

Hans Herbert von Arnim

A salary of 9,053 Euros
for Members of the European
Parliament?



FÖV 7

Discussion

Papers

Hans Herbert von Arnim

A salary of 9,053 Euros for Members
of the European Parliament?

FÖV 7
Discussion Papers

Forschungsinstitut für öffentliche Verwaltung
bei der Deutschen Hochschule für Verwaltungswissenschaften
Speyer

2004

Nicht im Buchhandel erhältlich

Schutzgebühr: € 5,-

Bezug: Forschungsinstitut für öffentliche Verwaltung
bei der Deutschen Hochschule für
Verwaltungswissenschaften Speyer
Postfach 14 09
67324 Speyer

<http://www.foev-speyer.de>

Universitätsprofessor Dr. iur. Hans Herbert von Arnim,
Dipl.-Volkswirt

Ordentliches Mitglied des
Forschungsinstituts für öffentliche Verwaltung

Inhaber des Lehrstuhls für Öffentliches Recht, insbesondere
Kommunalrecht und Haushaltsrecht, und Verfassungslehre an der
Deutschen Hochschule für Verwaltungswissenschaften Speyer und
Leiter des Forschungsprojektes „Die Besoldung und Versorgung von
Angehörigen des öffentlichen Dienstes und die Ausgestaltung der
Politikfinanzierung in der Europäischen Union“

Contents

0. Summary	1
1. The adequacy of the present regulations	3
2. 9,053 Euros: dubious standards of comparison	5
3. Tax privileges	7
4. The Council is hesitant	8
5. Supplementary national tax?	9
6. Scandal about the reimbursement of travel costs	10
7. Violation of Art. 190. 5 of the Treaty	11
8. Cumulation of salaries	12
9. Some MEPs will earn three times as much as prime ministers	13
10. Immediate taking effect	14
11. Appeal to the Council	15
Appendix:Chart	15
Resolution on the Statute for Members (adopted on 17.12.2003)	16
Statute for Members (adopted on 3./4.6.2003) ..	18

*Shortly before Christmas, Members of the European Parliament launched a new attempt to set uniform allowances at a high level. The Council's consent is to be obtained through several concessions, which, when looked at closely, turn out as cosmetics, even as blackmail. The Parliament ultimately asked the Council to state its opinion to these new proposals by 15th January 2004 – a deadline, which meanwhile has been extended until the next sitting of the Council. But the Council should stay firm and not give in. Otherwise the Statute could become a symbol for European politics taking place far away from the citizens, and pushing through its own interests, regardless of European welfare. The council will probably decide on its sitting of 26.1.2004**

0. Summary

0.1 The present distinction between the varying basic allowance being nationally defined (see chart in the appendix) on the one hand, and unvarying reimbursement of costs occurring in Brussels or Strasbourg (3,620 Euros per month general expenditure allowance, 257 Euros per diem allowance, medical assistance, up to 12,305 Euros per month secretarial assistance allowance, furnished and equipped offices) on the other hand, is in line with the European political system, as long as there is no homogeneous entity called 'the European people' and as long as a uniform electoral system for the European Parliament does not exist.

* This study builds on the assumption, that it is one of the tasks of researchers to analyse menacing developments and to help preventing them even by unsolicited opinions and by informing the public. See Hans Herbert von Arnim, *Staatslehre der Bundesrepublik Deutschland*, München 1984, p. 417 (423 f.). – The author would like to thank Martin Schurig, Mag.rer.publ., researcher at the Research Institute for Public Administration, for his preliminary work and his help with the translation of the text into English. He also thanks Russel Cope for his linguistic examination.

0.2 The creation of a uniform basic allowance at a high level (9,053 Euros) and taxation benefits coming from the advantageous Community tax as provided in the planned Statute do not make sense and may entail severe harm to the European idea.

