, Verbatim Report of proceedings, Sitting on 4.5.1999, p. 79.

(Art. 35). In this case pensions might even exceed the parliamentary allowance of 8,671 Euros.<sup>58</sup>

### VIII. Further privileges

The new Statute proposes an increase of MPs' entitlements (allowance, pensions, tax regulations, omission of other income) and to extend their rights in other respects. It allows them to pick and choose, while restrictions are lacking, even where they are necessary.

In the first place, the rights of the Members of the European Parliament are going to be expanded through the enlargement of parliamentary immunity (Art. 5). Thereafter, any restriction of a Member's personal freedom shall only be permitted with the consent of the Parliament except where he/she is caught in the act (Art. 5, 1). The seizure of documents, the searching of office or place of residence and the interception of mail and telephone calls shall only be possible with the Parliament's consent (Art. 5, 2). At Parliament's request criminal proceedings against a Member shall be suspended (Art. 5, 3). Similar rights exist for many national MPs as well (for German MPs see Art. 46, 2-4 Grundgesetz).<sup>59</sup> Their constitutional relevance and justification have, however, recently been called into question.<sup>60</sup> The German parliament, for example, regularly gives its consent to proceedings against national MPs but this could be different in the European case<sup>61</sup>, which would lead to the result that European MPs would be free of criminal

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58 On the basis of its unpublished rules for the reimbursement of costs, the European Parliament offers its Members the possibility to participate in a voluntary pension fund. This fund is financed by contributions from the Members and a subvention by the Parliament twice this sum. After one legislative period Members can earn supplementary pension expectancies of 1,214 Euros.

59 This is not true for all Member States. Members of Parliament in the Netherlands or in Great Britain, for instance, are not exempt from prosecution by criminal law. See *Roland Bieber*, *Der Abgeordnetenstatus im Europäischen Parlament*, *Europarecht* 1981, 124 (130 f.).

60 See *Siegfried Magiera*, *Zweitbearbeitung des Art. 46 (1981)*, *Bonner Kommentar*, No. 14.

61 As for example, the European Parliament recently refused to deprive *Daniel Cohn-Bendit* of his immunity which had been demanded by the Department of Public Prosecution in Frankfurt/Main ("Süddeutsche Zeitung" of 2.7.2003).

proceedings during the course of the legislative period.<sup>62</sup> The new provision expands Art. 10 of the protocol on the privileges and immunities of the European Commission of 8 April 1965, which entitles Members of the European Parliament to be covered by national regulations concerning parliamentary immunities which do not exist in every member State.<sup>63</sup> Art. 10 of the protocol does not contain any regulations comparable to those of Art. 5, 2 and 3 of the Statute.

As Art. 10 of the Protocol belongs to primary law, it is doubtful whether expanding it through a Statute's provision (i.e. secondary law), is at all permissible. In any case, the new provision can only be put into force after Art. 10 of the protocol has been abolished (Art. 38, 2).

## **IX. Absence of necessary restrictions**

As mentioned earlier, the Statute mainly regulates privileges, while it lacks restrictions.

### **1. Reimbursement of costs without receipts**

The Statute explicitly entitles Members "to reimbursement of costs incurred in the exercise of their mandate" (Art. 27). The exact rules concerning this reimbursement are, however, supposed to be determined by the Parliament, that is by the Bureau of the European Parliament, thus excluding the public.<sup>64</sup> In its alternative draft, the Council, however, suggested precise regulations for the reimbursement of

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62 In Spring 2001, a demand by of the Spanish Department of Public Prosecution to deprive *Silvio Berlusconi* (at that time Member of the European Parliament) of his immunity, was rejected by the Parliament ("Rhein-Pfalz" of 4.7.2003).

63 See Footnote 59.

64 Art. 22, 2 of the rule of procedure of the European Parliament assigns financial, organisational and administrative decisions on matters concerning Members and the internal organisation of Parliament, its Secretariat and its bodies to the Bureau.

costs.<sup>65</sup> But the Parliament rejects these proposals and thereby withdraws the regulations on cost reimbursement from the consent of the Council and the control by the public. This is not only legally delicate<sup>66</sup> but also causes a severe political problem. Choosing this procedure, European MPs reserve themselves the possibility to procure a disguised remuneration<sup>67</sup> by defining excessive lump sums. This is frequently being practised already, for example by deducting normal fares for low-fare flights, by entitling the general allowance of 3,546 Euros per month to every MP, whether an office outside of Brussels or Strasbourg is maintained or not, or by saving the per diem allowance of 251 Euros through low-cost overnight accommodation. The Council as well as the “Group of Eminent Persons” wanted to allow reimbursement of costs only after the presentation of receipts.<sup>68</sup>

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65 See Art. 9, Draft of the Council for a Statute for Members of the European Parliament of 6.4.1999, PE 278.414/BUR.

66 In order to ground the right to regulate the reimbursement of costs, the European Parliament refers to a judgement of the European Court of Justice ECJ, Judgement of 15.9.1981, Case 208/80 Lord Bruce, ECR 2205). At that time Art. 190, 5 of the Treaty, which was introduced by the Treaty of Amsterdam did not exist. This Article now explicitly entitles the Parliament to “lay down the regulations and general conditions governing the performance of the duties of its Members”. There is no reason why regulations concerning the reimbursement of costs should not be part of these general conditions. The tenor of the article, on the contrary, rather embraces regulations of cost reimbursements. Consequently, an adoption of rules on the reimbursement of costs would then have to follow the process of Art. 190, 5 which means that the Council would have to consent.

67 Concerning the illegality of concealed income derived from cost reimbursements see ECJ, Judgement of 15.9.1981, Case 208/80 Lord Bruce, ECR 2205. The ECJ explicitly provided the Member States the right to subject disguised income to national taxes. The ECJ founded this judgement on the fact that parliamentary allowances are not a matter of the European Institutions but of the Member States. This argument as well as national taxing rights has – since the introduction of Art. 190, 5 into the Treaty – become obsolete. It therefore is even more necessary to prevent disguised incomes through verification of vouchers.

