



UvA-DARE (Digital Academic Repository)

The European Parliament's quest for representative autonomy: An internal perspective

Buitenweg, K.M.

Publication date

2016

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Buitenweg, K. M. (2016). *The European Parliament's quest for representative autonomy: An internal perspective*. [Thesis, fully internal, Universiteit van Amsterdam].

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

6. Indemnity and Dependency on National Structures

The justification for a decent salary for members of parliament is similar to that of parliamentary immunity. It contributes 'to safeguard the free exercise of their mandate and protects them against pressure that might undermine their independence.'¹ The salary of members of parliament is generally referred to as *indemnity*: a compensation for time and efforts spent. Without this compensation, the liberty for members to undertake their legislative and control tasks attentively and extensively, could be hampered. A guaranteed indemnity for its members supports the autonomy of parliament vis-à-vis other institutions and the public.

The provisions regulating members' salaries enclose more than just the amounts involved: they contain *representative claims*. They define the group of citizens, such as local or national taxpayers, that financially compensates the elected members for their work, and thereby indicate in whose name the elected members carry out their representative task. Salary provisions underline a particular representative relationship and so contribute to shaping the formal representative status of a parliament. Having a say over these provisions is necessary for a parliament to ensure its autonomy in general, and its liberty to make own representative claims about itself and its electorate in particular.

One could expect that the status of members of the European Parliament is laid down in a single document. This is not the case. It is regulated through different sets of rules. Members' free mandate, the terms for gain and loss of membership, and the incompatibilities of office are laid down in the Direct Election Act of 1976.² Their parliamentary immunity is provided for in the 1965 Protocol on the Privileges and Immunities of the European Union (PPI).³ And since 2005, there is a statute for members regulating the financial privileges of members of the European Parliament.⁴ All these rules are established through different decision-making procedures,

1 Marc Van der Hulst, *The Parliamentary Mandate: A Global Comparative Study* (Inter-Parliamentary Union 2000) 27. In this investigation, I will use the words salary and indemnity interchangeably.

2 Act concerning the election of the representatives of the Assembly by direct universal suffrage (Direct Election Act) [1976] OJ L278/1. See for more Chapter 4.

3 Protocol of 8 April 1965 on the Privileges and Immunities of the European Communities [1967] OJ L152/13 (in Dutch). It was amended by the Treaty of Amsterdam and the Treaty of Nice. See for more Chapter 5.

4 European Parliament Decision 2005/684/EC Euratom adopting the Statute for Members of the European Parliament [2005] OJ L262/1.

in different moments of time and – as a result – contain different representative claims.

The present chapter focuses on the most recent of these documents. It analyses the actions that the European Parliament has taken with a view to amend the salary arrangement, and in particular the representative claim therein. It is built up as follows. Section 1 describes the *de jure* situation prior to the decision of 2005 to establish a common Union statute for members. It sets out what salary arrangements were in place in the period between the constituent session of the Common Assembly in September 1952 and the moment that the new salary arrangement entered into force on July 14, 2009. Additionally, it describes the formal powers of the European Parliament to lay down a financial statute for its members. Section 2 examines Parliament's views on that initial arrangement, and studies the motives behind the changes that it demanded. Subsequently, we turn to the actions that Parliament undertook to accomplish these changes *de jure* and/or *de facto*. Two types of actions can be distinguished. Section 3 concentrates on the development of Parliament's rule-making powers. Section 4 looks into Parliament's unilateral decisions to provide its members with financial benefits even in the absence of a common statute. As we will come to see, it did so on the basis of its right to regulate its own affairs in particular. Finally, section 5 analyses how these actions have contributed to changing the financial status of the members of the European Parliament. And above all, how they have fostered the European Parliament's liberty to make the representative claims that it deems fit.

1. The Salary Provisions

1.1. National Salaries for European Representatives: An Untenable Situation

Until 1979, all members of the European Parliament held both a national and a European mandate. There was no need to arrange for a salary for their European duties, as all already received a salary for their work in the national parliament. The introduction of direct elections in the Direct Election Act of 1976 changed this radically. Since then, most members are full-time European representatives. The Direct Election Act formulates a limited number of common rights and duties, such as rules on the duration of the parliamentary mandate, the commitment that the representative mandate is a free one, and a list of incompatibilities.⁵ One could have expected that the Act would also include arrangements for members' remuneration. This could either have been a European statute or a decision to continue to link the members' salary to that of the national representatives of their country of origin. The text is however deafeningly silent on the matter. Apparently, the financial status of the members of the European Parliament was 'too much of a hot potato'.⁶

5 Direct Election Act (n 2) arts 3, 4 and 6.

6 Quote by rapporteur Rothley on the situation in 1976. EP Debate of 2 June 2003 on a Statute for Members of the European Parliament [2004] OJ C068-E/12.

The level of parliamentary indemnity is always a precarious issue, closely tied to political culture and the validation of parliamentary work.⁷ This explains the existence of steep differences between the salaries of members of national parliaments across Europe. Agreeing a single European arrangement would have required a compromise on this sensitive issue. The member states would have to accept that ‘their’ European representatives would earn either substantially less or more than was deemed acceptable in the national political constellation. Moreover, a separate financial status would set the European representatives at a distance from the national structures. That effect is in particularly relevant for the current study. A common financial arrangement would present the claim to the public, and to other institutions, that the members of the European Parliament represent a single, self-standing electorate rather than an electorate that is constructed as the sum of the national ones. The *indemnitors* would be the Union citizens, rather than the national ones (see below). It seems that the member states were not ready to accept this autonomous position of Parliament in 1976. Instead, they informally agreed that the members of the European Parliament would continue to receive the same allowances, old-age pensions, survivors’ pensions, and other benefits as the members of the national parliaments in the member state in which they were elected.⁸ Their salary remained tied to the *national* political culture. This informal arrangement remained in place until the introduction of a European statute for members in 2009.⁹

The salaries of the directly elected European representatives thus varied considerably for thirty years. For instance, in 1999, members of different countries earned the following amounts (converted to Euros for comparison): a Spanish member earned 2849.14 Euro per month, Dutch members 5399.98 Euro, Austrians 8535.22 Euro,¹⁰ and the Italian members were the front-runners with an indemnity of 9975.74 Euro per month. As the members of the European Parliament were dependent on the national parliaments for shaping the salary provisions, their representative autonomy was very low. Parliament had no liberty to define their indemnitors. In this regard, it was ‘not a fully autonomous political institution’, as Julien Priestley, a former Secretary-General of the European Parliament, remarked.¹¹

7 Frederike Kaltheuner, ‘The Common Statute for Members of the European Parliament: Wise Men and Clear Guidance’ (2013) 5 MaRBLe Research Papers 253, 253.

8 There were some minor exceptions to this rule. The Dutch members received a lower gross salary than their national counterparts. The remuneration of the latter also included reimbursement for expenses. This amount was deducted from the salary of the Dutch members. The French and Italian members did not enjoy the same pension benefits that their national members were entitled to. See, for more, Julian Priestley, *Six Battles That Shaped Europe’s Parliament* (John Harper Publishing 2008) 81; Anna Pospíšilová Padowski and Hans Krück, ‘L’Emancipation Difficile Des Eurodéputés – L’Histoire et Le Contenu Du Statut Des Députés Au Parlement Européen’ (2010) 46 Cahiers de Droit Européen 225, 226.

9 The statute was laid down on 28 September 2005. However, it did not come into effect immediately. The members of the 7th legislature (following the European elections of 2009) were the first to which the statute applied.