0.3 Linking MPs allowances to the salaries of judges at the European Court of Justice already seems inappropriate for reasons of transparency. Besides, this linkage seems problematic as judges in principle are not allowed to take up another occupation, whereas this restriction does not apply to MPs. They can even be paid as lobbyists. Therefore many European MPs accumulate two incomes.

0.4 Parliament brought in higher and higher amounts with every draft. An amount of 9,053 Euros currently proposed for the basic allowance of MEPs has not until now been publicly revealed. Instead, incorrect amounts have been mentioned.

0.5 In order to take the edge off the tax issue and in order to facilitate the Council's consent to the Statute, the European Parliament proposed shortly before Christmas to provide Member States with the possibility to introduce a supplementary tax, in addition to the planned EU-tax. There is, however, no guarantee that, countries like Germany, for example, will actually make use of this possibility after the European election in June 2004. Parliament itself expressed its doubts, whether an additional national tax would be compatible with EU-law.

0.6 The Parliament pledges to rectify prevailing irregularities concerning travel costs to and from Strasbourg or Brussels, but only if the Council consents to the Statute – a case of blackmailing. This misuse should have been remedied long ago. Using it to establish an even greater misuse is completely unacceptable. Furthermore, the proposed reimbursement system threatens to become even more expensive than the present system.

0.7 Any reimbursement of costs incurred by Members at the seat of Parliament is not supposed to be included in the Statute for Members of Parliament, but is supposed to be dealt with by the Parliament's Bureau, thus apart from any ef-

ficient means of control. This seems to be incompatible with Art. 190. 5 of the Treaty establishing the European Community.

0.8 By the Statute, taking into account other income will be hindered, even if paid out of public funds.

0.9 The Statute would completely mix up the structure of politicians' salaries in most of the Member States. If they are granted 9,053 Euros, European MPs from Spain, Finland or Ireland will gain more than their cabinet ministers. MEPs from Poland and other accession countries will even earn double or three times the salary of their prime ministers and more than 20 times as much as the average income in their countries. After only one legislative period they would be eligible for old-age pension entitlements which amount up to five times the average income in their country of origin. Citizens will probably not appreciate this. The ten accession countries will be able to opt for the possibility of paying their MEPs less for a transition period. But in reality, this possibility exists on paper only. Every country making use of it will be fiscally punished and will therefore refrain from using it.

0.10 The Statute, originally supposed to enter into force together with the Constitution, i.e. not before 2006, is now supposed to become effective at the beginning of the next legislative period, i.e. directly after the elections to the European Parliament on 13th June 2004.

0.11 For all these reasons, and to prevent severe damage to the European idea, the Council should use its power of control and should not consent to the Statute.

1. The adequacy of the present regulations

So far, Members of the European Parliament have received their income from two sources: At home they receive the same allowances as their colleagues in the national parliaments. Members from Germany, for example, receive 7,009 Euros per month – like their counterparts in the German Bundestag. Their English colleagues earn 7,107 (converted)

Euros, French Members have a basic allowance of 5,205 Euros (see chart in the appendix).

In addition to their basic allowance, Members have always been highly reimbursed homogeneously for costs related to their mandate in Brussels or Strasbourg: presently they receive from the EU-budget a tax-free expense allowance of 3,620 Euros per month, 257 Euros per diem allowance for subsistence and overnight accommodation (which is also paid on "free Fridays" when the Parliament is not sitting), quite a health insurance for the Members and his/her families in case of illness and up to 12,305 Euros per month for the employment of staff, not to mention their fully equipped offices.

The present regulation which gives Members the same home-salary as their national colleagues is in line with the European Union's political system. European parliamentarians do not represent a homogeneous entity, 'the European people', which as such does not exist. In the European Treaties Members are characterised as "representatives of the peoples of the States brought together in the Community" (Art. 190.1 of the Treaty establishing the European Community). The election of the European Parliament on 13th June 2004 will in any case not be held according to a uniform electoral system, but according to 25 different electoral laws. Members will be elected – in each of the then 25 Member States separately – according to *national* candidate lists.