68 See Art.9, Draft of the Council for a Statute for Members of the European Parliament of 6.4.1999, PE 278.414/BUR. and Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6.2000, PE 290.755/BUR, p. 15. In a resolution of 5.12.2002 the European Parliament “called on the Bureau to prepare rules on the reimbursement of expenses, which should enter into force simultaneously with the Statute.” The

The exploitation of staff costs for the false employment of family and friends has previously occurred and will not be hindered by the new Statute.<sup>69</sup>

## **2. Unrestricted money for lobbyism**

Additional income and payments are not restricted by any regulation in the Statute. Payments from lobbyists, to whom MPs can sell their independence, are neither limited by the Statute nor subject to publication.<sup>70</sup> Regulations in the Rules of Procedure of the European Parliament concerning this problem are insufficient.

## **3. Lack of incompatibility regulations**

Regulations concerning incompatibility are also missing in the Statute. The Statute allows European MPs to be a national civil servant, soldier, university professor or judge at the same time and to generate full additional income. Provisions in the Act concerning the election of the representatives of the European Parliament<sup>71</sup> with regard to incompatibilities do not affect national civil servants and judges. At least in an earlier draft of the Statute, the introduction of further regulations

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Bureau of the European Parliament adopted some new regulations concerning the reimbursement of costs on 28.5.2003. Regulations concerning the general allowance and the per diem allowance of Members remained unchanged. See: List of new regulations of the rule on reimbursement of costs, PE 332.259/BUR/DEF, unpublished.

69 The Group of Eminent Persons had proposed to create a Statute for the personal assistants of the MPs. Furthermore it proposed that payment generally should only be directly made to the assistants. See: Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6.2000, PE 290.755/BUR, p. 15 f. The Bureau of the European Parliament in its session of 10.2.2003 adopted the creation of a public register of assistants but accepted that exceptions could be permitted. "Non-accredited assistants", "adding service providers", as well as "employees on short-term contracts" will not be subject to publication. See Minutes of the meeting of Monday, 10 February 2003 and Wednesday, 12 February 2003, PE 324.928/BUR.

70 In its alternative draft the Council had explicitly foreseen such an obligation.

71 See Act concerning the election of the representatives of the European Parliament by direct universal suffrage (Footnote 16).

concerning incompatibilities was at least intended<sup>72</sup> – the relevant passage has now disappeared.

## **X. Taking effect**

The final article foresees that the Statute “shall enter into force at the same time as the treaty amendments adopted on the basis of the work of the European Convention” (Art. 38, 1). This wording is ambiguous: Will the Statute enter into force at the time of the ratification of the Treaty amendments? This would be year 2006 or later. Or shall the Statute take effect at the same time as the intergovernmental conference takes a decision on the treaty amendments, which is scheduled for the end of 2003 or spring 2004 (before the election of a new European Parliament)? The first alternative is more likely to be realised.

In any case, the Statute for Members of the European Parliament and the European Constitution are going to be linked. On the one hand, such a connection seems adequate, the Statute being of great relevance for the recruitment and standing of representatives as well as for the relationship between political institutions and citizens. Like electoral law, it is part of the constitutional law.<sup>73</sup> On the other hand, there is the danger of the Statute for Members being overlaid by discussions about the work of the European Convention. It could even be pushed into the background so that protests from the general public against the provisions of the Statute would be prevented. To what extent such possible speculations of the initiators will be realised remains to be seen.

## **XI. An appeal to the Council**

For the time being, hopes are set on the Council to bring the Statute to a halt through its veto. This would prevent great damage to the Par-

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72 Report on the draft Statute for Members of the European Parliament of 18.11.1998, PE 228.308/end., p. 19.

73 See *Brun-Otto Bryde*, *Verfassungsentwicklung*, 1982, 59 ff., with further evidence.

liament and the European Union as a whole. However, the Council should make speedy use of this possibility and express its concern publicly. Delaying a statement until after the accession of the ten new Member States and the election of the European Parliament in June 2004 might create the danger of the Statute being adopted later.

## **XII. Conclusion**

In sum, the Statute is brimming with inconsistencies and contradictions. Its supporters essentially argue that the Statute will lead to financial equality of European MPs from all 15, and in future from all 25, Member States. When closely examined, this argumentation completely crumples. European MPs do not represent a uniform European People which does not exist yet, but (as it is clearly stated in the treaties) represent 15 (and in future 25) different peoples. Consequently, the financial status of European MPs should be regulated according to national frames of reference. A uniform electoral law does not exist either. In each of the 15 Member States the number of votes necessary for obtaining the mandate varies considerably. It is incomprehensible why parliamentary allowances of all things should be homogenised, whereas, firstly, inequality of election processes will prevail and, secondly, this kind of standardisation will lead to differences between the European MPs and Members of the national parliaments. If the Statute is put into force, all European MPs will earn 8,671 Euros per month. As a consequence many European MPs will earn a multiple of their national colleagues' salary and in some cases even more than their national cabinet ministers or prime ministers. Their income will completely stand out from the average in their home country. European MPs are already reimbursed according to uniform regulations for their costs occurring in Brussels or Strasbourg, so this new proposal would be completely inappropriate.

The intended equality of salaries for European MPs, however, will not be achieved by the Statute. On the contrary, many differences will prevail, and become even less transparent. Furthermore, reimbursement of costs occurring in the Member States will be regulated on the footing of national provisions and therefore also remain non-uniform.

During the evolution of the Statute, it gradually became clear that a completely different motivation lay behind it: The Statute really leads to massive pay increase for the vast majority of European MPs,

which also directly affects pensions and transitional allowances with even higher increases.

The effect of the pay increase will be reinforced by planned tax reliefs by which European MPs will be even more privileged when compared to their electors.

The whole development will probably set off a wave of pay increases for politicians on the national level.

On the one hand the Statute contains further privileges, especially concerning immunity; on the other hand it has considerable gaps: the lack of regulations for encompassing other income as well as regulations concerning incompatibilities permit multiple incomes. Possible abuse of regulations on the reimbursement of costs is in no way hindered.

It is now up to the Council to bring this Statute to a halt and to prevent severe damage to the European Union and the idea of Europe as a whole.





