

Commission Opinion on the Statute for Members of the European Parliament (Brussels, 3 June 2003)

Caption: Following the European Parliament's referral of its draft Statute for Members to the Commission, the latter gives its observations, in its Opinion of 3 June 2003, regarding, in particular, the legal problems raised by the provisions amending primary legislation as well as the impact on the Community budget.

Source: Cover note from Ms Patricia Bugnot, Director, Secretariat-General of the European Commission, date of receipt 10 June 2003, to Mr Javier Solana, Secretary-General/High Representative, Subject: Statute for Members of the European Parliament adopted in Strasbourg on 3 June 2003 - Commission opinion. 10423/03. Brussels: Council of the European Union, 11.06.2003. 3 p. "Commission opinion on the Statute for Members of the European Union", p. 2-3.

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1. Introduction

Article 190(5) of the EC Treaty provides for Parliament to fix the regulations and general conditions governing the performance of the duties of its members, in other words a statute for the members of the European Parliament.

Parliament has over many years sought to establish a stable, permanent and complete statute for its members.

Article 190(5) lays down the procedure for the adoption of such a statute. It states:

"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 Commission is required to give an opinion pursuant to this article before Parliament takes its decision.

The Commission has been seized of a draft Statute by Parliament on 3 June 2003.

2. General observations on the draft statute

2.1 The Commission welcomes efforts by the Parliament and Council to agree upon a complete, permanent and transparent statute applicable, after one legislature to all Members without discrimination. Such a statute will contribute to improving the image of Parliament in the run up to the 2004 elections.

2.2 Those provisions of the draft statute touching immunities, incompatibilities and certain other related matters that purport to modify primary law and in particular the Protocol on Privileges and Immunities and the act of September 20th 1976, raise certain legal problems, even in the suspensive form proposed.

In the view of the Commission, an Act based on Article 190(5) and hence by definition an act of secondary law cannot, in the absence of an explicit provision to that effect, modify primary law laid down in the Protocol on Privileges and Immunities. Such provisions could be interpreted as going beyond the competences attributed to Parliament by Article 190(5) of the EC Treaty.

2.3 Even if the net cost to the taxpayer, taking the national and Community budgets together will be relatively neutral, there will clearly be significant additional costs for the EC budget. Without being able to advance a final figure for the period in view of the uncertainty surrounding the number of MEPs who will opt out from the Statute, the Commission is obliged to point out that the amounts advanced by Parliament represent a significant charge on category 5 of the Financial Perspectives and calls on the Budgetary Authority to make adequate provision for this additional expenditure, without undue effect on the Budgets of the other institutions.

3. Some specific observations on Parliament's draft

3.1 Immunities etc.: in relation to those provisions relating to immunities, incompatibilities and related issues, the Commission would refer to its observations under 2.2.

3.2 Salaries: the pecuniary regime laid down is generally in conformity with general EC norms. The Commission notes that the provision for an allowance equivalent to 50% of that of members of the European Court of Justice seems to represent a broad consensus to which it can adhere as representing a transparent and objective basis.

3.3 Pensions and survivor pensions: these provisions, in particular those laying down a pension age of 60 and a maximum pension entitlement of 70% of the annual allowance, together with the provisions relating to survivor pensions, are in general conformity with EC norms and call for no particular observations. The provisions contained in Article 24 relating to the financing of pension fund would seem to be adequate.

3.4 Health and social security: these provisions are in line with general norms applicable to EC office holders and officials, and provision is made for their financing.

3.5 Expenses: the draft itself is silent on the nature and level of expenses that members of the European Parliament will enjoy. The preamble states that the jurisprudence of the Court of Justice has established the right of Parliament to fix these matters autonomously. The Commission would simply express the hope that in exercising this autonomous power, Parliament will adopt an approach reflecting reimbursement of expenses incurred.

3.6 Taxation: the Commission welcomes the general principle of the application of EU taxation to all MEPs on an equal basis. It takes note of the limited exception of additional national taxation inherent in the political compromise reached in the Council on 20 October 2001 and observes that only a restricted implementation would provide for a full equality of treatment among MEPs.

3.7 Transitional measures: the Commission can subscribe to the limited transitional measures applicable only to members re-elected to the Parliament in the first legislature after the statute enters into force. This right to opt for continued payment of national salaries will in any event be extinguished at the end of that legislature and give way to a system applicable to all. This transition measure seems justified in terms of respecting the acquired rights and expectations of sitting members.