Art. 190.5 of the Treaty consequently does not require a uniform salary for Members of the European Parliament.¹ As electoral law differs in each Member State, it is still appropriate to define the basic allowances of European Members in accordance with the national context; they are, after all,

1 On the other hand it does not forbid it either. Art. 190. 5 of the Treaty establishing the European Community reads: "The European Parliament, after seeking an opinion from the Commission and with the approval of the Council, acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council."

supposed to cover the living expenses of the Members and their families in their country of origin.² Thus aligning with existing national standards of income, they also reflect the national assessment of the worth of a parliamentary mandate.

2. 9,053 Euros: dubious standards of comparison

Nevertheless, the European Parliament is aiming at homogeneous standardised salaries, even at a very high level. All Members are supposed to earn an identical monthly allowance of 9,053 Euros (and the correspondingly high uniform old-age pensions).³ To reach this level, the European Parliament constantly increased the frames of reference for calculating the allowance from draft to draft of the Statute: they started out from the (unweighted) average of all allowances in the 15 Member States (which equalled an allowance of 5,677 Euros)⁴, then the weighted average (6,226 Euros),⁵ then the average allowance in the four biggest Member States, Germany, France, Italy and Great Britain (7,420 Euros),⁶ then

2 That makes the difference to public officials working and living with their families in Brussels the whole year. See *Hans Herbert von Arnim/Martin Schurig*, The Statute for Members of the European Parliament, FÖV-Discussion Paper Nr. 4 (2003), p. 6.

3 According to Art. 16 of the planned Statute (A5-0193/2003), the allowance for MEPs equals 50% of the basic salary of a judge at the Court of Justice of the European Communities, who receives 112,5 % of the highest basic salary of a European civil servant of category A 1. This rather complicated linkage to the salary of judges totals up to an amount of 9,053 Euros as from 1.1.2004. Until recently, an amount of 8,671 Euros had been proposed. This equals an increase of 382 Euros per month (=4,41%). Please see below in the text for further information.

4 Report on the draft Statute for Members of the European Parliament of 18.11.1998, PE 228.308/end., p. 13.

5 Recommendation of the Group of Eminent Persons on the Statute for Members of 6.6.2000, PE 290.755/BUR, p. 25.

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

the amount of 8,420 Euros⁷ and finally half the basic salary of a judge at the Court of Justice of the European Communities (9,053 Euros).⁸ The linkage to the salary of judges is already inappropriate, as judges in principle are not allowed to take up a second occupation, while this restriction does not apply to MPs. They are free to continue working and thereby earn an additional income, which in fact many European MPs do. It is even possible for them to be paid as lobbyists. German MEP Elmar Brok (EVP), for example, is in charge of the lobbying-office of the Bertelsmann-Group and receives an estimated additional income of 200,000 Euros per year.⁹

In order to explain the planned increase in allowances, the European Parliament also referred to the high allowances received by Italian MEPs, who earn 10,975 Euros (see chart). However, the Parliament did not mention that Italy – unlike other Member States – has no provision for old-age pensions for its Members of the European Parliament.¹⁰ The level of allowances for active Italian MEPs therefore must be considerably qualified. This is also true for French MEPs who receive a considerably lower old-age pension than their colleagues in the *Assemblée Nationale*.¹¹

European MPs have, by the way, coyly concealed the actual amount of their planned salary, even in the Plenary session of 17th December 2003. *Willy Rothley*, MEP and rapporteur on the Statute, even cited an incorrect amount (“about 8,600 Euros”). Since the adjustment of the remuneration with

7 Art. 8, Draft Statute for Members of the European Parliament of 26.10.2000, PE 296.525/BUR.

8 Art. 16, European Parliament decision on the adoption of a Statute for Members of the European Parliament of 3.6.2003.

9 *Der Spiegel* No 39/1997, p. 46. Also see *Hans Herbert von Arnim*, *Diener vieler Herren*, 1998, p. 48 f.