### **XIII. Appendix**

**Table: Basic allowances for Members of Parliament in the Member States of the European Union and in the new Member States compared with average income**

A	Country	Basic allowance <sup>1</sup>	Monthly average income <sup>2</sup>	Relation of allowance/average income (column 2 : column 3)	Relation of the proposed uniform allowance for Members of the European Parliament of 8,671 € and the national basic allowance: quotient (in brackets: difference)	Relation of the proposed uniform allowance for Members of the European Parliament of 8,671 € and national average income: quotient (in brackets: difference)	A
B	1	2	3	4	5	6	B
C	Italy	11,779 €	1,227 € (1995)	9.60	0.74 (-3,108 €)	7.07 (7,444 €)	C
D	Austria	8,750 € <sup>a</sup>	2,117 € (1999)	4.13	0.99 (-79 €)	4.10 (6,554 €)	D
E	Great Britain	7,216 €	2,353 € (1998)	3.07	1.20 (1,455 €)	3.69 (6,318 €)	E
F	Germany	7,009 €	2,791 € (2001)	2.51	1.24 (1,662 €)	3.11 (5,880 €)	F
G	Netherlands <sup>3</sup>	6,467 €	2,121 € (2000)	3.05	1.34 (2,204 €)	4.09 (6,550 €)	G
H	Ireland	5,984 €	2,145 € (2000)	2.79	1.45 (2,687 €)	4.04 (6,526 €)	H
I	Greece	5,600 € <sup>a</sup>	1,279 € (1998)	4.37	1.55 (3,071 €)	6.78 (7,392 €)	I
J	Denmark	5,570 €	3,255 € (2000)	1.71	1.56 (3,101 €)	2.66 (5,416 €)	J

1 The amounts of the allowances in the Member States are based upon Information provided by the European Parliament (Committee on legal affairs and the internal market – Notice to Members No. 1/2003 - PE 324.185). The data for the new Member States are based upon Information of Willi Rothley, rapporteur on the Statute in the European Parliament of 28.2.2003. For Poland as well as for Estonia a correction has been made by the authors (Conversion rate of 8.5.2003: 1€ = 4,313 PLZ). Information for Cyprus is not yet available. Conversion rates of 13.5.2003: 1 € = 245,440 Hungarian Forint, 42,23693 Slovakian Crowns, 236,515 Slovenian Tolar, 15,65000 Estonian Crowns, 4,34879 polish Zloty, 3,45280 Lithuanian Litas, 31,49101 Czech Crown, 0,47190 Maltesian Lire.

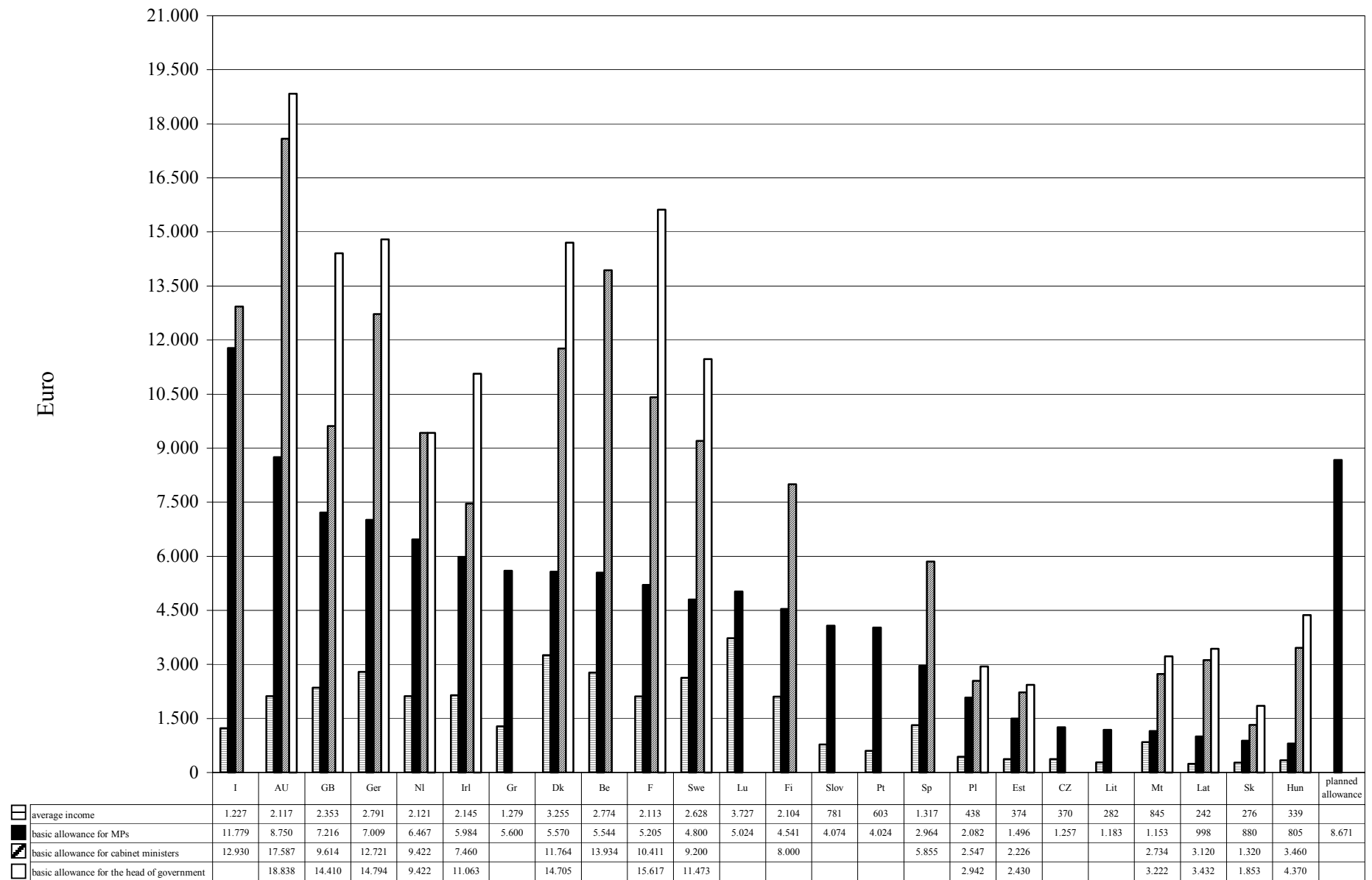
2 Statistisches Bundesamt (Hg.), Statistisches Jahrbuch für das Ausland 2002, Wiesbaden 2002, p. 301.

3 The information refers to the Members of the European Parliament from the Netherlands. While in the other Member States of the European Union Members of the European Parliament receive the same allowance as their national colleagues, Members of the European Parliament from the Netherlands receive a lower allowance than their colleagues in The Hague.

