

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION OPINION ON PARLIAMENT'S PROPOSAL FOR A COMMON STATUTE OF MEMBERS OF THE EUROPEAN PARLIAMENT

(based on Article 13 of the Act of 20 September 1976 concerning the election
of representatives of the Assembly by direct universal suffrage)

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1. INTRODUCTION

On 11 October 1983 the President of the European Parliament transmitted a resolution to the Council on a Common Statute of Members of the European Parliament. This comprised a section on remuneration and social security benefits and another on adaptation of the 8 April 1965 Protocol on Privileges and Immunities. As far as privileges are concerned, Parliament asked the Commission in November 1983 to produce a proposal for the Council. The Commission did so, transmitting the proposal to the Council on 12 December 1984 (COM(84)666 final).

As far as emoluments are concerned, Parliament itself produced a proposal under Article 13 of the 1976 Act on direct elections. This Article requires the Council to act on Parliament's proposal after consulting the Commission. The present document constitutes the Commission's opinion on Parliament's proposal.

2. LEGAL BASIS

Article 13 of the 1976 Act on direct elections reads as follows:

"Should it appear necessary to adopt measures to implement this Act, the Council, acting unanimously on a proposal from the Assembly after consulting the Commission, should adopt such measures after endeavouring to reach agreement with the Assembly in a conciliation committee consisting of the Council and representatives of the Assembly".

In the Commission's view this Article provides an adequate legal basis for determining the emoluments of Members of the directly-elected Parliament.

3. PRESENT SITUATION

3.1 At present MEPs are paid by the Member States of which they are nationals on the basis of the salaries paid to national parliamentary representatives. On top of this salary, calculated and paid on a national basis, MEPs receive allowances (daily allowance, reimbursement of travel expenses, secretarial allowance) fixed by Parliament itself and entered in its budget. At present Parliament's decisions are based on Rule 4 of its Rules of Procedure which reads as follows:

"The Bureau shall adopt rules governing the payment of expenses and allowances to Members".¹

In September 1980 Parliament's Bureau, basing itself on the Rules of Procedure, decided to introduce a provisional survivor's (widows and orphans) pension scheme for MEPs. The necessary appropriations are entered in

¹ Rule 22 stipulates that the Bureau shall take financial and organizational decisions on matters concerning Members, Parliament and its bodies. The Bureau also lays down regulations relating to their administrative and financial situation. Rules 114 and 115 require the Bureau to adopt a preliminary draft estimate of expenditure and the President to incur and settle expenditure covered by the internal financial regulations issued by the Bureau.

Parliament's budget. Parliament justified its decision at the time by the absence of a Community social security scheme for MEPs.

If allowances and the provisional survivor's pension scheme are left out of account, the emoluments of MEPs vary considerably depending on their nationality. This situation produces sharp discrepancies in basic remuneration, some MEPs earn about three times as much as others. These discrepancies merely reflect differences between national salary systems for parliamentary representatives.

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4. ANALYSIS OF THE PROPOSAL FOR A COMMON STATUTE OF MEMBERS OF THE EUROPEAN PARLIAMENT

The present analysis is based on the assumption that the proposal for a Common Statute referred to the Commission for an opinion deals with the emoluments of MEPs in their entirety, that any lacunae are deliberate, and that they will not be filled in subsequently. Should this assumption prove to be mistaken, the comments which follow would clearly have to be revised.

The proposal for a Common Statute covers:

1. remuneration (basic salary and family allowances other than the education allowance)
2. social security benefits
3. pension scheme
 - retirement
 - invalidity
 - survivor's (widows and orphans; widower in certain circumstances)
4. a transitional allowance
5. a limited "one-payment-only" rule (applicable to the transitional allowance only)
6. tax.

The proposal for a Common Statute is silent on:

- the reimbursement of expenses,
- the education allowance,
- concurrent payment of salaries from other sources or other pensions of Community origin,
- the crisis levy.

A superficial comparison with information available on the situation for national parliamentary representatives reveals that the proposal contains nothing totally new.