10 Therefore the European Parliament helps Italian MEPs out with a “provisional pension scheme”. See Rules Governing the Payment of Expenses and Allowances to Members (unpublished), Annex III.

11 The European Parliament helps out here too.

effect from 1.7.2002¹², half the allowance of a judge (and therewith the planned salary for MEPs) equals 8,671 Euros. Since the adjustment of the remuneration of 5.12.2003¹³ with effect from 1.7.2003, it equals 8,756 Euros, and due to a further adjustment of the remuneration of 8.12.2003 it equals 9,053 Euros with effect from 1.1.2004¹⁴. These data had been published some time before 17th December and ought not to have been kept secret at Rothley's press conference (where he appeared as an official representative of the Parliament and not as a private person). The correct amount of the planned allowance were only made public on 11.1.2004, when the German "Der Spiegel" and "Bild am Sonntag" reported about the context of this study.

3. Tax privileges

In addition, tax privileges will be provided. The envisaged salary is supposed to be taxed in line with the taxation scheme for European civil servants.¹⁵ This leads to a considerably lower tax burden than in most of the Member States. This planned

12 See Council Regulation (EC, Euratom) No 2265/2002 of 16 December 2002 adjusting with effect from 1 July 2002 the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto Official Journal L 347, 20.12.2002, p. 1.

13 See Council Regulation (EC, Euratom) No 2148/2003 of 5 December 2003 correcting with effect from 1 July 2002 the remuneration and pensions of officials and other servants of the European Communities, Official Journal L 323, 10.12.2003, p. 1.

14 See Council Regulation (EC, Euratom) No 2182/2003 of 8 December 2003 adjusting with effect from 1 January 2004 the remuneration and pensions of officials and other servants of the European Communities and the weightings applied thereto, Official Journal L 327, 16.12.2003, p. 3.

15 Art. 18.1 of the Statute reads: "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."

“tax reduction” for MEPs incited the German “Bild-Zeitung” in autumn 2003 to wage a campaign¹⁶, which produced a strong impact on many German Members of the European Parliament.¹⁷ Their spokesmen felt themselves cornered so that they tried to find refuge in hazardous declarations: the planned Statute would – in reality – not lead to an increase of net income for German MEPs if one considered that they would have to contribute to their old-age pension system. This desired result was then supported by dubious, gross incorrect calculations.¹⁸

4. The Council is hesitant

These provisions were already agreed on in June 2003 by the European Parliament, when a Statute for Members was adopted.¹⁹ But the Council, whose agreement is indispensable for the Statute coming into force, is hesitant: not only because of high allowances and the planned advantageous taxation, but presumably also because the salaries and old-age pensions of the Members of the European Parliament in

16 See Bild-Zeitung of 14.10.2003, p. 1 and 2; of 15.10.2003, p.1 and 2; and of 16.10.2003, p. 1 and 2. Also see *Hans Herbert von Arnim*, „Spiel mit gezinkten Karten“ (Interview), Focus of 20.10.2003, p. 243.

17 See for instance *Helmut Bündler*, “Deutsche Parlamentarier wollen sich nur Spesen sichern”, Frankfurter Allgemeine Zeitung of 9.12.2003: “Many German MEPs still have the campaign of the Bild-Zeitung in mind. In summer, the paper had accused them of trying to flee the German income tax by elaborating the Statute.”

18 The abatement of 10% of the income for “occupational and personal expenses” as well as the existence of abatements for children (Art. 3.4 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.). At the same time contributions of the MEPs for their old-age pension and insurances were calculated much too high.

19 Decisions of the European Parliament of 3.6.2003 and 4.6.2003. See *Hans Herbert von Arnim/Martin Schurig* (Footnote 2).

many Member States would then be completely inappropriate. This would most certainly lead to a massive loss of prestige and reputation for the European Parliament, just at the time of the accession of ten new Member States from Central and Eastern Europe (on 1st May 2004).