A	Country	Basic allowance <sup>1</sup>	Monthly average income <sup>2</sup>	Relation of allowance/average income (column 2 : column 3)	Relation of the proposed uniform allowance for Members of the European Parliament of 8,671 € and the national basic allowance: quotient (in brackets: difference)	Relation of the proposed uniform allowance for Members of the European Parliament of 8,671 € and national average income: quotient (in brackets: difference)	A
K	Belgium	5,544 €	2,774 € (1998)	1.99	1.56 (3,127 €)	3.13 (5,897 €)	K
L	France	5,205 €	2,113 € (1998)	2.46	1.67 (3,466 €)	4.10 (6,558 €)	L
M	Luxemburg	5,024 € <sup>b</sup>	3,727 € (2000)	1.34	1.73 (3,647 €)	2.33 (4,944 €)	M
N	Sweden	4,800 €	2,628 € (2000)	1.83	1.81 (3,871 €)	3.30 (6,043 €)	N
O	Finland	4,541 €	2,104 € (1999)	2.16	1.91 (4,130 €)	4.12 (6,567 €)	O
P	Slovenia	4,074 € (941,500 SIT)	781 € (2000)	5.22	2.13 (4,597 €)	11.10 (7,890 €)	P
Q	Portugal	4,024 € <sup>a</sup>	603 € (1998)	6.67	2.15 (4,647 €)	14.38 (8,068 €)	Q
R	Spain	2,964 € <sup>a</sup>	1,317 € (2000)	2.25	2.93 (5,707 €)	6.58 (7,354 €)	R
S	Poland	2,082 € (8,980 PLZ)	438 € (2000)	4.75	4.16 (6,589 €)	19.80 (8,233 €)	S
T	Estonia <sup>4</sup>	1,496 € (23,400 EEK)	374 € (2000)	4.83	5.80 (7,175 €)	23.18 (8,297 €)	T
U	Czech Republic	1,257 € (46,500 CZK)	370 € (2000)	3.40	6.90 (7,414 €)	23.44 (8,301 €)	U
V	Lithuania	1,183 € (4,085 Litas)	282 € (2000)	4.20	7.33 (7,488 €)	30.75 (8,389 €)	V
W	Malta	1,153 € (519 Lm)	848 € (2000)	1.36	7.52 (7,518 €)	10.23 (7,823 €)	W
X	Latvia	998 €	242 (2000)	4.12	8.69 (7,673 €)	35.83 (8,429 €)	X
Y	Slovakia	880 € (37,100 SK)	276 € (2000)	3.19	9.85 (7,791 €)	31.42 (8,395 €)	Y
Z	Hungary	805 € (195,615 HUF)	339 € (2000)	2.37	10.77 (7,866 €)	25.58 (8,332 €)	Z
<sup>a</sup> The allowance is paid 14 times per year. For reasons of comparability the amounts have been converted into 12 monthly salaries.							
<sup>b</sup> The allowance is paid 13 times per year. For reasons of comparability the amounts have been converted into 12 monthly salaries.							

4 During the first quarter of 2003 the average income in Estonia was 405 Euros and the basic allowance for Members of Parliament was 1,665 Euro (26,048 EEK). Source: Information provided by Prof. Dr. Sulev Mäeltsemees, Tallinn.

# Basic allowance of Members of Parliament in the Member States of the European Union and in the new Member States compared with the average allowance for cabinet ministers and the average income



In this chart all available data have been reproduced. Missing data are not yet available.

**Source:** For allowances of Members of Parliament as well as average income see table, for allowances of cabinet ministers see: Le Monde of 1.9.2002, where Information was only provided for nine countries. In Le Monde allowances for cabinet ministers in Great Britain were indicated with 16,666 €. In this amount the allowance as Member of Parliament which cabinet ministers also receive is already included. The basic salary for a cabinet minister in Great Britain is 9,614 €. See: Ministerial and other Salaries Act 1975. For cabinet ministers and prime minister in Estonia: Prof. Dr. Sulev Mäeltsemees, Tallinn, as well as Information of the German embassy in Tallinn of 6.8.2003. For cabinet ministers and prime minister in France see: Art. 14 Abs. 2, *Loi* N°. 2002-1050, of 6.8.2002, *JORF* of 8.8.2002, p. 13576. For cabinet ministers and chancellor in Germany see: § 11 Bundesministergesetz (Information without *Familienzuschlag*). For cabinet ministers and prime minister in Sweden: Information provided by the German embassy in Stockholm of 11.7.2003. For cabinet Ministers and prime minister in Denmark: Information provided by the German embassy in Copenhagen of 14.07.2003. For cabinet ministers and prime minister in Austria: Information provided by the German embassy in Vienna of 17.7.2003. For ministers and prime minister in the Netherlands: Information provided by the German embassy in The Hague of 16.07.2003. For Members of Parliament, cabinet ministers and prime minister in Lettland: Information provided by the German embassy in Riga of 17.7.2003. For cabinet ministers and prime minister in Hungary: Information provided by the German embassy in Budapest of 25.07.2003. For cabinet ministers and prime minister in Malta: Information provided by the German embassy in Valletta of 25.7.2003. For cabinet ministers and prime minister in Slovakia: Information provided by the German embassy in Bratislava of 29.07.2003. The prime minister in Slovakia receives the same basic allowance as cabinet ministers do, but also an extra allowance of 22,500 SKK (533 Euro). For cabinet ministers and prime minister in Irland: Information provided by the German embassy in Dublin of 28.07.2003.



## **Statute for Members of the European Parliament**

P5\_TA-PROV(2003)0236

A5-0193/2003

### **European Parliament decision on the adoption of a Statute for Members of the European Parliament (2003/2004(INI))**

*The European Parliament,*

having regard to the Treaties establishing the European Communities, in particular Article 190(5) of the Treaty establishing the European Community<sup>1</sup> and Article 108(4) of the Treaty establishing the European Atomic Energy Community<sup>2</sup>,

having sought the opinion of the Commission,

whereas:

#### A. General considerations

- (1) The Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 enabled the first direct election of representatives of the European Parliament to take place in 1979.
- (2) This Act contains no provisions either for a uniform electoral procedure or for a Statute for Members.
- (3) Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002<sup>3</sup>, based on Article 190(4) of the EC Treaty, which has been inserted by the Treaty of Amsterdam, amended the 1976 Act to establish a uniform electoral procedure.
- (4) At present, more than 20 years after the first direct elections to the European Parliament, there is still no uniform statute for Members.