It can usefully be analysed from three angles: (a) a number of provisions raise points of principle or are particularly sensitive; (b) other provisions appear to be somewhat contradictory; and (c) yet others could do with redrafting.

I. POINTS OF PRINCIPLE

Although Parliament's proposal draws on the regulations determining the emoluments of Members of the other institutions,¹ it departs from these in a number of respects which raise points of principle.

1. Remuneration

(a) Basic monthly salary (Article 2) is defined as an unspecified percentage of the basic salary of a "Member of the Court of Justice". The salaries of Members of the other institutions, on the other hand, are defined as a specific percentage of the basic monthly salary of an A1 official on the maximum of his scale.

¹Members of the Commission, the Court of Justice and the Court of Auditors.

This lacks precision given the fact that salaries paid to Members of the Court vary depending on whether the Member is the President, a Judge, an Advocate-General or the Registrar. But it also raises the question of whether it would not be preferable to stick to a single parameter for all the institutions.

The Commission has no wish to pronounce on the actual percentage to be chosen. It notes however that this will be of decisive importance not only for the intrinsic meaning of a "basic salary" but for the entire pension scheme.

(b) Another departure is that basic salary would be paid (Article 1):

- for three months after MEPs cease to hold office (where they have served for less than five years), and
- for six months (where they have served for five years or more).

This provision must be read in conjunction with Article 4 (transitional allowance).

2. Transitional allowance

The proposed allowance differs considerably from that payable to Members of the other institutions.

In the first place, the allowance is identical to basic salary. For Members of the other institutions it varies with service and ranges from 40% to a maximum of 65% of basic salary.

As to duration, the allowance would be paid for one month per year of service in excess of five years. The maximum duration would be two years. Payment would commence seven months after the MEP ceased to hold office. By contrast, former Members of the Commission receive their transitional allowance for three years.

Thus, although the proposed transitional allowance for MEPs is higher it would be paid for a shorter period of time and the maximum duration (24 months) corresponds - as indicated in the proposal - to 29 years' service (one month per year of service in excess of five years).

3. "ONE-PAYMENT-ONLY" RULE

(a) In relation to remuneration

The proposal for a Common Statute makes no provision for a ban on the payment of two salaries. It would be difficult to justify a straight "one-payment-only" rule: this would be tantamount to excluding exercise of the dual mandate allowed by the Act on direct elections, added to which each function exercised merits some payment. However, without a "one-payment-only" rule present disparities between the earnings of MEPs of different nationalities exercising the dual mandate would persist. Indeed the situation of MEPs exercising the European mandate could be affected too (since the European salary would be fixed at a lower level).

(b) In relation to the transitional allowance

The proposal for a Common Statute provides for an extremely limited "one-payment-only" rule.

Article 10 stipulates that the transitional allowance cannot be drawn concurrently with the retirement or invalidity pension. On the other hand, it can be combined with another retirement or invalidity pension of Community origin, or with income accruing from other duties.

4. Allowances and reimbursement of expenses

The proposal for a Common Statute is silent on most of the allowances for which the Members of the other institutions are eligible and on the reimbursement of expenses.

(a) allowances and reimbursement of expenses linked to a residence requirement:

- residence allowance
- installation allowance
- reimbursement of travelling expenses
- reimbursement of removal expenses

(b) allowances and reimbursement of expenses linked to duties:

- monthly representation allowance
- reimbursement of mission expenses (travel, hotel, daily allowance)

It is only logical that the allowances and reimbursement of expenses referred to at (a) do not appear in the proposal for a Common Statute, since MEPs are not subject to a residence requirement. What is surprising is that no provision is made for the allowances or the reimbursement of expenses referred to at (b).

This element is extremely important since the expenses that they are designed to cover are normally very high in the case of MEPs. Bearing in mind the assumption made at the outset - that the proposal for a Common Statute is exhaustive - the Commission can only suppose that salary is deemed to include an element to cover these expenses. Should this assumption prove to be mistaken, in other words should it emerge that Parliament intends to reimburse these expenses from its budget, the provisions on basic remuneration would take on a very different aspect. Should the assumption prove well-founded, MEPs' salaries would be taxed in toto despite the fact that they include reimbursement of expenses which should be tax exempt. This is because a clause in the proposal states explicitly that all emoluments are subject to Community tax.