5. Supplementary national tax?

In order to induce the governments eventually to consent to the Statute in the Council, the European Parliament tried shortly before Christmas to take the edge off the tax issue by providing the Member States with the possibility to introduce a supplementary tax, in addition to the planned EU-tax.²⁰ The Council was ultimately asked to state its opinion by 15th January 2004.²¹ But the Parliament's proposal contains two snags: first, there is no guarantee that, to quote an example, Germany will actually make use of this possibility once the European election in June 2004 will be over. Moreover, the compatibility of such an additional national tax with primary EU-law has been strongly denied during the plenary session of the European Parliament of 17.12.2003.²² To what extent these

20 Draft resolution of the groups of the PPE-DE, PSE, ELDR, Verts/ALE, GUE/NGL concerning the Statute for Members of 16.12.2003 (B5-0543/2003 – RC), Number 2g. Adopted in the plenary session of the European Parliament of 17.12.2003. Result of the vote: 345 for, 94 against, 88 abstentions. – Additionally, the old-age pension, which, according to the draft Statute, was supposed to be paid at the age of 60, will now be paid at the age of 63. Finally, all regulations concerning immunity and all other regulations, except those concerning salaries and pensions, are to be eliminated from the Statute.

21 Draft resolution (Footnote 18), Number 1.

22 See for instance MEP *Klaus Heiner Lehne* (PPE): "And yet we know – we have the information of all three legal services, of the Parliament as well as the Commission and the Council – that what has been proposed here is illegal. Now we as the Parliament still get into it. But I can already announce: should it happen, that this decision will be taken and that some Member State actually makes use of this option, the case will surely be dealt with by the Court of

considerations are well-founded can not be explored here.²³ But they will certainly be used as an argument not to make use of the option. So the supplementary national tax will become even less probable.

6. Scandal about the reimbursement of travel costs

In addition, the Parliament promised the Council to do away with irregularities concerning the reimbursement of travel costs for flights to and from Brussels or Strasbourg. A German MEP from Berlin, for instance, can “legally” rake in up to 28,500 Euros tax-free per year by taking low-fare flights, but claiming normal fares.²⁴ However, the Parliament is only willing to eliminate this obvious defect if the Council in return consents to the Statute for Members²⁵ – a case of blackmailing. It is a scandalous fact that these long practised inadequate reimbursement rules have not yet been removed. Using them as a means to establish an even greater inadequacy is the last straw!

Brussels understands this misuse of reimbursement regulations as a legitimate compensation for Members with lower allowances, for example from Spain or Portugal (see chart). But this idea, concocted by those personally concerned, is neither logical nor justified. It is not logical because it cannot explain why also Members with higher allowances, as those from Germany for example, should also benefit from these

Justice and will – in the end - be decided there. “ Also see the Austrian MEP *Othmar Karas* (PPE): “Even though many of us consider the provision concerning taxation to be illegal, unjust and wrong in substance, we still present it as a sign of our good will and as listeners of the problems within the Council.”

23 Our request to make accessible to us the quoted opinion of the legal services was turned down by the European Parliament (letter of 18.12.2003).

24 See for example Focus of 4.8.2003, p. 156.

25 Draft resolution (Footnote 18), Number 1h. See the statement of *Willi Rothley*, MEP and Rapporteur on the Statute, at a press conference in Strasbourg on 17.12.2003.

irregularities. Furthermore, this idea lacks any justification: in Brussels or Strasbourg, European MPs have – in addition to their basic allowance – always been highly reimbursed at a uniform rate for costs related to their mandate (see above number 1).

There is consequently no reason in addition to establish equal basic allowances of deputies at an enhanced level, thus completely messing up the structure of salaries for politicians in most of the Member States.