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1 Hereinafter referred to as: EC Treaty.

2 All further references to the Treaties in this Statute relate solely to the provisions of EC Treaty.

3 OJ L 283, 21.10.2002, p. 1.



- (5) The solution provisionally adopted consists in the application to Members of the European Parliament of the same provisions, in general, as those applying to Members of the national parliaments in respect of Members' allowances, old-age pensions, survivors' pensions and other conditions governing the exercise of a Member's mandate (in the Netherlands, the allowance paid to Members of the European Parliament has been lower than that paid to Members of the national parliament since 1976).
- (6) These provisions vary greatly from one Member State to another.
- (7) Further provisions are contained in Articles 8, 9, and 10 of the Protocol on the privileges and immunities of the European Communities of 8 April 1965 (hereinafter: the Protocol) and Article 4(1) and (2) of the 1976 Act (as amended by the decision amending the 1976 Act).
- (8) These provisions are supplemented by the European Parliament's rules on the reimbursement of costs (travel, subsistence, general expenditure), assistants (secretarial allowance) and social benefits (Article 199(1) of the EC Treaty).
- (9) This system was developed for the delegates appointed to the earlier parliamentary Assembly and is today regarded as unsatisfactory, because it results in unequal treatment for Members.
- (10) It is an outmoded system that must be replaced by rules tailored to the directly elected European Parliament and reflecting its increasing importance.
- (11) The European Parliament has sought to establish a uniform statute since the first direct elections. These attempts failed for lack of a legal basis.
- (12) The Treaty of Amsterdam, as amended by the Treaty of Nice, provides a legal basis for a Statute in Article 190(5) of the EC Treaty. This Statute is based on that Article.
- (13) The Statute falls within the scope of application of the EC Treaty, therefore, and consequently is subject to the prohibition of discrimination enshrined in Article 12 of the EC Treaty.
- (14) Article 190(5) of the EC Treaty is couched in general terms ('regulations and general conditions governing the performance of the duties of its Members'). This provision does not place any limitation on the European Parliament's regulatory powers that would restrict it to issuing rules in respect of financial conditions

only, or only in respect of residual matters not covered by primary law.

- (15) The European Parliament's regulatory powers consequently also extend to the privileges and immunities regulated by Articles 8, 9, and 10 of the Protocol or to matters which have not yet been regulated, such as the right to refuse to testify, and to Article 4 of the 1976 Act (as amended by the decision amending the 1976 Act).
- (16) Provisions of the Statute that conflict with provisions of primary law may not enter into force unless and until an intergovernmental conference has decided to repeal the corresponding provisions of primary law and that decision has been ratified by the Member States (hierarchy of norms).
- (17) For the sake of legal certainty, the same procedure should be adopted in the case of new provisions which either incorporate the wording of the provisions of primary law or essentially mean the same.
- (18) Rules adopted by the European Parliament, being secondary law, do not need to be ratified.
- (19) The criterion of performance of Members' duties also serves to distinguish Article 190(5) from Article 190(4) of the EC Treaty. Provisions applicable in the pre-election phase (eligibility, electoral procedure, etc.), as well as those concerning the beginning and end of a Member's term of office, the verification of credentials, removal from office, replacement, and incompatibilities, should be regulated in the 1976 Act because they do not relate to the performance of the Members' duties.
- (20) Article 10 of the Protocol establishes the immunity of Members of Parliament. Although parliamentary immunity is a privilege of the European Parliament, it affords Members freedom from prosecution or any other curtailment of personal freedom by the State for the duration of their term of office. If immunity is waived, the exercise of the Member's mandate is possible only to a limited extent, if at all. Members' immunity is, therefore, a condition affecting the exercise of their mandate and, consequently, should be covered by the Statute.

- (21) Subjects, such as the privilege to decline to give evidence, which have not previously been dealt with in primary law, can be dealt with in the Statute.
- (22) The Statute does not contain any detailed provisions relating to the reimbursement of costs (travel, subsistence, general expenditure), assistants (secretarial allowance) and social benefits (Article 199(1) of the EC Treaty). The European Parliament may, on the basis of Article 199(1) of the EC Treaty, decide on such matters autonomously<sup>4</sup>.
- (23) There is no reason to call this autonomy into question. Article 190(5) of the EC Treaty is intended to extend the European Parliament's powers to regulate its own affairs, not to curtail them.
- (24) According to Article 189(1) of the EC Treaty, the European Parliament shall consist of 'representatives of the peoples of the States brought together in the Community'. These representatives are referred to in Article 190(1) of the EC Treaty as the 'representatives in the European Parliament of the peoples of the States brought together in the Community'. The same term is used in Article 190(2) of the EC Treaty ('the number of representatives elected in each Member State') and in Article 190(3) of the EC Treaty ('representatives shall be elected for a term of five years').
- (25) These provisions, whereby Members are the constitutional representatives of the peoples, are of a constitutional nature.
- (26) The term used in the Statute should be 'Member'.
- (27) The right of the European Parliament to regulate its own business, in accordance with Article 199(1) of the EC Treaty, is not affected by this Statute.

#### B. With reference to individual provisions

- (28) Article 1 takes the concept of 'Member' and makes it clear that the Statute does not deal with Members' rights and obligations, but comprehensively covers the rules and general conditions applicable to the exercise of their mandate.

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4 ECJ Judgment of 15.9.1981, Case 208/80 Lord Bruce, ECR 2205.

