

Statute for Members of the European Parliament

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Statute for Members of the European Parliament

Negotiations on a uniform statute

The Statute for Members of the European Parliament is the name given to the rules governing the exercise of the parliamentary mandate, ineligibility and incompatibility, and privileges and immunities. It also includes rules of conduct with respect to conflicts of interest. It is not fully harmonised at European level and to a large extent refers to national law. The fragmentation of the status of parliamentarian has to do with the way in which Members of the European Assembly were seen in the treaties: their ties were to national settings, not to a European political area. As Article 20 of the Treaty establishing the European Coal and Steel Community puts it, the Members of Parliament are ‘representatives of the peoples of the States’ brought together in the Community. They are not the representatives of a European people. Elections to the European Parliament are held in each Member State, in accordance with internal electoral rules, subject to respecting the common principles defined by the Treaties or the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage.¹ The Treaty of Lisbon made a semantic change: the reference to the peoples of the states was abolished and replaced with a reference to a specifically European concept: European citizenship. According to Articles 10 (2) and 14 (1) of the TEU, ‘The European Parliament shall be composed of representatives of the Union’s citizens’.

The question of bringing in a uniform statute for the Members of the European Parliament arose as soon as the Members were no longer appointed by the national parliaments from within their own ranks but on the basis of direct election (June 1979). The 1976 Act lays down for this purpose that the Council, acting unanimously on a proposal from the Assembly after consulting the Commission, shall adopt the measures needed to implement this. In December 1976, a European Parliament study group made a proposal to the Council for a series of guidelines on a uniform statute for Members of the European Parliament.² In June 1978 the Council spoke of the need to set the remunerations of MEPs at Community level. Parliament adopted a proposal to this effect in 1983.³ The Council did not take it up. To make progress on this issue, the Treaty of Amsterdam of 2 October 1997 recognised the European Parliament’s right to decide on the regulations and general conditions governing the performance of the duties of its Members, after seeking an opinion from the Commission and with the approval of the Council acting unanimously (Article 190(5) of the Treaty establishing the European Community and Article 108(5) of the Treaty establishing the European Atomic Energy Community). The Treaty of Nice substitutes qualified majority voting for unanimous voting in the Council, except in the case of rules or conditions applying to the tax status of Members or former Members, which are subject to unanimous voting in the Council.

On 3 December 1998, the European Parliament adopted by a large majority a draft statute for Members of the European Parliament. At a meeting held on 26 April 1999, the General Affairs Council agreed to an overall compromise on the draft. Nevertheless, the subsequent interinstitutional negotiations failed. Similarly, Parliament’s invitation to the Council to give its approval on the Decision of 4 June 2003 on the adoption of the Statute for Members of the European Parliament did not meet with success. In the absence of a single statute, the Members of the European Parliament have generally been regarded as members of national parliaments. It was only with the new text amended by the European Parliament resolution of 23 June 2005 that the General Affairs Council approved the draft Decision of the European Parliament laying down the new rules and terms and conditions for the performance of the duties of its Members. On 28 September 2005, the European

¹ OJ L 278, 8 October 1976, p. 5.

² European Parliament — Working party on a ‘Statute for Members of the European Parliament elected by direct universal suffrage’. Draft Statute for Members of the European Parliament elected by direct universal suffrage, Part 1, 14 December 1976, I/459 f/76 (ASS). Source: <http://ec.europa.eu/dorie/fileDownload.do?docId=107569&cardId=107569>, consulted on 10 March 2014.

³ European Parliament Resolution of 15 September 1983 on the Statute for the Members of the European Parliament, OJ C 277, 17 October 1983, p. 135.

Parliament thus adopted a single statute for its Members, which was to enter into force on the first day of the 2009 parliamentary term.