10 See table of the Committee on Legal Affairs and the Internal Market of the European Parliament, as published in Kaltheuner (n 7) 254.

11 Priestley (n 8) 86.

Moreover, in terms of content, the agreement allied the members of the European Parliament to national structures. As a result, members were treated as if they were 'national delegates, rather than European representatives'.¹² The national salaries established a formal link between the group of taxpayers in each member state and the members of the European Parliament from that country. This has influenced how the electoral relationship between the members of the European Parliament and their electorate was viewed. Susana Muñoz has described how, '[i]n the absence of a single statute, the Members of the European Parliament have generally been regarded as members of national parliaments.'¹³ In this way, the European Parliament was seen as an assembly representing only national peoples.

1.2. Relatively High Rule-Making Power

The fact that the informal agreement remained in force for so long was very confrontational for many in the European Parliament. They had expected that a common salary would be agreed in the years following direct election.¹⁴ In their view, such a decision could, and should, be taken on the basis of the flexibility clause of Article 13 of the Direct Election Act.¹⁵ This provision made it possible to take complementary measures.

'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, shall adopt such measures after endeavoring to reach agreement with the Assembly in a conciliation committee consisting of the Council and representatives of the Assembly.'

However, the Council interpreted this provision differently than the European Parliament. In the view of the former, Article 13 only provided a legal basis for measures that were strictly necessary for the implementation, or in other words the *organisation*, of the direct election. It was not to provide a basis for decision on related matters, such as the remuneration or the legal position of the elected members. According to the Council, there was no legal basis for deciding a uniform salary for members until it was created by the Treaty of Amsterdam (1997).¹⁶ As this

12 Ibid.

13 Susana Muñoz, 'Statute for Members of the European Parliament' (2014) <http://www.cvce.eu/content/publication/1997/10/13/d3bef5dd-153d-4602-ae49-49a4f4b74dc0/publishable_en.pdf> updated on 14 May 2014, 2.

14 Priestley (n 8) 81.

15 In fact, as becomes apparent from reading the debate of 15 September 1983, many MEPs recognised the inappropriateness of using Article 13 to establish a uniform statute for members. They insisted on it nevertheless, for tactical and practical reasons. They believed that it would be possible, if there was the political will for it. See for more, section 2.2.

16 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (Treaty of Amsterdam). The Treaty was signed on 2 October 1997, and entered into force on 1 May 1999.

legal basis, laid down in Article 190(5) EC, is crucial for Parliament's representative autonomy, a closer look is useful.

Article 190(5) EC provides for an unusual decision-making procedure. Butler and Westlake have therefore called it a 'new and innovative provision'.¹⁷ In particular, it envisages an exceptionally dominant role for the European Parliament.

'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.'¹⁸

In comparison to the common decision-making procedure at that time, two important differences emerge. Firstly, the European Parliament is provided with the *right of initiative*. It is put in charge of designing the statute for its own members. In most other areas, this remains the task of the European Commission.¹⁹ Secondly, the European Parliament is given the *final say*. Even in the 'co-decision procedure' (nowadays the ordinary legislative procedure), it cannot 'lay down' decisions. In this, the European Parliament and the Council are placed on an equal footing, as a decision requires their 'joint adoption'.

'The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission.'²⁰

In the case of the statute for members, the provision explicitly provides the order in which the decision-making should take place. It is the European Parliament that takes the final decision. Evidently, this does not render the role of the Council meaningless. Without the Council's approval, the European Parliament has no text to adopt. Nevertheless, Article 190(5) EC is constructed with an emphasis on the dominant role that the elected representatives ought to play.

One may wonder why this choice was made. The answer to this question can be found in comparing the extra-ordinary decision-making on the statute for members with another extra-ordinary procedure: the one on the electoral provisions. The two sets of rules are not identical. The European Parliament has the right of consent with

17 David Butler and Martin Westlake, *British Politics and European Elections 1999* (Palgrave Macmillan 2000) 42.

18 Nowadays, the text is found in Article 223(2) TFEU. Initially, the Council had to take such decisions unanimously. Since the Treaty of Nice, it can act by qualified majority, except in relation to the taxation of members or former members. Rules or decisions related to taxation continue to require unanimity within the Council.

19 Article 17(2) TEU.

20 Article 289(1) TFEU.

regard to the electoral procedure, whilst it is up to the Council to 'lay down' these provisions.²¹ By contrast, Parliament lays down the statute for its members. However, when we look at the right of initiative in these two sets of provisions, the similarities are striking. In both cases, Parliament draws up a proposal. It is apparently deemed inappropriate that the Commission (or any other institution) designs the rules that have an impact on the representative status of Parliament. That is first and foremost a task for the elected representatives themselves. As explained in Chapter 2, the need for this liberty stems from their free, representative mandate as well as the separation of powers principle. The members of the European Parliament have an explicit free mandate since 1979. When we regard Article 190(5) EC in this light, it is perhaps not such a strange procedure after all. The attribution to Parliament of the described far-reaching powers is understandable as Parliament must be in the position to make own representative claims.

2. Parliament's Challenge

The European Parliament had no formal competence to lay down, or even draft, a statute for members until 1998. Moreover, until 2005, the representative claim that was made in the salary provisions, was that members were the representatives of national peoples. In the previous chapter on parliamentary immunity, we have already concluded that the European Parliament wanted an encompassing uniform statute, including a uniform salary for its members. Before describing – in the remainder of this chapter – the actions that Parliament has taken to further this goal, I first describe why Parliament demanded change. Thereby I focus on Parliament's *institutional* motives. There may well have been other motives involved as well. When money is at stake, greed, jealousy and concerns about financial stability are often not far away. This study however concerns the development of Parliament's capacity to make own *representative claims*, including through amending or laying down salary provisions. The question that is answered below is whether we can observe, by studying parliamentary reports, debates and decisions, that underlying Parliament's efforts to accomplish a Union statute for members, there was (also) a desire by Parliament to increase its representative autonomy.

2.1. A Self-Standing Electorate

Parliament's efforts to achieve a common statute were inextricably interlinked with the introduction of direct elections. Before these were held, the difference in the financial status of members was acknowledged as a logical consequence of the fact that members were selected by, and from, national parliaments.²² As their representative basis was tied to national institutions, so was their financial situation. How-

²¹ Article 223(1) TFEU.

²² Priestley (n 8) 87.

ever, once the European Parliament was composed of directly elected members, it insisted on a common, uniform statute without delay.²³

Frederike Kaltheuner analysed the arguments that were exchanged in the parliamentary debates in favour of a single salary for all members.²⁴ She found that ‘equal pay for equal work’ formed the dominant motive. Just as we have seen in the previous chapter on the deviating levels of parliamentary immunity, there was resentment amongst the members about the fact that the rules created ‘first class’ and ‘second class’ members in the European Parliament.²⁵ This was regarded both ‘unfair’ for the persons involved and detrimental for the institution’s unity. Let us look at both elements in turn.

On a personal level, one could understand that vast differences in salaries between colleagues may be confronting and a cause for irritation. However, whether these differences can be considered *unfair* depends on how the comparison is made. Parliament’s records show that the members of the European Parliament compare themselves mainly with each other, and not with their colleagues in national parliaments. This is not an obvious and unavoidable choice. When comparing the workload of members of the European Parliament coming from different countries, we see huge differences between them.²⁶ Members who are elected by a constituency-based system generally have more extra-parliamentary activities than those elected in systems with national lists. Moreover, in some countries, the constituencies are much larger than in others, a fact that also influences the level of work.²⁷ The absence of a uniform electoral system on the European level and the existence of different national political cultures make the work of members of the European Parliament in many respects more comparable to their colleagues in the national parliament than to their colleagues from other countries within the European Parliament.