- (29) The freedom and independence of Members upheld in Article 2 require statutory protection and are not mentioned in any provision of primary law. Undertakings made by Members to relinquish their office at a given time, or declarations of their intent to relinquish office at an unspecified date which political parties can make use of at their discretion, are incompatible with Members' freedom and independence and so cannot be binding in law.
- (30) Protecting the freedom to vote and freedom of speech is a matter of fundamental public interest. Article 4(1), therefore, precludes a Member from being prosecuted or otherwise held to account for a statement made in the exercise of his or her mandate. Under Article 4(2), the European Parliament may decide whether a statement was made in the exercise of a Member's mandate. In such a case it is, as when verifying credentials in accordance with the provisions of the 1976 Act, functioning in a judicial capacity. In its decisions on immunity, which are certainly comparable, the European Parliament has consistently shown a sense of proportion and realism.
- (31) The immunity provided for in Article 5 protects Members from tendentious prosecution (*fumus persecutionis*) and restrictions imposed by the executive branch. As various cases decided on by the European Parliament show, there can be no question of these aspects no longer playing a role today. Immunity at all events touches on questions of equality, the division of powers and the rule of law. A further aim of immunity is to ensure the European Parliament's ability to function. These considerations suggest the following solution: criminal investigations and proceedings can be initiated against a Member at any time. There is no requirement for immunity to be waived. Current law is not helpful either to the European Parliament or to individual Members, as even straightforward offences such as road traffic offences have to be discussed in public. Any restriction on the personal freedom of a Member must, however, be conditional on the agreement of the European Parliament (to ensure the European Parliament's ability to function). It must be possible to suspend investigations and criminal proceedings at the insistence of the European Parliament if '*fumus persecutionis*' is involved. Paragraph 2 provides these guarantees.

- (32) The entitlement to refuse to give evidence, for which Article 6 provides and which has not so far been regulated in primary law, protects a Member's freedom with regard to information and the relationship of trust between him/her and any person who has entrusted facts to him/her. It is a right vested in the individual, which applies in all procedures where a duty to give evidence exists, and the European Parliament cannot override it. The prohibition on seizure, searches and exploitation protects this entitlement. It would be absolutely unacceptable for journalists to have an entitlement to refuse to give evidence while Members did not.
- (33) The freedom of movement for Members provided for by Article 7, which is essentially a matter of course, has fresh significance because this freedom has recently been restricted by measures adopted by the authorities in connection with demonstrations.
- (34) Article 9 ensures that Members' records, documents, drafts, letters and other correspondence are excluded from any requirement of disclosure.
- (35) The right of initiative provided for in Article 10 is the key right of a Parliament and of every Member thereof. The Article makes it clear that the Rules of Procedure of the European Parliament cannot restrict the enjoyment of this right by every Member.
- (36) The right to inspect files, provided for by Article 11, which has already existed hitherto on the basis of the Rules of Procedure of the European Parliament, is an essential aspect of the exercise of a Member's mandate and should therefore be provided for by the Statute.
- (37) Article 12 is intended to ensure that, despite statements to the contrary, linguistic diversity will not in reality be further eroded. Any discrimination against any of the official languages must be excluded. This principle must continue to apply after any enlargement of the European Union.
- (38) Pursuant to Articles 15 and 16, Members are to receive an allowance in return for denying themselves a private career and – for a limited period – serving the European Union, their country and democracy in Europe. Regarding the amount of the allowance, a group of experts convened by the European Parliament submitted a study in May 2000. An allowance of 50% of the basic salary of a judge at the Court of Justice of the Euro-

pean Communities falls well within the range which the experts deemed appropriate.

- (39) Article 15(3) is necessary because parties often expect the benefits referred to in paragraphs 1 and 2 to be used in part for their purposes. This form of party funding is illegal.
- (40) The transitional allowance provided for in Articles 15(2) and 19 is intended to bridge the period between the end of a Member's term of office and his/her taking up a new post. When the former Member takes up another mandate or assumes a public office, this purpose ceases to be relevant.
- (41) In the case of the old-age pension referred to in Article 20, the age when entitlement to it is to begin has been a matter of dispute. The group of experts proposed the age of 65 or – with an actuarial deduction – the age of 60. In accordance with Article 20(1), the old-age pension would become payable on the Member's 60th birthday. A Member who, after his/her education and some years of professional experience, is elected for the first time at age 35 or 40 and serves as a Member for twenty years, leaves Parliament aged 55 or 60. While he/she may reasonably be expected to take up an occupation outside Parliament at the age of 55, this is hardly the case at the age of 60. Calculations by Parliament's administration indicate that an actuarial deduction would be so large that this solution cannot be considered.
- (42) The arrangements for provision for survivors are essentially in line with current law in the European Community. The entitlement of a surviving spouse who has remarried is based on the modern idea that it relates to a personal benefit and is not intended merely as 'provision'. Such an entitlement is not ruled out even when a surviving spouse is 'provided for' by virtue of his or her own income or personal wealth.
- (43) The purpose of Article 24(1) and (2) is to alleviate on a long-term basis the burden on the budget of the European Union. The option of setting up a fund has proved its value in practice. The group of experts proposed that the European Parliament should contribute two-thirds and Members one-third.
- (44) Article 25 is necessary because when the Statute enters into force, Member States will cease to reimburse the costs that Members incur as a result of sickness or to pay part of medical

insurance contributions. These benefits are often retained after a Member's term of office is over.

- (45) The provisions concerning the reimbursement of costs must respect the principles set out by the Court of Justice of the European Communities in the 'Lord Bruce' judgment<sup>5</sup>.
- (46) According to that judgment 'it is a matter for the Parliament to decide which activities and travel of Members of the Parliament are necessary or useful for the performance of their duties and which expenses are necessary or useful in connection therewith. The autonomy granted to the Parliament in this matter in the interests of its proper functioning also implies the authority to refund travel and subsistence expenses of its Members not upon production of vouchers for each individual item of expenditure but on the basis of a system of fixed lump-sum reimbursements. The choice of this system (...) arises from a concern to reduce the administrative costs and burdens inherent in a system involving the verification of each individual item of expense and therefore represents sound administration'<sup>6</sup>.
- (47) However, 'the allowances fixed in that manner must not exceed reasonable limits consistent with the refund of travel and subsistence expenses'. The lump sum fixed for the allowances must not be too high or constitute disguised remuneration<sup>7</sup>.
- (48) The Member States should ensure that the rules placing Members of the European Parliament, when exercising their mandate in their Member State, on the same footing as members of the national parliament (as regards, e.g., reimbursement of air fares, provision of free rail passes, etc) are retained. It is not possible for this problem to be solved at European level, as numerous very disparate arrangements exist in the Member States. Without such a provision, the exercise of the mandate of a Member of the European Parliament in the Member State where a Member was elected would be considerably hampered, if not impossible. Effective exercise of the mandate is also in the interests of the Member States.

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5 See footnote 1 to recital 22.