Independence of the mandate

The European Parliament is composed of representatives of the Union's citizens (Article 14 TEU). The mandate is representative. MEPs exercise their mandate independently (Article 2 (1) of European Parliament Decision (2005/684/EC, Euratom) of 28 September 2005,⁴ Rule 2 of the EP's Rules of Procedure). They cannot be bound by any instructions, whatever they may be (from national administrations, Community institutions, private interest groups, non-governmental organisations, etc.) or receive a binding mandate (Article 4 of the 1976 Act, which became Article 6 in 2002).

The independence of the mandate is also underpinned by a series of incompatibilities designed to prevent conflicts of interest and guarantee institutional balance: for example, a Member of the European Parliament cannot also be a member of another Community institution or body.

In addition to the rules of secondary legislation, the independence system is the subject of ethical measures adopted by the European Parliament in pursuance of its power to organise its own affairs. These measures are defined in Parliament's Rules of Procedure, in a Code of Conduct annexed to them and in implementing measures adopted by the Bureau of Parliament.⁵ The first versions of the Rules of Procedure were confined to stating Parliament's powers to lay down rules of conduct for its Members.⁶ It was not until the second half of the 1990s that a corpus of rules was developed. Members are required to make an accurate declaration of their professional activities; if they have a financial interest in a case being discussed in the European Parliament, they must state the fact when they take the floor to speak. Any support, whether financial or in terms of staff or material, additional to that provided by Parliament and granted to the Member in connection with his political activities by third parties must be declared.⁷ At the same time, the arrangements for giving representatives of interest groups access to the premises of the European Parliament 'with a view to supplying information to Members within the framework of their parliamentary mandate' are subject to restrictions (a tag bearing the visitor's name is issued in return for entering the name in a register, and the Code of Conduct annexed to the European Parliament's Rules of Procedure must be complied with).

The increase in the European Parliament's powers, the resignation of the Commission under President Jacques Santer in 1999, the criticism levelled at the opaqueness of the salary system and the misuse of MEPs' expenses claims made it necessary to tighten up the code of conduct. The adoption of the Statute for Members by the European Parliament in September 2005 standardised the allowances system for Members. It left in abeyance the question of a genuine code of conduct similar to that adopted by the Commission in 1999. As regards the investigation procedure aspect, the fraud prevention unit set up in 1999 had powers to conduct investigations designed to combat fraud, corruption and illegal activities.

In March 2011, press revelations concerning bribes accepted by some Members in return for tabling amendments led to the adoption of a Code of Conduct by the European Parliament. The Code was adopted in July 2011 and revised in June 2012. Implementing measures defined by the Bureau of the European Parliament were added to it.

⁴ OJ L 262, 7 October 2005, p. 1.

⁵ Decision by the Bureau of the European Parliament of 15 April 2013 laying down the measures for implementing the code of conduct for Members of the European Parliament with respect to financial interests and conflicts of interest.

⁶ For example: Rule 8 of the European Parliament's Rules of Procedure of 25 March 1981, OJ C 90, 21 April 1981, p. 48.

⁷ Article 2 of Annex I, 'Provisions governing the application of Rule 9 (1) — Transparency and Members' financial interests', annexed to the Rules of Procedure of the European Parliament, 15th version, February 2003, OJ L 61, 5 March 2003, p. 1.

The Code of Conduct gives details of the declaration of financial interests which each Member is required to make, prohibits the acceptance of any personal gift worth more than 150 euros and limits the facilities granted to former Members when they engage in lobbying activities, etc. Any breach of the code is considered by an Advisory Committee consisting of five MEPs appointed by the President of the European Parliament from amongst the members of the bureaux and the coordinators of the Committee on Constitutional Affairs and the Committee on Legal Affairs. Any infringement detected results in the Member responsible being liable to a penalty ranging from a simple reprimand to dismissal from the offices which he or she holds in Parliament.

The pay and allowances system

The question of the parliamentary allowances and social security rights of Members of the European Parliament is linked to that of their status.