Moreover, the proposed reform of the travel cost reimbursement rules will probably prove to be even more expensive for the EU budget than the actual system. So far, it has only been possible to claim the "unrestricted normal fare" – i.e. the highest economy-class tariff²⁶ – but in future, business-class tariffs would be reimbursed, albeit only after the presentation of receipts.²⁷ For a flight from Berlin to Brussels, for example, the latter tariff costs about 200 Euros more.²⁸

7. Violation of Art. 190. 5 of the Treaty

If anything should be set down in a Statute for MEPs, it should be these reimbursement regulations for expenses in Brussels or Strasbourg (expense allowance, subsistence allowance, medical expenses, secretarial assistance allowance). These reimbursements belong to the "regulations and general conditions governing the performance of the duties of its Mem-

26 Art. 2, 2a of the actual Rules Governing the Payment of Expenses and Allowances to Members of the European Parliament. In the press, this tariff has occasionally been confused with the business-class tariff.

27 List of new regulations of the Rules Governing the Payment of Expenses and Allowances to Members (PE 332.259/BUR/DEF), Number la (I). Adopted by the Bureau of the European Parliament on 28.5.2003. Minutes of the sitting (PE 332.238/BUR), p. 6. The putting into force of these new regulations has been postponed.

28 This is the result of a detailed calculation, considering all relevant aspects.

bers” which are to be defined according to the procedure laid down in Art. 190. 5 of the Treaty.²⁹ But, paradoxically, all these regulations are supposed to be defined by the Bureau of the European Parliament, i.e. without cooperation of the Plenum, the Commission or the Council and without any efficient control³⁰, even though this is particularly necessary when the Parliament takes decisions on its own behalf.

8. Cumulation of salaries

The Statute provides the Members with additional privileges, not taking into account income from other sources, even when coming from public funds. According to the Statute, only allowances from current mandates in another parliament will be offset against the future allowance.³¹ Old-age pensions, entitlements from service as a civil servant or from functions as cabinet minister will not be taken into account.

29 See the reading of Art. 190. 5 in footnote 1. – As Art. 190. 5 gives the Council the role of a counter balancing controller when Parliament decides on its own behalf the Council cannot renounce on this function given to him in public interest. Therefore the Council is not entitled to transfer its competencies to the Parliament as it is foreseen in the Statute for regulations concerning cost reimbursements.

30 The planned Statute provides only a basic regulation. The absolute level of payments and the structure remain to be defined by the Bureau of the Parliament. According to Art. 27 of the Statute “Members shall be entitled to reimbursement of costs incurred in the exercise of their mandate.” According to paragraph 2 the “Parliament shall determine those cases in which reimbursement may be effected by means of a flat-rate sum.” Art. 28. 1 entitles Members “to assistance from personal staff whom they may freely choose themselves.” The provisions for the implementation of these regulations explicitly remain in the hands of the Parliament (Art. 27. 3; Art. 28. 2), which delegated them to its Bureau (Art 5, Rules of Procedure of the European Parliament). Such delegation of competencies from the Commission and the Council to the Bureau of the Parliament as provided in the Statute is incompatible with Art. 190.5 of the Treaty. See footnote 29.

31 Art. 17 of the Statute.

The former cabinet minister, Jo Leinen, could here be cited by way of example. He had been cabinet minister in Saarland for nine and a half years and has been receiving a high pension for this reason since his 55th birthday.³²

In addition, old-age pensions for European MPs will be paid “irrespective of any other pension”.³³ In its former alternative draft, the Council had proposed at least to take into account old-age pensions simultaneously acquired with pensions received by holding a seat in the European Parliament.³⁴ This proposal was rejected by the European Parliament as a “purely malicious act”.³⁵ MPs who have a right to pensions from former posts as civil servants or cabinet ministers, can therefore cumulate both entitlements without any restrictions.