6 Paragraph 17.

7 Paragraph 21.

- (49) Article 33(1) is required because the very disparate national provisions to which Members have so far been subject make it impossible to solve at European level all the problems associated with the transition from an old to a new European system. Giving Members a choice will make it impossible for Members' rights to be reduced or for them to suffer financial damage as a result of the transition. Paragraphs 2 and 3 are consequences of the decision in paragraph 1.
- (50) The considerable economic differences between existing and new Member States will be eliminated only gradually after accession. It therefore seems appropriate, for a transitional period, to enable the new Member States to apply different rules on the allowance, transitional allowance and pensions,

DECIDES:

- A. Regulations and general conditions governing the performance of the duties of the Members of the European Parliament

#### Article 1

This Statute lays down the regulations and general conditions governing the performance of the duties of Members of the European Parliament.

#### Article 2

- (1) Members shall be free and independent.
- (2) Agreements concerning the resignation from office of a Member before or at the end of a parliamentary term shall be null and void.

#### Article 3

- (1) Members shall not be bound by any instructions and shall not receive a binding mandate\*.

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\* See Article 37(2).



- (2) They shall vote on an individual and personal basis\*.
- (3) Agreements concerning the way in which the mandate is to be exercised shall be null and void.

#### Article 4\*

- (1) A Member may at no time be the subject of legal proceedings or otherwise be held to account extrajudicially for any action taken, vote cast or statement made in the exercise of his/her mandate.
- (2) Parliament shall decide, on an application from the Member, whether a statement was made in the exercise of his/her mandate.
- (3) Parliament shall lay down provisions for the implementation of this Article in its Rules of Procedure.

#### Article 5\*

- (1) Any restriction of a Member's personal freedom shall be permitted only with the consent of Parliament, except where he/she is caught in the act.
- (2) The seizure of a Member's documents or electronic records or the searching of his/her person, office or place of residence or interception of his/her mail and telephone calls may be ordered only with the consent of Parliament.
- (3) Investigations or criminal proceedings against a Member shall be suspended at Parliament's request.
- (4) Consent pursuant to paragraph 2 may be applied for only by the authorities competent under national law.
- (5) Consent pursuant to paragraph 2, or suspension pursuant to paragraph 3, may be granted conditionally, for a limited period or on a restricted basis.
- (6) Article 4(3) shall apply mutatis mutandis.

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\* See Article 37(2).

### Article 6

- (1) A Member shall be entitled at all times to refuse to give evidence about persons who have entrusted facts to him/her or to whom, in the exercise of his/her mandate, he/she has entrusted facts and such facts themselves.
- (2) Measures under Article 5(2), or the exploitation of documents already seized, shall be prohibited.

### Article 7\*

- (1) Members shall enjoy freedom of movement throughout the European Union.
- (2) This right may not be restricted by law or by order of a public authority or court.

### Article 8

The privileges and immunities arising from the foregoing Articles may not be restricted by other provisions of the European Community's derived legislation.

### Article 9

Documents and electronic records which a Member has received, drafted or sent, and which do not bear an official document number, shall be deemed not to be European Parliament documents.

### Article 10

- (1) Each Member shall be entitled to table proposals for Community acts in the context of the European Parliament's right of initiative.
- (2) Article 4(3) shall apply *mutatis mutandis*.

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\* See Article 37(2).

## Article 11

- (1) Members shall be entitled to inspect any files held by Parliament.
- (2) This shall not apply to personal files and accounts.
- (3) Paragraph 1 shall apply without prejudice to acts of the European Union and agreements by the Institutions concerning access to documents.
- (4) Parliament shall lay down provisions for the implementation of this Article.

## Article 12

- (1) The documents of the European Parliament shall be translated into all the official languages.
- (2) Speeches shall be interpreted simultaneously into all the other official languages.

## Article 13

- (1) Members may form themselves into political groups.
- (2) Article 4(3) shall apply *mutatis mutandis*.

## Article 14

- (1) The political groups shall be part of Parliament.
- (2) They may sue and be sued.

## Article 15

- (1) Members shall be entitled to an appropriate allowance to safeguard their independence.
- (2) At the end of their term of office, they shall be entitled to a transitional allowance and a pension.
- (3) Agreements on the use of the allowance, the transitional allowance and the pension for other than private purposes shall be null and void.

- (4) The surviving dependants of Members or former Members shall be entitled to a survivor's pension.

#### Article 16

The amount of the allowance shall be 50% of the basic salary of a judge at the Court of Justice of the European Communities.

#### Article 17

The allowance received by a Member for the exercise of a mandate in another parliament shall be offset against the allowance.

#### Article 18

- (1) The allowance shall be subject to Community tax on the same terms and conditions as those laid down on the basis of Article 13 of the Protocol on the Privileges and Immunities of the Communities for the officials and other servants of the European Communities.
- (2) The right of Member States to take the allowance into account in determining the tax to be levied on other income shall remain unchanged.

#### Article 19

- (1) At the end of their term of office Members shall be entitled to a transitional allowance equivalent to the allowance pursuant to Article 16.
- (2) This entitlement shall continue for one month per year in which their mandate has been exercised, but not for less than six months or more than 24 months.
- (3) No such entitlement arises in the event of a Member assuming a mandate in another parliament or taking public office.
- (4) In the event of death, the transitional allowance shall be paid for the last time in the month in which the former Member died.
- (5) Article 18 shall apply mutatis mutandis.

### Article 20

- (1) Former Members shall be entitled to an old-age pension as from the age of 60.
- (2) This pension shall be, for each full year's exercise of a mandate, 3.5% of the allowance pursuant to Article 16 and one-twelfth thereof for each further full month, but not more than 70% in total.
- (3) Entitlement to the old-age pension shall exist irrespective of any other pension.
- (4) Articles 17 and 18 shall apply *mutatis mutandis*.

### Article 21

- (1) Members who become incapacitated during their term of office shall be entitled to a pension.
- (2) Article 20(2) shall apply *mutatis mutandis*. However, the amount of the pension shall be at least 35% of the allowance pursuant to Article 16.
- (3) The entitlement shall take effect when the Member concerned stands down.
- (4) Articles 11(4), 17 and 18 shall apply *mutatis mutandis*.

### Article 22

Should a former Member be entitled simultaneously to the payment of the transitional allowance pursuant to Article 19 and the pension pursuant to Article 20 or Article 21, he or she shall decide which arrangement shall be applied.