Additionally, there are large differences in the inconvenience that members of the European Parliament experience. Members from Spain, Greece, or the far north of Finland for instance, need more travel time to arrive at parliamentary meetings than members from the Netherlands, France, and Belgium.²⁸ Travelling long distances is not only time-consuming, but it also makes it more difficult to combine parliamentary work with family life at home. So, also in this respect, the position of the members of the European Parliament coming from different countries is quite varied.

The overriding argument that brought the European Parliament to demand equal pay among one another nevertheless, is its view that members do ‘equal work’ be-

23 EP Resolution of 15 September 1983 on the Statute of Members of the European Parliament [1984] OJ C277/135.

24 Kaltheuner (n 7).

25 EP Debate of 2 June 2003 on a Statute for Members of the European Parliament (n 6).

26 See the findings of the Group of Independent Eminent Persons that was set up to advise Parliament about a proper salary arrangement. ‘Recommendation of the Group of Eminent Persons on the Statute for Members’ (2000) <http://www.cvce.eu/content/publication/1999/1/1/6f-11cdb2-a0bc-4b7d-abb8-130db6ddaac8/publishable_en.pdf>. See also Kaltheuner (n 7) 259-260.

27 ‘Recommendation of the Group of Eminent Persons on the Statute for Members’ (n 26).

28 Kaltheuner (n 7) 260.

cause they all equally *hold office*.²⁹ They are all member of the same parliament, the European Parliament. Kaltheuner concludes that Parliament's argument is based on all members having the same 'work description'.³⁰ This argument is also found in the conclusion of the group of independent eminent persons that was asked to advise Parliament on the statute for members.

'The characteristics of Parliamentary office are the same for all Members, irrespective of the electoral system used in their countries. They all carry out the same Parliamentary work in accordance with the rules governing the way in which Parliament operates.'³¹

However, not only a mere 'work description' is shared by members of the European Parliament. It is not just that they equally have to participate in meetings in the plenary, of the committees, and of their European political groups. More fundamentally, they share a similar 'representative basis'. This representative basis is distinctive from that of members of national parliaments. The members of the European Parliament are 'different animals', as Priestley remarks.³² This has become particularly noticeable since the creation of Union citizenship. Since then, members of the European Parliament are elected by citizens in their capacity as *Union citizens*, while members of national parliaments are elected by citizens in their capacity as nationals.³³ Its election by Union citizens forms the representative basis of the European Parliament. Considering that neither the job description nor the representative basis of the members of the European Parliament and the national parliaments is the same, there is no justification for them being paid the same. The standard of 'equal pay for equal work' should thus apply between the members of the European Parliament mutually, irrespective of their nationality, and not between the elected representatives of the same country, irrespective of the parliament in which they were elected.³⁴ Notwithstanding personal considerations about fairness, the equal pay of members of the European Parliament can be regarded as *appropriate* from an institutional perspective.

The parliamentary records testify that the members were well aware that a common remuneration would make a different representative claim than the initial arrangement made. It would underline the existence of a distinctive European representative basis. Frassoni, for one, stated that a uniform statute for members would stress that the European Parliament represents 'the European people'.³⁵ Not all

29 Ibid.

30 Ibid.

31 'Recommendation of the Group of Eminent Persons on the Statute for Members' (n 26) 5.

32 Priestley (n 8) 97.

33 See Chapter 1, section 2.1.

34 EP Resolution of 5 May 1999 on the draft Statute for Members of the European Parliament [1999] OJ C279/171, para 2.

35 EP Debate of 22 June 2005 on amending the Decision of 4 June 2003 on the adoption of the Statute for Members of the European Parliament [2006] OJ C133-E/1.

members were happy with this implication. This surfaces in for example the contribution of van Dam.

[H]aving a Community statute may nurture the idea that Parliament represents one people. But the European Union is made up of a rich diversity of different peoples. We are elected by the people of our own nation and must also bear in mind our national interest.³⁶

The disagreements that were voiced about the desirability of this particular claim only emphasise that opponents *and* supporters realised that a common financial statute for its members would change the formal representative status of the European Parliament to some extent. The salary provisions would then highlight the fact that the European Parliament is a *unitary* institution and not a collection of national delegations. Moreover, it would reflect and strengthen the claim that Parliament represents a self-standing electorate composed of Union citizens.

The German social-democrat Rothley, a long-standing rapporteur on this dossier, vocally pressed this point during a parliamentary debate on the statute for members on 2 June 2003.

'Why is it that this house is in this difficult position? It is because, in 1976, when the Act concerning the election of the Members of the European Parliament by direct universal suffrage was introduced, the Council fought shy of harmonising the general conditions applicable to the exercise of the mandate. It found that too much of a hot potato. That is why the European Parliament retained the structure of a parliamentary assembly even after it started to be directly elected, a structure it retains to this day. The object of this statute is to break down this parliamentary assembly-style structure and for us to become a real Parliament. That is what this Statute is for!'³⁷

The European Parliament demanded a common statute as a means to amend its representative status and change its position in the institutional architecture.

2.2. *Full Rule-Making Autonomy*

For a long time, the European Parliament demanded an increase of its rule-making powers to lay down a statute for its members. The desired level of Parliament's involvement has been subject to change. In 1960, rapporteur Dehousse proposed to make the European Parliament solely responsible for designing and deciding future

36 EP Debate of 2 December 1998 on the report of Rothley on a Statute for members [1998] OJ C398/1.

37 EP Debate of 2 June 2003 on a Statute for Members of the European Parliament (n 6).

electoral provisions (see Chapter 4).³⁸ Dehousse did not make explicit whether the same decision-making process would apply for the rules regarding members' indemnity as well. It can nonetheless be assumed that, in his view, this formed part and parcel of the electoral provisions, and that he did not envisage a more modest role for Parliament on this particular aspect. Fifteen years later, the European Parliament showed itself more willing to share rule-making power with the Council regarding the salary provisions (see Chapter 4). Rapporteur Patijn created a special procedure, in Article 14 of the 1975 Draft Convention, according to which the European Parliament and the Council would have equal rights for adopting measures to implement direct elections.³⁹ In his explanation, Patijn highlighted that the remuneration of members was one of the matters that ought to be regulated by means of this procedure.⁴⁰

Parliament continued to advocate for equal involvement of Council and Parliament in the years thereafter. Because Patijn's proposals were not fully endorsed in the 1976 Direct Election Act, the European Parliament was left without rule-making power on the statute for members, and even without a right of initiative (see Chapter 4, section 3.2). Creating a legal basis for a statute in primary law, and a procedure for adopting it, became one of Parliament's priorities during subsequent treaty revisions.⁴¹ In these proposals, it envisaged an important role for the Council along the same line as finally laid out in Article 190(5) EC.⁴²

The call for co-decision between Council and the European Parliament can be read as resignation to the fact that Parliament would (and maybe should) not be fully autonomous in deciding the financial status of its members. However, it may also simply have been a tactical manoeuvre to ensure that Parliament would get a seat at the decision-making table. The latter theory is supported by the fact that, once the European Parliament had acquired the right of initiative and final adoption via the Treaty of Amsterdam, it tried to further augment its powers at the expense of the Council. In the Intergovernmental Conference (IGC), preparing the later Treaty of Nice, the European Parliament proposed to be made solely responsible for establishing a statute for members. Article 190(5) of the EC Treaty should be amended as follows: "The European Parliament shall lay down the regulations and general conditions governing the performance of the duties of its Members."⁴³

Parliament's 2000 demand is similar to its position forty years earlier. However, today, the desire to fully side-line the Council is not strongly present in the European Parliament. The IGC-proposal was highly controversial within Parliament itself,

38 Draft Convention on the election of the European Parliament by direct universal suffrage (Draftsman: Fernand Dehousse), OJ No 37 of June 1960 (in Dutch), art 9, 834.