5. Crisis Levy

The proposal for a Common Statute contains no provision analogous to Article 19a of the regulation applicable to Members of the Commission and Members of the Court of Justice dealing with the crisis levy.

There is no reason why MEPs should not contribute to the solidarity the crisis levy represents.

II. SPECIFIC ASPECTS

The proposal for a Common Statute includes a series of provisions which depart from those applicable to Members of the other institutions in circumstances where this hardly appears to be justified, or where the logic is far from clear.

1. Social security benefits

Although MEPs enjoy the same social security benefits as Members of the other institutions (that is to say, the same benefits as officials) and contribute to the scheme to the same extent, there are no social security benefits for former MEPs, that is to say former MEPs in receipt of monthly salary (for three or six months as the case may be), a transitional allowance or a pension.

This lack of cover for former MEPs is hardly justified since, in principle, social security benefits always go hand in hand with the remuneration in whatever form.

2. Pension scheme

As can be seen from Tables I, II and III attached the pension scheme proposed for MEPs differs considerably from that for Members of the other institutions.

The following additional comments are called for

(a) In relation to survivor's pension (Article 12)

- Entitlement to an orphan's pension ceases at the end of the month in which the child reaches the age of 18 (the age is 21 in the case of Members of the other institutions).

- No provision is made for division of the total pension between a surviving spouse, a child from a previous marriage, other entitled persons, or children from two different marriages.

(b) In relation to the guarantee for pension payments (Article 13)

This article does not specify that pension payments are collectively guaranteed by the Member States.

III. ADDITIONAL COMMENTS

Finally, a number of provisions could be redrafted or clarified to avoid practical difficulties later.

1. Family allowances

Article 3 stipulates that allowances are fixed by analogy with the provisions of Article 67 of the Staff Regulations and Articles 1 and 2 of Annex VII to those Regulations.

However, Article 67 of the Staff Regulations covers the educational allowance, while Articles 1 and 2 of Annex VII excludes this allowance. Drafting needs to be improved here.

2. Survivor's pension (Article 12)

The term "surviving spouse", endorsed by the case law of the Court of Justice, should be used here. Furthermore the expression "for each child where the mother is still alive" should be replaced by "for each child where the mother or the father is still alive".

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In conclusion, it should be noted that under Article 15 of the proposal all the emoluments of MEPs would be subject to Community tax. However, since MEPs are covered by the Protocol on Privileges and Immunities they would be exempt from national tax on income accruing from the Community.

5. CONCLUSIONS

5.1 It would be difficult to justify retention of a system differentiated on grounds of nationality given that Parliament is a Community institution, elected by direct universal suffrage under Community legislation. In the Commission's view the fact that a uniform electoral system has yet to be approved - despite express provision for it in the Treaty - cannot be invoked to justify the perpetuation of arrangements which discriminate between Members of one and the same institution.

The Commission therefore considers that it is essential for political and practical reasons to adopt a uniform Community scheme for MEPs. It would favour a Community scheme ensuring that there was no discrimination between MEPs on grounds of nationality. The Commission feels that this uniform scheme should enter into force in 1989 at the same time as the uniform electoral system. Achievement of these twin goals would do much to improve the standing of MEPs.

5.2 Content of scheme

The Commission favours a scheme which would cover all the elements making up emoluments (remuneration and reimbursement of expenses). It appreciates that this move could create political difficulties for Member States who pay their parliamentary representatives considerably less than other Member States. It feels, however, that this cannot be allowed to stand in the way of a Common Statute.

The Commission therefore advocates a uniform scheme comprising (a) identical basic salary for all MEPs - irrespective of nationality - and (b) a "reimbursement of expenses" element designed to cover expenditure actually

incurred. Should the Council favour this solution, conciliation with Parliament would be essential since it departs from Parliament's original proposal.