In accordance with Articles 21 ECSC, 138 EEC and 108 EAEC, the Members of the Common Assembly and then of the single Assembly were appointed by and from amongst the members of the national parliaments according to the procedure laid down by each Member State. In the absence of any further clarification in Community law, the allowances system for each delegate to the European Assembly came under national law. This led to wide discrepancies between the treatment of Members in terms of social security and remuneration. Each Member of the European Assembly received an allowance calculated on the basis of the salaries paid to members of the national parliaments.

The Act of September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage is silent on this matter and leaves it up to the Member States to determine the allowances payable to Members of the European Parliament elected on their national territories, pending the adoption of a uniform system. Article 13 of the Act lays down that the Council, acting unanimously on a proposal from the Assembly after consulting the Commission, should adopt the implementing measures deemed necessary. On 15 September 1983, the European Parliament adopted a preliminary draft Statute for its Members including, among other things, a common allowances system. The basic monthly salary would be determined on the basis of a percentage of that of a member of the Court of Justice. Despite a positive opinion from the Commission, the proposal was not followed up by the Council. The common allowances system was eventually laid down, nearly 20 years later, by the European Parliament. It was defined in the Decision (2005/863/EC, Euratom) of 28 September 2005 adopting the Statute for Members of the European Parliament.⁸ Until this common system was adopted, Parliament, on the basis of its power to run its own affairs, had adopted an allowances system which supplemented the national systems with a view to reducing the inequalities between Members of the European Parliament.

The salary payable to members of the European Parliament as laid down in the 2005 Statute is equal to 38.5 % of the basic salary of a judge at the Court of Justice of the European Communities (EUR 7 956.87 gross per month as of 1 January 2014).⁹ In special cases where an MEP also holds office as a member of a national parliament (as is the case, for example, with Members elected from a Member State which acceded after the last European Parliament elections were held), the national salary is deducted from that paid in respect of membership of the European Parliament.

The Community salary is subject to Community tax. Member States may, however, make this salary

⁸ OJ L 262, 7 October 2005, p. 1.

⁹ Council Regulation (EEC) No 31 and (EAEC) No 11 laying down the Staff Regulations of officials and the conditions of employment of other servants of the EEC and the EAEC, OJ 45, 14 June 1962, p. 1385, as last amended on 22 October 2013; in conjunction with Council Regulation No 422/67/EEC, No 5/67/Euratom of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice, OJ L 187 of 8 August 1967, p. 1, as last amended on 24 September 2012

subject to the provisions of national tax law, provided there is no double taxation.

Members of the European Parliament are covered by medical insurance and a general insurance covering risks associated with the exercise of their mandate.

The European Parliament reimburses expenses incurred by Members in the performance of their duties and the costs of actual travel to or from their places of work.

Each Member may engage the services of one or more parliamentary assistants of his or her choice. Parliament meets the expenses actually incurred in employing personal staff. Each Member is entitled to use the equipment and premises placed at his or her disposal by the European Parliament.

The status of former Member gives entitlement to certain forms of financial compensation. At the end of their term of office, Members are entitled to a transitional allowance of an amount equivalent to that received when they were in office for at least six months and at most 24 months. Former Members from the age of 63 receive a pension which may not be more than 70 % of the parliamentary salary; this entitlement is alternative to the entitlement to the transitional allowance. In the event of the recipient's death, the pension is payable to his/her spouse and/or dependent children (survivor's pension). Members in receipt of a pension and persons drawing the survivor's pension continue to be entitled to medical insurance.

The ineligibility and incompatibility system

The Act of September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage does not contain any rule relating to eligibility or ineligibility. The national electoral rules apply in this area. Ineligibility results in most cases from criminal convictions, deprivation of civil rights or being placed under guardianship or curatorship. In certain countries, loss of eligibility may go hand in hand with a declaration of liquidation by a judicial authority or personal bankruptcy, whether due to misconduct or to fraud.

The incompatibility system is twofold. The Act of September 1976 includes a number of incompatibilities. Each Member State may also extend the incompatibilities which apply at national level; the competent national authorities are requested to notify the European Parliament of existing incompatibilities.