39 Article 14 of Draft Convention of 14 January 1975 on the election of Members of the European Parliament by direct universal suffrage (Draftsman: Schelto Patijn) [1975] OJ C32/15.

40 EP Debate of 14 January 1975 on the Act concerning the election of the representatives of the Assembly by direct universal suffrage [1975] OJ C32/12.

41 Priestley (n 8) 88.

42 Ibid.

43 EP Resolution of 7 February 2000 containing the European Parliament's proposals for the Intergovernmental Conference [2000] (14094/1999 – C5-0341/1999 – 1999/0825(CNS)) OJ C40/409, para 7.

and has not been repeated since.⁴⁴ Due to the constitutional implications and the vulnerability of deciding on one's own salary, many members seem ready to accept that Parliament is not in a position to unilaterally settle the status of its members.

At any rate, the involvement of the Council in establishing a European statute for members was much less controversial than the fact that in the pre-statute era members were dependent on national legislation and national parliaments for their legal and financial status. That was conceived as 'wholly inappropriate and improper'.⁴⁵ Therefore, Parliament's main priority has been to replace the variety of national legislations by Union legislation as soon as possible.

3. The Battle for the Right of Initiative

We now know Parliament's formal competences to change the legal provisions as well as its objectives. The central question in the following two sections is how Parliament acted in order to advance its goals. In this exercise, primary law is taken as an external fact. The influence that Parliament may have had on the adoption of the treaty texts is not taken into consideration. Instead, the focus is on the gap between Parliament's formal powers to lay down a statute and how it has acted to accomplish it nonetheless. This section explains the development of Parliament's right of initiative.

3.1. *Parliament Grabs the Initiative*

As stated before, prior to the Treaty of Amsterdam the European Parliament lacked the right of initiative regarding the regulations and general conditions governing the performance of its members' duties. However, Parliament acted *as if* it had. In 1976, following the adoption of the Direct Election Act, Parliament set up a special parliamentary working group. This group presented the Council input for a future, uniform statute.⁴⁶ In July 1979, a month after the new legislature was invested, a second working group convened, chaired by Glinne. It came forward with a proposal for a common statute in which the salary of the members was calculated as a percentage of the salary of a judge at the European Court of Justice.⁴⁷ Neither proposal evoked a positive response by the Council. Therefore, on 15 September 1983, the European Parliament put some pressure on the Council. It needed 'to decide on a common statute for the Members of the European Parliament of the European Parliament in time for it to apply to the second term of Parliament'.⁴⁸ In its resolution, Parliament

44 The phrase was supported by only a slim majority in the responsible committee. Report on the European Parliament's proposals for the Intergovernmental Conference (Rapporteur: Giorgos Dimitrakopoulos) (EP 2000, A5-0086/2000).

45 EP Debate of 22 June 2005 on amending the Decision of 4 June 2003 on the adoption of the Statute for Members of the European Parliament (n 35) contribution Maria Berger.

46 Draft Statute of 14 December 1976 for Members of the European Parliament elected by direct universal suffrage (Draftsman: Walter Behrendt) (1/459 f/76 (ASS)).

47 Pospíšilová and Krück (n 8) 229; Priestley (n 8) 88.

48 EP Resolution of 15 September 1983 on the Statute of Members of the European Parliament (n 23) para 1.

underlined that the content of Council's decision should be based on a proposal by Parliament's enlarged Bureau.⁴⁹ Designing the text was regarded as primarily a matter for Parliament itself, even though this principle was not laid out as such in primary law. It is noteworthy that the Council and the Commission did not dispute Parliament's 'right' of initiative. They discussed the proposals even in the absence of a formal legal basis for them. The Commission even drafted a formal reaction to Parliament's proposals.⁵⁰ This course of events can be seen as evidence that Parliament managed to develop a right of initiative in practice, an innovation that no doubt was fostered by the existence of the norm that parliaments in general ought to have sufficient autonomy – including in relation to shaping the salary provisions of their members.

While the Council discussed the parliamentary initiatives, it was unable to reach a unanimous decision on them.⁵¹ In order to provide new input and place the issue higher on the political agenda, the European Parliament constituted new working groups in 1995 and 1997.⁵² These efforts did not however manage to break the deadlock in the Council.

3.2. Council's Counterclaim

On 2 October 1997, the Treaty of Amsterdam was signed, giving the European Parliament the right of initiative regarding its members working condition. The Treaty was to come into effect on 1 May 1999. However, the European Parliament did not want to wait that long before taking new initiatives. It hoped to take advantage of the momentum right away with a view to establishing a statute before the next European elections in 1999. Therefore, on 3 December 1998, it adopted a resolution, containing an expansive proposal.⁵³ It included provisions on the remuneration of the members, but also on matters such as the incompatibilities of office, the verification of credentials, and parliamentary immunity. As the Treaty of Amsterdam was not yet ratified, the proposal lacked a formal legal basis. According to the European Parliament, this was not necessarily problematic as it could be agreed upon conditionally.

'[T]his Statute should enter into force as soon as the ratification of the Treaty of Amsterdam provides a legal basis for the adoption thereof'.⁵⁴

49 EP Resolution of 15 September 1983 on the Statute of Members of the European Parliament (n 23) para 3.

50 See Commission, 'Opinion on Parliament's Proposal for a Common Statute of Members of the European Parliament' COM (85) 221, 2.

51 Pospíšilová and Krück (n 8) 230.

52 Ibid.

53 EP Resolution of 3 December 1998 on the draft statute for Members of the European Parliament [1998] OJ C398/24. See also Priestley (n 8) 91.

54 EP Resolution of 3 December 1998 on the draft statute for Members of the European Parliament (n 53) para D.

However, as in the previous decades, the proposal failed to receive unanimous enthusiasm in the Council. The member states objected to numerous elements of the draft, including the level of indemnity, the retirement age of the members, and the inclusion of provisions on immunity.⁵⁵ Moreover, they wanted to add a new element: 'the possibility of imposing national tax on earnings of Members subject to their national tax system'.⁵⁶ Considering its objections, the Council could have rejected Parliament's texts and awaited new proposals. Instead, the General Affairs Council of 26 April 1999 came up with alternative formulations itself.⁵⁷ The minutes of this meeting record the following:

'The Council reached political agreement on an overall compromise concerning the draft Statute for Members of the European Parliament adopted by the European Parliament on 3 December 1998 (13978/98). The terms of the compromise are set out in 7528/2/99 REV 2.'

'The Council instructed the Presidency to forward the outcome of its proceedings to the European Parliament and expressed its willingness to give its opinion very swiftly by means of the written procedure on a revised draft which the European Parliament would submit to it formally after 1 May 1999, the date of entry into force of the Amsterdam Treaty containing the legal basis for it.'⁵⁸

The Council's reaction did not go down well with the members of the Legal Affairs Committee. Rapporteur Rothley considered it a clear attack on Parliament's right of initiative.

'There is no basis in the Treaty for the Council to draw up the text of a Statute, to which Parliament merely gives its assent. Such an approach turns the procedure on its head and constitutes a breach of the Treaty.'⁵⁹

One may question whether Rothley was right in a legal sense. After all, at the time that the Council adopted its proposal, the European Parliament was still without a *de jure* right of initiative. Nevertheless, in view of any parliament's need for autonomy in this matter, and the fact that Article 190(5) EC would be applicable only a week later, the Council's proposal can very well be seen as a violation of the *spirit* of the treaties.