9. Some MEPs will earn three times as much as prime ministers

Anyhow, the above said does not in any case solve the main problem: if all European MPs equally receive 9,053 Euros per

32 Payments of this kind to German MEPs generally must be taken into account since the 21st amendment of the Abgeordnetengesetz (law for Members of the Bundestag) and the 18th amendment of the Europaabgeordnetengesetz (law for German Members of the European Parliament) of 20.07.2000. Provisions accordingly amended will take effect exceptionally “at the first session of the 6th European Parliament”, i.e. in June 2004. Taking into account income from other sources is long overdue, yet it will be prevented by the new Statute, should it be consented to.

33 Art. 20. 3 of the Statute.

34 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.

35 MEP *Klaus-Heiner Lehne*, Verbatim report of proceedings, sitting on 4.5.1999, p. 79. *Lehne* made himself heard in the plenary session with somewhat exaggerated formulations. He qualified the Council's position as “dishonest and mendacious”. At the same time, he tried to discredit – misinterpreting the situation completely – the Council's veto as an offence against the Parliament (“This house also has its dignity”).

month, Members from Spain, Finland or Ireland, would earn more than their national cabinet ministers. European MPs from Poland, Estonia, Slovakia or Hungary would even earn double or three times as much as their national prime ministers and more than twenty times as much as the average income in their countries. A European MP will acquire a pension-entitlement of 1,584 Euros after one legislative period of five years. This equals the income of five average citizens in most of the Member States (see chart). Their citizens would certainly not appreciate this – just as little as those who would have to provide the funds – for example, German and other tax payers.

The Parliament is trying to crack this nut by providing the ten accession countries with the option of paying their European MPs less for a transition period. But, apart from the fact that this excludes present Member States like Finland, Ireland and Spain, countries opting for this alternative will be fiscally punished: They would have to pay their European representatives out of the national budget,³⁶ whereas the salaries of all other MEPs are to be paid from the European budget. Making use of this option would therefore be disadvantageous for the accession countries.³⁷

10. Immediate taking effect

The new regulations are supposed to take effect at the beginning of the next legislative period i.e. after the election of the new European Parliament on 13 June 2004. Up to the present, the Statute was to “enter into force at the same time as the Treaty amendments adopted on the basis of the work of the European Convention”³⁸ – in the year 2006 at the earliest.

36 Art. 37. 3 of the planned Statute.

37 See *von Arnim/Schurig* (Footnote 2), p. 8 f. – In a “non-paper” of the Council it is explicitly stated, that the costs occurring for the national budget would prevent the Member States from making use of this option (PE 302.639/BUR).

38 Art. 38.1 of the Statute.

After the temporary failure of the Intergovernmental Conference of Brussels, the European Parliament wants to give up the linkage to the European Constitution in order to expedite the entry into force of the Statute.³⁹ The whole matter is therefore of immediate interest.

11. Appeal to the Council

We appeal to the governments of the 15 Member States, including the German national government, to fully fulfil their function as an organ of control and not to consent to the Statute for MEPs, adopted by the Parliament on its own behalf. Failure to do this would severely damage the European idea. The Statute for Members could become a symbol for European politics taking place far away from the gaze of citizens, and pushing through its own interests, regardless of European welfare.

39 See the statement of *Willi Rothley*, MEP and Rapporteur on the Statute, at a press conference in Strasbourg on 17.12.2003.

European Parliament resolution on the Statute for Members of the European Parliament

(adopted on 17.12.2003)

P5_TA-PROV(2003)0573

The European Parliament,

- having regard to the Council and Commission statements made in Parliament on 17 December 2003,
- having regard to Article 190(5) of the Treaty establishing the European Community and Article 108(4) of the Treaty establishing the European Atomic Energy Community,
- having regard to its decision of 3 June 2003⁽¹⁾ and its resolution of 4 June 2003⁽²⁾ on the adoption of a Statute for Members of the European Parliament,
- having regard to the Bureau decision of 28 May 2003 concerning the new rules governing the reimbursement of Members' expenses,
- having regard to Rule 37(2), (3), (4) and (5) of the Rules of Procedure,