5.3 "One-payment-only" rule

Parliament's proposal makes no provision for a "one-payment-only" rule. For the reasons indicated above (see 4.1.3) the Commission considers that there should be some limitation on MEPs exercising the dual mandate drawing a European and a national salary.

The Commission therefore advocates an "optional" solution which would allow MEPs exercising the dual mandate to choose between the Community and the national system. In the first instance an MEP exercising the dual mandate would receive the same salary as an MEP exercising the European mandate and retain the allowances (but not the basic salary) to which he is entitled by virtue of his national mandate.

In the second instance, the MEP would continue to receive the same national salary as at present, this being supplemented by arrangements for the reimbursement of expenses to be defined under the Common Statute. The advantage of this formula is that it would avoid inclusion of a binding "one-payment-only" rule in the Common Statute, forcing the MEP to renounce all or part of his national salary.

5.4 An exhaustive scheme

The Commission considers that the Common Statute should determine all the elements comprising emoluments (basic remuneration and reimbursement of expenses) and should, consequently, exclude the possibility of expenses being

reimbursed from the budget. An arrangement of this kind would ensure maximum transparency in the eyes of the public.

5.5 "Normal" or "special" Community scheme

Parliament's proposal departs in a number of respects from the existing scheme for Members of the other institutions, according to MEPs more favourable conditions in some instances (e.g. in relation to pensions). It is true that the duties of an MEP differ from those of a Judge of the Court of Justice or a Member of the Commission but this would not justify a scheme which departed substantially from arrangements for Members of the other institutions. On the other hand, the Commission considers that the uniform scheme must be sufficiently attractive relative to the national parliamentary function. It therefore advocates a uniform scheme aligned more or less on that in force for Members of the other institutions.

On the vital issue of the level of remuneration, the Commission feels that this should be fixed by reference to a precise parameter as is the case with Members of the other institutions. Since Parliament's proposal deliberately leaves the matter open (it merely refers to an unspecified percentage of the basic salary of a Member of the Court of Justice), the Commission has not commented on the actual percentage. This will have to be negotiated within the Council and during conciliation meetings with Parliament.

TABLE I

RETIREMENT PENSION

Retirement age	MEPs	Members of the other institutions
	60 years	65 years (60 with coefficient)
Contribution to scheme	6.75% of basic salary	None
Severance grant (linked with pension entitlement)	Personal contributions plus compound interest at 3.5% a year	None
Amount of pension	3.5% of final basic salary for each full year in office One-twelfth of that sum for each complete month	4.5% of final basic salary for each full year in office One-twelfth of that sum for each complete month
Minimum pension	30%	-
Pension entitlement	On ceasing to hold office, subject to at least five years' service	On ceasing to hold office

TABLE II

INVALIDITY PENSION

	MEPs		Members of the other institutions	
	Temporary invalidity	Permanent invalidity	Temporary invalidity	Permanent invalidity
Method of calculation	60% of basic salary	Same as retirement pension (3.5%)	30% of basic salary (60% if the illness is contracted in the performance of duties)	Same as retirement pension (4.5%)
Duration	Until recovery. Replaced by pension for life after seven years or at 60 = retirement pension	Pension for life	Until recovery. Replaced by pension for life after seven years or at 65 = retirement pension	Pension for life
Minimum		60% of basic salary		30% of basic salary

TABLE III

SURVIVOR'S PENSION

Deceased member	MEPs		Members of the other institutions	
	Retirement pension	Basic salary	Retirement pension	Basic salary
(1) Where pension rights have accrued				
- Widow/widower	60%		60%	
- Child where the mother is still alive	12%		10%	
- Child where both father and mother are dead	24%		20%	
(2) Where Member dies in office*				
- Widow/widower		60%		36%
- Child where the mother is still alive		12%		
- Child where both father and mother are dead		24%		12%

*To this must be added, in the case of MEPs, the hypothesis of a former MEP in receipt of invalidity pension.