The members of the European Parliament were highly divided on how to respond to the Council. There were many different motives involved. Some members wanted

55 Pospíšilová and Krück (n 8) 233; Priestley (n 8) 90-91.

56 Council Recommendation on a Draft Statute for Members of the European Parliament [1999] 7676/1/99, para 4.

57 Council Position 7791/99 on the Statute for Members [1999] Minutes 5.

58 Ibid.

59 Report on the draft Statute for Members of the European Parliament (Rapporteur: Willi Rothley) (EP 1999, A4-0267/99 0010) para 2 explanatory statement.

to reject the Council's proposal as they felt strongly about safeguarding Parliament's right of initiative.⁶⁰ Others used this institutional argument, but in fact simply favoured the content of Parliament's original text.⁶¹ Yet another group of members, consisting of members from northern countries in particular, shared the Council's criticism regarding the level of the salary and the generous allowances system. They were willing to turn a blind eye to the Council's intrusion into Parliament's institutional privileges, and to accept its text as a good basis for negotiations.⁶²

The different positions in the European Parliament can not only be understood as different assessments about what constitutes the most profitable position in terms of financial benefit or institutional power. More than before, it was (also) about reputation, electoral gain, and connecting to the public. The statute has the potential to change the relationship with the electorate. This perspective inspired some members to battle for a statute that was as uniform as possible. Only that outcome would send the unequivocal message that the members of the European Parliament have a self-standing electorate and represent Union citizens as a single group. That was the representative claim that they wanted to make. They resisted the Council's proposal, which allowed for national taxation, as this would mean that members' net salaries would continue to differ and to depend on their nationality. Others, however, seriously feared that a too generous scheme, and an exclusion from national taxation, would permanently damage people's trust in the European Parliament.⁶³ Such rules would not just set the Parliament apart from the national structures, but from citizens as well. Furthermore, and apart from any theories on representation, many members simply feared negative articles in the press if they rejected Council's proposal for austerity. In short, the reactions by the public had a more direct impact on the actions of the representatives than was customary before.⁶⁴

After fierce discussions, the European Parliament adopted a new resolution on 5 May 1999, less than a week after the entry into force of the Treaty of Amsterdam.⁶⁵ The political message is immediately evident at the beginning, in paragraph 1. Parliament '[c]onfirms the resolution that it adopted on 3 December 1998'.⁶⁶ In other words, the majority of the European Parliament decided to reinstate the original text of Parliament as the starting-point of any negotiations. The Council's text was off the table. Moreover, Parliament reminded the Council that Parliament now formally had the right of initiative, and that the Council was bound to respect that by the duty of sincere cooperation.⁶⁷

60 See Priestley (n 8) 91.

61 Ibid.

62 See for instance the position of the Dutch Greens, in their 'politiek jaarverslag 2000' (political annual report), published in February 2001.

63 Butler and Westlake (n 17) 42-43.

64 EP Resolution of 5 May 1999 on the draft Statute for Members of the European Parliament (n 34) para H. See also Butler and Westlake (n 17) 42-43.

65 EP Resolution of 5 May 1999 on the draft Statute for Members of the European Parliament (n 34).

66 Ibid para 1.

67 Ibid para 4. The duty of sincere cooperation is nowadays enshrined in Article 13(2) TEU.

The negotiations were thus undertaken on the basis of the proposals by the European Parliament. Materially, this did not significantly reduce the Council's influence. The latter used the fact that its approval was imperative to force the European Parliament to draft compromises. The Council may not have been the author, but certainly provided the inspiration for many clauses in Parliament's texts. To support this conclusion, it is useful to turn to the text that was finally laid down by the European Parliament on 28 September 2005.

Most importantly, the decision determines that all members of the European Parliament are paid the same gross salary. Their salary is set at 38.5 per cent of the basic salary of a judge at the European Court of Justice, resulting in the amount of 7956.87 Euro over which they pay European tax.⁶⁸ Also the social provisions, pensions and health insurance are the same for all members (they receive further elaboration in section 4.2).⁶⁹ The money is paid directly from the European Parliament budget.

On these issues, the European Parliament could be satisfied with the outcome as it came close to what it had wanted to accomplish. However, on other issues, it accepted painful compromises. The first one concerned taxation. The European Parliament had to accept that member states can levy national taxes on members' salary, provided that double taxation is avoided.⁷⁰ This possibility had been qualified as 'illegal, unjust and wrong in substance'⁷¹ in one of the parliamentary debates. It would mean that 'discrimination' on the basis of nationality would effectively continue to exist.⁷² A secondly compromise related to the reimbursements of expenses incurred by the members. The European Parliament has always strongly opposed the incorporation of detailed provisions on this matter in the statute for members. In its view, such provisions do not fit in a constitutional text. Moreover, Parliament regarded regulations on reimbursements for work-related expenses a matter to decide on independently, as they fell under the scope of Parliament's right to regulate its own affairs. The Council, however, refused to agree to a Union salary for members without simultaneously restricting Parliament's liberty to hand out generous allowances. As we will see in the next section, these allowances were the object of much public outcry, as they often exceeded normal compensation for costs incurred. Parliament was forced to accept a provision providing that members would only be entitled to the reimbursement of 'actual expenses incurred'.⁷³

Equally distressing to Parliament was the removal of any references to Union immunity. From the start, it had insisted on a statute that would incorporate both financial and legal aspects of the parliamentary mandate. Yet, after all these decades

68 European Parliament Decision 2005/684/EC Euratom (n 4) arts 9-10. The amount mentioned, 7956.87 gross per month, took effect as of 1 January 2014. For taxation, see art 12(1).

69 Ibid arts 13-19.

70 Ibid art 12(3).

71 Karas in Hans Herbert von Arnim, 'A Salary of 9,053 Euros for Members of the European Parliament?' [2004] Forschungsinstitut für öffentliche Verwaltung bei der Deutschen Hochschule für Verwaltungswissenschaften Speyer, 9.

72 Pospíšilová and Krück (n 8); Priestley (n 8) 99.

73 European Parliament Decision 2005/684/EC Euratom (n 4) art 20. This provision should be read in combination with 'wheras' 17-18, as will be explained in the next section.

of struggle, it was now left with a text that mainly settled financial matters, and left the differences in members' legal protection unaffected (see Chapter 5).

One might say that the final compromise is more in line with the Council's position than with that which the Parliament had set out to accomplish. This is a remarkable outcome, considering Parliament's exceptionally strong rule-making powers in this dossier. In the previous chapter, we have seen that Parliament's factual room to manoeuvre often exceeded its formal decision-making competence. Here, the reverse seems to have been the case. How can this be explained? What is the reason that, in respect of the statute for members, Parliament's power was not increased, and even seemingly diminished *de facto*? Let me give an explanation, in the light of the battle for representative autonomy.

In other areas, Parliament's effort to increase its representative autonomy was regarded as fitting behaviour in view of its tasks. For instance, its quest for a similar legal protection for all the members of the European Parliament enabling them to engage on an equal footing in European political activities can be accepted as appropriate, or at least as not utterly *inappropriate*. It may also be that the Council could accept Parliament's autonomous case-law on immunity, and the changes it introduced through the Rules of Procedure (see Chapter 5, section 4), because there was only limited public interest in this matter.