### Article 23

- (1) In the event of the death of a Member during his/her term of office, or of a former Member who at the time of his/her death was entitled to a pension pursuant to Article 20 or Article 21, the spouse and dependent children shall be entitled to a survivor's pension.

- (2) The total amount of the pension shall not exceed the pension to which the Member would have been entitled at the end of the parliamentary term or to which the former Member was entitled.
- (3) The surviving spouse shall receive 60% of the amount referred to in paragraph 2, but in any case at least 30% of the Member's allowance. Such entitlement shall not be affected if the surviving spouse remarries.
- (4) A dependent child shall receive 20% of that amount.
- (5) Should it be necessary, the maximum amount of the pension to be paid shall be divided between the spouse and the children in the ratio of the percentages laid down in paragraphs 3 and 4.
- (6) The pension shall be paid as from the first day of the month following the date of death.
- (7) Should the spouse die, the entitlement shall expire at the end of the month during which the death occurred.
- (8) A child's entitlement shall expire at the end of the month in which he/she reaches the age of 21. However, it shall continue for the duration of education or vocational training, but only until the end of the month during which he/she reaches the age of 25. The entitlement shall continue as long as the child is unable to support himself/herself on account of sickness or infirmity.
- (9) Partners from relationships recognised in the Member States shall be treated as equivalent to spouses.
- (10) Articles 11(4) and 18 shall apply *mutatis mutandis*.

#### Article 24

- (1) To finance the pensions a fund shall be set up which shall constitute reserves for the pensions.
- (2) The reserves shall be constituted from monthly payments by Parliament (two-thirds) and Members (one-third) and also from the interest accruing therefrom.
- (3) The amount of the contributions required shall be determined annually by Parliament.
- (4) The contributions pursuant to paragraph 2 shall not be subject to any tax.

- (5) The accounts shall be audited by the European Court of Auditors.

#### Article 25

- (1) Members and former Members drawing a pension, and persons entitled to the survivor's pension, shall be entitled to reimbursement of the costs that they incur as a result of sickness, pregnancy or the birth of a child.
- (2) To cover the costs a fund shall be set up, in the financing of which former Members shall likewise participate.
- (3) Articles 11(4) and 24 shall apply *mutatis mutandis*.

#### Article 26

- (1) Members shall be entitled to insurance cover for the risks connected with the exercise of their mandate.
- (2) Article 11(4) shall apply *mutatis mutandis*.

#### Article 27

- (1) Members shall be entitled to reimbursement of costs incurred in the exercise of their mandate.
- (2) Parliament shall determine those cases in which reimbursement may be effected by means of a flat-rate sum.
- (3) Articles 11(4) and 15(3) shall apply *mutatis mutandis*.

#### Article 28

- (1) Members shall be entitled to assistance from personal staff whom they may freely choose themselves.
- (2) Article 11(4) shall apply *mutatis mutandis*.

#### Article 29

- (1) Members shall be entitled to use Parliament's office facilities, telecommunications equipment and official vehicles.
- (2) Article 11(4) shall apply *mutatis mutandis*.

### Article 30

All payments shall be made from the budget of the European Union and from the funds to be established pursuant to Articles 24 and 25.

### Article 31

The benefits provided by the European Parliament pursuant to Articles 24 and 25 shall not be subject to tax.

### Article 32

Decisions concerning the implementation of this Statute shall be published in the L series of the Official Journal of the European Union.

## B. Transitional provisions

### Article 33

- (1) Members who were already sitting Members at the beginning of the parliamentary term in which this Statute enters into force and who have been re-elected, may opt for the national system applicable hitherto in respect of the allowance, transitional allowance and pensions for the entire duration of their term of office.
- (2) These payments shall be made from the budget of the Member State and shall be subject only to national tax.
- (3) Such Members shall pay no contribution to the fund established pursuant to Article 24.

### Article 34

- (1) Members who wish to continue with the national system applicable hitherto pursuant to Article 33(1) shall notify the President of Parliament of this decision in writing within 30 days of the entry into force of this Statute.
- (2) The decision shall be final and irrevocable.



- (3) Should such notification not be made within the time-limit, the provisions of this Statute shall apply.

#### Article 35

- (1) The voluntary pension fund set up by the European Parliament shall be maintained after the entry into force of this Statute for Members or former Members who have already acquired rights or future entitlements in that fund or who opt for the national system applicable hitherto pursuant to Article 33(1).
- (2) Acquired rights and future entitlements shall be maintained in full.
- (3) The contributions to this fund shall not be subject to any tax.
- (4) Members who pay contributions to the pension fund under Article 24 may not acquire any new rights or future entitlements in the voluntary pension fund.
- (5) The fund shall not be open to Members who are first elected to Parliament when this Statute becomes applicable.
- (6) Article 15(3), Article 18 and Article 20(3) shall apply *mutatis mutandis*.

#### Article 36

- (1) Any pension entitlement that a Member has acquired in accordance with national arrangements at the time when this Statute is applied shall be retained in full.
- (2) Any term of office served in the European Parliament or in a national parliament which under national arrangements does not give rise to any pension entitlement shall be taken into account in calculating the pension based on this Statute.

#### Article 37

- (1) For a transitional period each new Member State may adopt, for the Members elected in it, rules different from the provisions of this Statute as regards the allowance, transitional allowance and pensions.

- (2) These rules shall place the Members on at least an equal footing with the members of their respective national parliament.
- (3) All payments shall be made from the budget of the Member State in question.
- (4) The transitional period shall begin on the date of entry into force of the accession treaty and shall end at the latest at the end of the second full European Parliament parliamentary term after that date.
- (5) The entitlements of Members pursuant to Articles 25 to 29 shall not be affected by such rules.

C. Entry into force

Article 38

- (1) This Statute shall enter into force after its approval by the Council and at the same time as the Treaty amendments adopted on the basis of the work of the European Convention.
- (2) Without prejudice to paragraph 1,
  - Article 3(1) and (2) shall enter into force if and when Article 4(1) of the 1976 Act is repealed;
  - Article 4 shall enter into force if and when Article 9 of the Protocol is repealed;
  - Article 5 shall enter into force if and when Article 10 of the Protocol is repealed;
  - Article 7 shall enter into force if and when Article 8 of the Protocol is repealed.
- (3) After the Council has given its approval, this Statute shall be duly signed by the President of the European Parliament and published in the L series of the Office Journal of the European Union.