

European Parliament working document on the Statute for Members (9 January 2003)

Caption: This working document, drawn up by the European Parliament's Committee on Legal Affairs and the Internal Market and dated 9 January 2003, outlines the procedure for the adoption of the Statute for Members of the European Parliament.

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Working document on the procedure for adopting the Statute for Members – Committee on Legal Affairs and the Internal Market of the European Parliament (9 January 2003)

Rapporteur: Willi Rothley

The basis for the adoption of the Statute by the European Parliament comprises Article 190(5) of the EC Treaty and Article 108(4) of the Euratom Treaty. The relevant provisions thereof state that:

‘The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.’

In view of the French wording of these provisions (‘Le Parlement européen fixe le statut ... de ses membres’), it is usual to refer to the Statute for Members.

Upon entry into force of the Treaty of Nice, scheduled for 1 February 2003, the legal basis will be amended as follows:

‘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.’

The Council and the European Parliament agree that it is the prerogative of the European Parliament to lay down the text of the Statute (‘right of drafting’).

In order to lay down the text of the Statute, it is necessary:

- 1. for an opinion to be sought from the Commission;**
- 2. for a decision of the European Parliament to be adopted by a simple majority¹.**

Once it has taken a decision on the above basis, Parliament will have acted in the matter of the Statute.

However, the Statute² cannot finally come into being and enter into force unless it has been approved by the Council.³

Such approval does not have to be given before the adoption of a decision by Parliament. Under the terms of the EC Treaty, the Statute is not ‘laid down’ *following* the approval of the Council, but *with* its approval.⁴ Pursuant to the Treaty of Nice, the Council acts by a qualified majority. (Only tax arrangements require unanimity).

When it takes the decision on the Statute, Parliament in its resolution will therefore ask the President to make out the final version of the Statute as adopted by Parliament, sign it, and have it published in the Official Journal once the Council has notified its approval.

The decision on the Statute will conclude the procedure in Parliament.

The decision will thus remain valid beyond the 2004 European elections (Rule 185 of the Rules of Procedure).

¹ A qualified majority is not needed. Article 198 of the EC Treaty refers to an ‘absolute’ majority of the votes cast. Parliament has

consistently followed the practice, now established beyond challenge, of treating abstentions as votes not cast. Consequently, if there are more votes in favour than votes against, this always means an 'absolute' majority. It is therefore possible to speak of a simple majority (as opposed to a qualified majority).

² From a legal point of view, a decision *sui generis*.

³ Rejection by the Council would have no significance in law. Parliament's decision would not be rendered invalid as a result. Every 'no' from the Council would mean 'not yet yes'.

⁴ It would, of course, also be possible for the Council first to approve a draft and for Parliament to adopt the Statute in the knowledge that it has this approval. That was the order in which the stages of the procedure were completed when Parliament adopted the regulations and general conditions governing the performance of the Ombudsman's duties, Decision of 9 March 1994, OJ L 113, 4.5.1994, p. 15; unlike Article 190(5), the German text of Article 195(4) (which in that respect differs from the other language versions) explicitly states that the regulations and general conditions governing the performance of the Ombudsman's duties are to be adopted after the Council has given its approval.