This did not apply to the statute for members. There was more public interest than Parliament may have wanted in how it was shaping the salary provisions. Even the representative claims therein were a matter of concern. Would the members of the European Parliament come to pay national taxes or would their financial status be fully disconnected from national structures? Would their salary be tied to that of national representatives or to that of the scale of European civil servants? These matters were discussed by the public and in national parliaments. Parliament was formally at liberty to take the decisions that it deemed fit with the approval of Council. However, its substantive liberty was limited. There was a serious risk that public opinion would turn against a uniform salary, including the claim therein that members represent, and should thus receive indemnity from, Union citizens. Such a rejection would undermine Parliament's legitimacy. In the case of the statute, the Parliament was pushed off-stage by the Council. The former lost ground, while the latter strengthened its position. The reason for this twist is that the Council was seen as acting in the interest, and with the approval, of the public. At the end of the day, it was the Council that enhanced its representative autonomy – not the European Parliament. The Council adjusted its representative claim, making itself not only the mouthpiece of national governments, but also the representative body of the national peoples. The strong interventions by the Council in laying down the statute for members of the European Parliament provides us with an interesting new element in the puzzle of how the European Parliament can foster its autonomy. It can only do so when the Council cannot make a *better claim* to represent the electorate.

4. Organisational Autonomy: The Sky and the Limits

Since its election, the European Parliament has fought for a uniform statute for its members. To accomplish this, it did not focus exclusively on the legislative process. In the Eighties and Nineties, Parliament set up several social security schemes for

its members on the basis of its right to regulate its own affairs. In their study on the statute, Pospíšilová and Krück explained the rationale behind the adoption of these schemes. They aimed ‘to compensate for the existing inequalities between Members coming from different Member States’.⁷⁴ These findings suggest that *de facto* a minimum statute for members was already in place prior to the 2005 decision, by which one was adopted *de jure*. The current section examines Parliament’s unilateral decisions regarding its members’ pensions and social securities. Has Parliament, through these decisions, effectively enlarged its representative autonomy in practice?

4.1. Parliament’s Own Social Security Schemes

According to Parliament’s Rules of Procedure, its Bureau is responsible for taking financial, organisational, and administrative decisions on matters concerning the internal organisation of Parliament and its members.⁷⁵ This provided, at least in the view of the Bureau, a legal basis for the setting up of own social security schemes. As we will see in the next section, this interpretation was not shared by the Council.

Of all the social security arrangements that have been set up, the *voluntary pension fund* forms one of the most well-known (and notorious) ones. It was established by a decision on 12 June 1990.⁷⁶ All members of the European Parliament were free to join this fund. They had to pay one-third of the contribution; the other two-thirds were paid from Parliament’s budget. The fund provided an *additional* benefit. It did not replace the national pension pay-out that members were already entitled to (and that national members of parliament received as well). Consequently, those members who decided to opt-into the voluntary pension fund received a double pension for their work as member of the European Parliament. The national pension was largely paid for by the national taxpayer; the European one by those contributing to the Union budget.⁷⁷ The decision by the Bureau to establish the voluntary pension fund is remarkable. After all, pensions can be defined as ‘delayed salary’. One would therefore expect that a European pension scheme would be regulated in the framework of a statute for members. From reading the decision, it emerges that the Bureau would have indeed preferred that. However, in the absence of a statute, it considered itself well-placed to create a temporary solution. As indicated in the first paragraph of the Bureau decision, the voluntary pension scheme was established ‘[p]ending the adoption of a single Statute for Members’.⁷⁸

74 Pospíšilová and Krück (n 8) 226.

75 Rules of Procedure of the European Parliament – September 2015, Rule 25. The Bureau is composed of Parliament’s President and Vice-Presidents. The Quaestors have an advisory capacity.

76 Rules Governing the Additional (Voluntary) Pension Scheme 1990. See for this arrangement and the following the Rules Governing the Payment of Expenses and Allowances to Members [1999] PE 133116/Q/REV, 56.

77 The budget from the European Union has several sources. Member states pay a percentage of their gross national income (around 0.7 per cent) to the EU budget. Also, a small percentage of VAT (around 0.3 per cent) is paid into it. Other sources are *inter alia* customs duties on imports from outside the EU, fines, and taxes by EU civil servants.

78 Rules Governing the Additional (Voluntary) Pension Scheme (n 76) art 1.

The voluntary pension fund was not the first decision that the Bureau had taken with regard to pensions. In 1981, it had set up a *retirement pension* fund, seeking to ensure that all members received a pension that was not lower than what members in the national parliaments were entitled to.⁷⁹ While this situation was the rule for most members, the French and the Italian members constituted an exception to this. The European arrangement was tailored to them, as they received less than their national counterparts. The 1981 decision was the first in which money was allocated from the European budget for the old-age benefit of members of the European Parliament. Even though it was only limited in scope, it forms an important precedent. It breached the member states' political agreement of 1976, according to which the salaries of the members of the European Parliament was a matter for the member states in which they were elected (see section 1.1). Once this route was taken, other funds followed. In 1982, the Bureau set up an *invalidity pension*.⁸⁰ In 1988, it decided on a *survivors' pension*.⁸¹ In both cases, the entitlements were linked to that of a European judge, being an autonomous reference standard. Together, the arrangements described above, formed an important part of what can be regarded as a European statute for members *avant la lettre*. When the statute was agreed in 2005, they were either included explicitly in the final text or made superfluous by it. For example, an invalidity pension can be found in Article 15, a survivors' pension in Article 17, and Article 14 regulates that all former members are entitled to a European old-age pension from the age of 63. By virtue of Article 27, members can no longer join the additional voluntary pension scheme.⁸²

Also in other areas than pensions, the Bureau has arranged for benefits that normally are part and parcel of a statute for members. The *transitional end-of-service allowance* is an example thereof. Many countries provide their members of parliament with such an allowance in order to guarantee a scrupulous exercise of the representative mandate. The pay-out enables members to decide about resignation or continuation of their office without having to take short-term financial concerns into consideration. However, not all countries have such an arrangement. Consequently, some members of the European Parliament received no, or only a small, allowance at the end of their mandate, whilst others received large amounts. In 1988, the Bureau decided:

79 Rules Governing the Retirement Pension 1981. The decision is incorporated in the Rules Governing the Payment of Expenses and Allowances to Members (n 76).

80 Rules Governing the Invalidity Pension 1982. See Rules Governing the Payment of Expenses and Allowances to Members (n 76).

81 Rules Governing the Survivors' Pension 1988. See Rules Governing the Payment of Expenses and Allowances to Members (n 76).

82 European Parliament Decision 2005/684/EC Euratom (n 4).

*'Pending the introduction of a single Statute, Members of the European Parliament who leave after a minimum term of office of three years shall be entitled ... to a monthly end of service allowance equal to the basic parliamentary salary to which they were entitled on termination of their term of office at the European Parliament.'*⁸³ (italics added)

If members already received an allowance under national law, they could ask for a European 'top-up' in case the national arrangement was less generous than the rule above.⁸⁴ The decision thus intended to reduce the differences in financial compensation of the members. However, these differences did not fully disappear, as the Bureau made the entitlements dependent on the national salaries that the members had earned. Nevertheless, it meant that the financial positions of members of the European Parliament became (a little) more comparable. Inevitably, this also meant that the position of members of the European Parliament and members of the national parliaments became more divergent. The temporary arrangement was made redundant by the introduction of a statute for members. The latter foresaw an end-of-service allowance of the same level as the new European salary in Article 13.