A. whereas, in its letter of 25 June 2003, the Council pointed out that there were still significant differences between the respective positions of the Council and of Parliament, which were preventing it from giving its approval,

B. whereas, in its letter of 21 November 2003, the Council emphasised that, almost twenty-five years after the first elections by direct universal suffrage and six years after the establishment of the necessary legal basis by the Treaty of Amsterdam, it was important that the Statute for Members of the European Parliament now be adopted, and that it wished to step up dialogue in order to achieve compromise solutions that would be acceptable to both institutions,

1. Calls on the Council to inform Parliament as soon as possible (preferably before the end of the Italian Presidency and, in any event, by 15 January 2004) whether it is in a position to accept the proposed compromise and to approve the Statute for Members of the European Parliament should

the decision which Parliament adopted on 3 and 4 June 2003 be amended accordingly;

2. Believes that an overall compromise on the Statute for Members of the European Parliament could comprise the following points:

- a) the part of the Statute relating to secondary law should be examined separately and autonomously from that relating to primary law and they should be approved on the basis of the institutional provisions applying to each of them;
- b) as regards the part relating to primary law, Member States should be asked to revise those provisions of the Protocol on privileges and immunities of the European Communities of 8 April 1965 which concern Members of the European Parliament, using the Statute adopted on 3 and 4 June 2003 as a model;
- c) consequently, and subject to a favourable opinion from the Council, Articles 4, 5, 6, 7, 8 and 38(2), recitals 7, 15, 16, 17, 18, 20, 21, 30, 31, 32, 33, 34 and the words '*or only in respect of residual matters not covered by primary law*' in recital 14 should be deleted;
- d) Members should be entitled to an old-age pension as from the age of 63;
- e) consequently, and subject to a favourable opinion from the Council, in Article 20(1), '60' should be replaced with '63';
- f) the provision concerning the Community tax to which the Members' allowance is to be made subject is without prejudice to the Member States' power to make this allowance subject to national tax law provisions, provided that any double taxation is avoided (compromise reached under the Belgian Presidency);
- g) consequently, and subject to a favourable opinion from the Council, a new paragraph 1a should be inserted after paragraph 1 of Article 18 to read: '*Paragraph 1 shall be without prejudice to the Member States' power to make this allowance subject to national tax law provisions, provided that any double taxation is avoided*';

h) the new rules governing the reimbursement of Members' expenses should enter into force at the same time as the Statute;

3. Instructs its President to forward this resolution to the Council and the Commission.

[\(1\)](#) P5_TA(2003)0236.

[\(2\)](#) P5_TA(2003)0241.

Statute for Members of the European Parliament*

(adopted on 3./4.6.2003)

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 Community¹ and Article 108(4) of the Treaty establishing the European Atomic Energy Community²,
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.

* Changes proposed by the European Parliament in its resolution of 17.12.2003 (see above) have been marked: crossed out articles and considerations are to be deleted, added passages have been put into brackets.

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) Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002³, 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.
- (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.

3 OJ L 283, 21.10.2002, p. 1.

- (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 autonomously⁴.
- (23) There is no reason to call this autonomy into question. Article 190(5) of the EC Treaty is intended to extend the

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

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.
- (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 regu-~~

lated 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 pri-

vate 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 European 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' judgment⁵.
- (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'⁶.

5 See footnote 1 to recital 22.

6 Paragraph 17.

- (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 remuneration⁷.
- (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.
- (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:

7 Paragraph 21.

- 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*.
- (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.~~

* See Article 37(2).

* See Article 37(2).

~~(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.~~

~~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.~~

* See Article 37(2).

~~(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.

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

- i) The documents of the European Parliament shall be translated into all the official languages.

- j) 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.

[(1a) Paragraph 1 shall be without prejudice to the Member States power to make this allowance subject to national tax law provisions, provided that any double taxation is avoided.]

- (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 [63].
- (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 Parlia-

ment and published in the L series of the Office Journal of the European Union.