In accordance with Article 7 of the Act (as amended by Decision 2002/772/EC, Euratom of the Council of 25 June 2002 and of 23 September 2002), the office of Member of the European Parliament is incompatible with that of:

- member of the government of a Member State,
- Member of the European Commission,
- Judge, Advocate General or Registrar of the Court of Justice of the European Union or of the Court of First Instance,
- member of the Board of Directors of the European Central Bank,
- Member of the Court of Auditors,
- Ombudsman,
- member of the Economic and Social Committee of the European Community,
- member of the Committee of the Regions,
- member of committees or other bodies set up pursuant to the Treaties establishing the European Community and the European Atomic Energy Community for the purpose of managing the Communities' funds or carrying out a permanent direct administrative task,

- member of the Board of Directors, Management Committee or staff of the European Investment Bank,
- active official or servant of the institutions of the European Union or of the specialised bodies attached to them or of the European Central Bank.

With effect from the start of the 2004–2009 term, the office of Member of the European Parliament is also incompatible with that of member of a national parliament — application of this rule is deferred for members of the Irish Parliament and for members of the United Kingdom Parliament.

Following elections to the European Parliament, Parliament verifies credentials and rules on the validity of the mandate of each of its Members. For this purpose it asks each competent national authority to send it a list of candidates elected and a list of any substitutes in numerical order. No later than six days before the holding of the constitutive sitting, each Member must declare in writing that he or she does not hold any office incompatible with the office of a Member of the European Parliament. In the event of incompatibility, the European Parliament declares the seat concerned vacant. The task of scrutinising the verification of credentials is performed by the Committee on Legal Affairs. The mandates of the 736 candidates elected in June 2009 were declared valid.¹⁰ This power of verification held by the European Parliament does not confer on it any general authority to carry out checks on the official declaration of the poll by the Member States' authorities.¹¹

The system of parliamentary privileges and immunities

The 1976 Act does not lay down any special system of privileges and immunities for Members of the European Parliament. Under Article 4 (2) of the Act, Members enjoy the privileges and immunities provided for in the Protocol of 8 April 1965 on the privileges and immunities of the European Communities. They enjoy immunities during the sessions of the European Parliament.

They may travel freely to the places of meeting of the European Parliament.¹² However, except in this situation, Members are subject to the common system of freedom of movement of persons and may find themselves refused entry to the territory of a Member State on grounds of public order.¹³

When they are in the territory of their own state, the immunities they enjoy are those accorded to the members of their country's parliament and they enjoy immunity from any measure of detention and from legal proceedings in the territory of any other Member State unless they are found in the act of committing an offence.

As Rule 5 (2) of Parliament's Rules of Procedure states, parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members. A Member may not renounce it. Conversely, Parliament has a responsibility for defending the immunity of its Members. It alone has power to decide to waive the immunity of one of its Members. Any request from a competent authority of a Member State that the immunity of a Member be waived, or from a Member or a former Member that privileges and immunities be defended, is addressed to the President of the European Parliament. The merits of the decision are considered by the Committee on Legal Affairs; the Member concerned has the right to be heard and to submit any relevant documentation to the parliamentary committee. The decision taken by a plenary meeting of Parliament is immediately communicated to the Member concerned and to the national authority of the Member State involved.

¹⁰ European Parliament Decision of 16 December 2009 on the verification of credentials, T7-0109/2009, OJ C 286E, 22 October 2009, p. 30.

¹¹ ECJ, Joined Cases C-393/07 and C-9/08 *Italian Republic and Beniamino Donnici v. European Parliament*, ECR [2009] p. I-3679.

¹² Article 7 of the Protocol on the privileges and immunities.

¹³ Jacqu , Jean-Paul, 'Parlement europ en', in *R pertoire communautaire Dalloz*, December 2011, last updated June 2013, S/No 47.