The web of financial benefits that was created for members of the European Parliament, also included some other reimbursements. It is not necessary to describe them all in detail. Only the travel allowances still need explicit attention. As indicated earlier, they were at the core of clashes between the Council and the Parliament during the negotiations on the statute for members. At a first glance, travel allowances may seem unrelated to the financial status of members. This latter covers the *indemnity* of members, composed of pensions, salaries, and social security arrangements. Travel allowances are part of a different category. They are, in principle, only meant to *reimburse* for costs incurred. However, in the case of the European Parliament, the reimbursements for travel expenses were so generous that members could have an additional income from it if they chose to cash the full amounts (which not all did).⁸⁵ It has been argued by several scholars that there was an institutional justification for providing such generous reimbursements. According to Pospíšilová and Krück, the payments were part of Parliament's strategy to reduce the relative differences in members' national salaries.⁸⁶ Priestley also points out that the allowances aimed to 'soften, or even remove, the impact of the salary discrimination.'⁸⁷

83 Rules Governing the Transitional End of Service Allowance 1988, art 1. See Rules Governing the Payment of Expenses and Allowances to Members (n 76).

84 Rules Governing the Transitional End of Service Allowance (n 83) art 2.

85 For example, the Dutch and German members of the European Parliament publicly pledged to pay back into the European budget the difference between the actual costs they made for travel arrangements and the amounts that they received for it from Parliament's administration.

86 Pospíšilová and Krück (n 8) 227. See also Muñoz (n 13) 4.

87 Priestley (n 8) 83.

'The fact that the Portuguese, Greek and Spanish members, who did well out of this situation, were the poorest paid MEPs, meant that a "hidden salary" evened things up for them.'⁸⁸

The findings in this section support the conclusion of Pospíšilová and Krück that the reimbursements and the social security schemes succeeded in reducing the inequalities between members to a certain extent.⁸⁹ In this respect, they served their purpose. However, precisely because of this impact, it is difficult to understand how Parliament could decide on the building blocks for a statute in the absence of a treaty basis for such statute. This is the subject to which we now turn.

4.2. Limits on Parliament's Organisational Autonomy

The decisions described above were taken by the Bureau on the basis of Parliament's right to regulate its own affairs. This right was originally laid down in Article 25 ECSC, and since 1958, in Article 142 EEC (and Article 112 Euratom). At the time of the negotiations on the statute for members, it was contained in Article 199 EC.⁹⁰ It reads as follows:

'The European Parliament shall adopt its rules of procedure, acting by a majority of its members.'

The provision stems from, and reinforces, the fact that the European Parliament is an independent institution.

The use of Article 142 EEC as a legal basis for decisions with financial implications, did not go unchallenged. Even in the period when members of the European Parliament only received relatively modest travel (and subsistence) allowances, and the social security arrangements were not yet in place, several national governments objected this. They argued that Article 142 EEC was not meant as a legal basis for financial handouts. It only served to enable the adoption of procedural rules for organising Parliament's work properly and effectively.⁹¹ In 1980, the matter was referred to the European Court of Justice for a preliminary ruling.

⁸⁸ Ibid.

⁸⁹ Pospíšilová and Krück (n 8) 226.

⁹⁰ Nowadays, it is found in Article 232 TFEU. In this section, I shall refer to the numbering of the provisions at that time. This means that, when referring to Parliament's right to regulate its own affairs, I shall speak of Article 199 EC. When discussing the legal basis for the adoption of a European statute for members, I refer to Article 190(5) EC.

⁹¹ See the observations of the French and the United Kingdom Government added to Case 208/80 *Lord Bruce of Donington v Eric Gordon Aspden* [1981] ECR 2205 (Court of Justice of the European Union) 2211-2212.

The concrete question raised in the case of *Lord Bruce of Donington versus Eric Gordon Aspden (Her Majesty's Inspector of Taxes)* was whether a British member of the European Parliament could be held liable to pay national income tax over the travel and subsistence allowances that he had received from the European Parliament. In its ruling, the Court underlined that the European Parliament ought to be at liberty to reimburse costs incurred by its members. This is an essential privilege that ensures its proper functioning.

'[I]t 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.'⁹²

The Court of Justice clarified that it was for the European Parliament itself to decide *how* the cost would be incurred. This could be done on the presentation of tickets, or by means of lump-sum payments. In both cases, the member states were not allowed to levy national tax on the received payments.⁹³ At the same time, the Court outlined the limitations to Parliament's liberty. The restitutions to the members should be 'reasonable'.⁹⁴ They should not be so lavish as to form a disguised remuneration in fact. Considering this criterion, it can be assumed that if a similar preliminary question would have been raised years later, after the European Parliament's Bureau had established the overly generous reimbursement scheme, the Court would have reached a different conclusion. Also, considering its reasoning, it is likely that the Court would not have accepted Article 142 EEC as the appropriate legal basis for the Bureau's decisions to set up a voluntary pension fund and other social security arrangements. They were not strictly necessary for the performance of members' duties.

The introduction of a legal basis for a statute for members in 1997 implicitly underlines that the European Parliament had overstepped its powers in the previous years. The provision regulated that, at least from then onwards, the European Parliament could no longer lay down building blocks for a statute for members on the basis of its organisational autonomy. This had to be done on the basis of Article 190(5) EC, and hence with the approval of the Council. For those who believed that Parliament's previous acts had fallen within its purview, it meant that Parliament's liberty was curbed by the introduction of Article 190(5) EC.

92 *Lord Bruce of Donington v Eric Gordon Aspden* (n 91) para 17.

93 *Ibid* para 22.

94 *Ibid* para 21.

The Council held that the new treaty provision formed the appropriate legal basis for *all* decisions regulating some form of financial compensation for the members. In its view, the Council should thus also have a say in decisions regulating members' travel costs. The European Parliament strongly disagreed with this. In the aforementioned case of *Lord Bruce of Donington versus Eric Gordon Aspden (Her Majesty's Inspector of Taxes)*, the Court had highlighted that the European Parliament ought to be at liberty to compensate its members for costs incurred for the performance of their duties. Therefore, it was in line with this early judgment that the European Parliament insisted to keep the full say over its members' travel allowances, and to retain its organisational autonomy.⁹⁵

'There is no reason to call this autonomy in question. Article 190(5) ECT is intended to extend the European Parliament's powers to regulate its own affairs, not to curtail them.'⁹⁶

During the lengthy negotiations for the statute, the solution for this dispute was eventually found in the 'Paquet Cox', named after the Parliament president who had proposed the strategy. The *package* managed to square the circle of reconciling Parliament's right to regulate its own affairs with Council's objective to avoid an abuse of this right. Both institutions agreed to include in the statute the general principle that 'Parliament shall reimburse the actual expenses incurred by Members in travelling to and from the places of work and in connection with other duty travel' in the statute.⁹⁷ The Bureau of the European Parliament remained formally responsible for laying out the details. However, two additional provisions in the text, accompanying the statute, reduced its effective liberty. A first provision referred to a Bureau decision of 28 May 2003 that (deliberately) had not yet entered into effect. The decision foresaw a ceiling for the reimbursement of costs, and required the presentation of supporting documents such as tickets and boarding passes for air travel and tickets for rail travel. According to paragraph 18 of the statute for members, the decision of 2003 'should enter into force at the same time as this Statute'. In other words, once all members received a European salary, the Bureau would stop to provide a 'hidden' additional salary. A second limitation was set by paragraph 17 of the statute, reminding the institutions that any new rule 'must be in conformity with the principles set out by the Court of Justice of the European Communities in the 'Lord Bruce' judgment'.⁹⁸

According to Friedrich, one of the vice-presidents of the European Parliament (and already serving since 1979), the changes meant an infringement on Parliament's rights:

95 Report on the draft Statute for Members of the European Parliament (Rapporteur: Willi Rothley) (n 59) explanatory statement, item 3e.

96 EP Decision of 3 June 2003 on the Adoption of a Statute for Members of the European Parliament [2004] OJ C068-E/115, cons 23.

97 European Parliament Decision 2005/684/EC Euratom (n 4) art 20.

98 Ibid 3.

[T]he rules governing the reimbursement of Members' expenses and Members' allowances will no longer be based on Parliament's right of administrative autonomy, pursuant to Article 199 of the EC Treaty, but instead on Articles 9 to 23, 27 and 28 of the Statute for Members.⁹⁹

Overall, the statute has put limitations on how Parliament previously interpreted its right to organisational autonomy. Nevertheless, the statute also offers the European Parliament new windows of opportunity to make rules with an impact on members' financial situation without the involvement of the Council. Many articles of the statute, having formulated the concerned right in general terms, conclude with the phrase: 'Parliament shall lay down the conditions for the exercise of this right.'¹⁰⁰ In line with Parliament's Rules of Procedure, it is again the Bureau that has to decide on these implementing measures. They will no doubt be interesting material for future research.

5. Conclusion

The European Parliament adopted the statute for members on 28 September 2005, after an opinion given by the Commission,¹⁰¹ and with the approval of the Council.¹⁰² As a result, all 751 members of the European Parliament receive the same gross salary. No longer are they paid the equivalent of members of the national parliaments of the country in which they were elected. Nowadays, they have specific rules applying to them. The decision to arrange for a common gross salary for all members of the European Parliament, irrespective of where they have been elected, has amended the representative status of the European Parliament. The previous arrangement tied members to national structures (as national parliaments established the level of their salary) and to a national electorate (as national taxpayers paid for it).¹⁰³ Conversely, the new status stresses that the European Parliament is a unitary representative body with a distinctive, own-standing electorate.

Still, nationality is, and continues to be, an important feature of Parliament's electorate. This is also reflected in the salary provisions. The gross salary of all members are now the same, but their net salary is not. Member states are at liberty to impose national taxes on the salary of members of the European Parliament. This decision to allow differentiation may be helpful to avoid that members are (accused of being) alienated from the concerns of citizens, and immune to the rules that apply to them. As such, it may serve the legitimacy of Parliament. However, it also stresses the exist-

99 Report on the amendment of Parliament's Rules of Procedure in the light of the Statute for Members (Rapporteur: Ingo Friedrich) (EP 2007, A6-0368/2007) explanatory statement.

100 See for example arts 15, 17-18, and 20-22.

101 Commission Opinion on the Statute for Members of the European Parliament (Brussels, 3 June 2003), confirmed by Vice-President Wallström in the course of the sitting of the European Parliament on 22 June 2005.

102 The text was adopted by the Council on 18 July 2005 at its 2674th meeting. Doc. 11173/05.

103 Section 1.1. Section 2 subsequently describes Parliament's views on this.

ence of different political cultures and a special relationship between members and national citizens. Therefore, to a certain extent, this national taxation can be seen to undermine the claim that Parliament's electorate is a unitary group.

The continued relevance of the member states also shows itself in how the indemnity is collected. Members of national parliaments receive their salary from the national budget. This is composed (to a large extent) of the contribution by national taxpayers, who can be regarded as their *indemnitors*. The members of the European Parliament receive their money from the Union budget. One may expect that this is collected from the contributions of Union citizens, making them the *indemnitors* of the members of the European Parliament. However, the largest source of revenue of the Union budget are contributions by the *member states* based on a percentage of their Gross National Income. The claim that the European Parliament represents Union citizens (as a unitary group) would be served by a decision to levy Union income tax. Until now, the Treaties do not foresee in this possibility. We can thus conclude that, although the statute of members has raised the profile of the European Parliament as a representative body of Union citizens, the picture is not unambiguous.

Additionally, the development of Parliament's powers has shown not to be an issue with straight progression and a clear-cut outcome. This can be observed from, for instance, the development of the right of initiative. Parliament has exercised this right, prior to it having been formally granted. The lenience shown by the other institutions is understandable. After all, a statute has the potential to affect the relationship with the electorate. It is therefore *appropriate* that this statute is designed by those holding free, representative mandates themselves. Parliament's right of initiative was legally enshrined in the Treaty of Amsterdam (1997), Article 190(5) EC.¹⁰⁴ However, Parliament has not always been in the position to exploit it fully. In the years that the statute for members was negotiated (1998-2005), the Council occasionally presented itself as more appropriate representatives of the electorate, and has tried to take over Parliament's right of initiative *de facto*. This has restricted Parliament's liberty substantially.¹⁰⁵

The development of Parliament's rule-making powers has shown setbacks as well. In the Eighties and Nineties, the European Parliament set up a web of financial benefits for its members of a type that normally is incorporated in a statute for members.¹⁰⁶ The legal basis for these decisions was found in Parliament's organisational autonomy.¹⁰⁷ While this seems not justified on the basis of the case law by the Court of Justice, the decisions were not legally challenged at the time. Hence, Parliament had expanded its rule-making power. However, when the Treaty of Amsterdam laid down a procedure for establishing a statute for members, this liberty was curbed to a certain extent. The new provision requires that the Council approves any decision on members' pensions and social security. On top of this, the Council itself also demanded the right of approval on matters related to the travel reimbursements, while

104 Section 1.2. describes the *de jure* powers; section 3.1. describes how Parliament acted *de facto*.

105 Section 3.2.

106 Section 4.1.

107 Section 4.2.

the Court had ruled that these decisions could be settled unilaterally by Parliament. The outcome of this battle is a precarious balancing act. The Council accepts Parliament's liberty to decide on travel reimbursements, *as long as* it does not fundamentally deviate from a decision by the Bureau that the Council can agree with.¹⁰⁸

Overall, the liberty of the European Parliament to present the representative claims it deems fit in a statute for members, has increased. It can initiate and lay down a statute. However, due to the involvement of the Council, Parliament's autonomy may be more restricted than that of most national parliaments. Let me finalise this chapter by outlining why the involvement of the Council is understandable at this point of Parliament's development.

First of all, the Council's involvement follows from the intergovernmental aspects of the European Union architecture. It is evident that a statute for members has constitutional implications. It influences the definition of the European Parliament, and (consequently) the place of the European Parliament amidst the institutions of the European Union. Such decisions normally require approval by the member states. However, as this would go against the *norm* of providing an elected body with substantial representative autonomy (and would reduce the chance for a statute ever to be approved), it is appropriate that the procedure was relaxed. Nowadays, not the member states, but the Council has to approve the proposed statute (by majority).

Secondly, the Council's involvement serves as a barrier against self-enrichment of members of the European Parliament. National parliaments are often more in the public eye than the European Parliament. This reduces their liberty to award their members hefty pay rises. The European Parliament has been subject to public criticism as well. However, this was not voiced in all member states. Therefore, the influence of the public's view on the debate in the European Parliament was less than one may have expected in the presence of a common public space. The need for approval by the Council could be seen as an extra assessment in the absence of such a common European public space.

Like the chapter on immunity, the present chapter has underscored that the European Parliament could increase its representative autonomy through a particular enforcement of its right to regulate its own affairs. It has enabled Parliament to adopt rules influencing members' parliamentary immunity and their financial position, thereby presenting itself more as a representative body of a Union electorate. The way in which Parliament was organised, enabled it to take such decisions: it determined its capacity to act. Now, it is time to focus on Parliament's organisation itself, and the representative claims that are encompassed within. That is the purpose of the following chapter.

108 Section 4.2.