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REPORT

on insertion of a new Rule 29a in Parliament's Rules of Procedure: activities and legal situation of the political groups

Committee on Constitutional Affairs

Rapporteur: Gianfranco Dell'Alba

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PROCEDURAL PAGE

At the sitting of 5 June 2003 the President of Parliament announced that he had referred the proposal by Mr Hans-Gert Poettering to amend the Rules of Procedure to insert a new Rule 29a in Parliament's Rules of Procedure: activities and legal situation of the political groups (2003/2114(REG)) to the Committee on Constitutional Affairs pursuant to Rule 181 of the Rules of Procedure.

At its meeting of 19 May 2003 the Committee on Constitutional Affairs had decided to draw up a report and had appointed Gianfranco Dell'Alba rapporteur.

It considered the draft report at its meetings of 7 July and 26 August 2003.

At the latter meeting it adopted the proposal for a decision unopposed with 1 abstention.

The following were present for the vote: Giorgio Napolitano, chairman; Jo Leinen, vice-chairman; Ursula Schleicher, vice-chairman; Gianfranco Dell'Alba, rapporteur; Margrietus J. van den Berg (for Enrique Barón Crespo), Georges Berthu, Guido Bodrato (for Teresa Almeida Garrett), Jens-Peter Bonde, Jean-Louis Bourlanges, Elmar Brok (for Luigi Ciriaco De Mita), Carlos Carnero González, Richard Corbett, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Fernando Fernández Martín (for Daniel J. Hannan), Monica Frassoni, José María Gil-Robles Gil-Delgado, Gerhard Hager, Hans-Peter Martin, Iñigo Méndez de Vigo, Elena Ornella Paciotti (for Jean-Maurice Dehousse, pursuant to Rule 153(2)), Doris Pack (for Lord Inglewood, pursuant to Rule 153(2)), Jacques F. Poos (for Olivier Duhamel), Konrad K. Schwaiger (for Hanja Maij-Weggen), Paavo Väyrynen (for Paolo Costa) and Joachim Wuermeling (for Antonio Tajani).

The report was tabled on 28 August 2003.

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on insertion of a new Rule 29a in Parliament's Rules of Procedure: activities and legal situation of the political groups (2003/2114 (REG))

The European Parliament,

- having regard to the letter of 28 May 2003 from its President,
 - having regard to Rules 180 and 181 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A5-0283/2003),
1. Decides to amend its Rules of Procedure as indicated below;
 2. Points out that these amendments will enter into force on the first day of the next part-session;
 3. Instructs its President to forward this decision to the Council and Commission, for information.

PARLIAMENT'S RULES OF PROCEDURE

Present text

Amendments

(Amendment 1)

Rule 29 a (new)

Activities and legal situation of the political groups

29a. The political groups shall carry out their duties as part of the activities of the Union, including the tasks allocated to them by the Rules of Procedure. On the basis of the establishment plan of the Secretariat, the political groups shall be provided with a secretariat, administrative facilities and the appropriations entered for that purpose in the budget.

The Bureau shall lay down the rules relating to the provision, implementation and auditing of those appropriations and determine the related delegations of budget implementation powers.

Those rules shall determine the administrative and financial consequences in the event of the dissolution of a political group.

Amendment 2

Rule 30, paragraph 2 a (new)

2a. The Bureau shall also lay down the rules relating to the provisions, implementation and auditing of appropriations entered in the budget to cover secretarial expenses and administrative facilities of non-attached Members.

Justification

Whereas the proposed new Rule 29a seeks to define the role and legal situation of the political groups and the scope of their activities, these provisions cannot be applied to non-attached Members, as the Court of First Instance clearly set out in its judgment of 2 October 2001 (T-222/99, T-327/99 and T-329/99). However, it is appropriate to define the responsibilities of the Bureau also with regard to the administration of the appropriations entered in the budget under Item 3701 for use by non-attached Members.

EXPLANATORY STATEMENT

1. Background to the referral to the Committee on Constitutional Affairs

By letter of 2 April 2003, Mr Hans-Gert Poettering, chairman of the Group of the European People's Party, in his capacity as representative of the political group chairmen, submitted a number of proposals concerning the political groups to the President of Parliament.

One proposal he submitted, relating to the powers of the Committee on Constitutional Affairs, seeks to insert a new Rule 29a in Parliament's Rules of Procedure in order to define the role and legal situation of the political groups and the scope of their activities. That proposal was referred by the President to the committee responsible, pursuant to Rule 181, for examination and for a decision to be taken, if appropriate, to submit it to Parliament.

On the basis of the Court of Auditors' report on the use of budget Item 3701 appropriations and the entry into force of the new Financial Regulation, Mr Poettering also proposed an amendment to the Bureau rules on the use of appropriations from budget Item 3701, which are intended to cover the administrative and operational expenditure of the parliamentary groups / non-attached Members' secretariat, to take account of the new Financial Regulation provisions, in particular to determine the authorising officer responsible, set up an appropriate internal-audit system and make provision for appropriate derogations concerning non-attached Members' expenditure.

Lastly, he also proposed responses to the observations made by Parliament in its resolution on discharge for the financial year 2000¹ with regard to the share of Parliament's total budget accounted for by the appropriations for the political groups and an audit of their finances on the basis of the various groups' audit reports.

2. Role and legal situation of the political groups

The political groups in Parliament are neither expressly provided for nor expressly referred to in the Treaties; rather, only Parliament's Rules of Procedure do so. The situation is similar to the position of parliamentary groups in some Member States, where they derive from the right of national parliaments to organise their business proceedings.

In its Special Report No 13/2000 on the expenditure of the European Parliament's political groups, the Court of Auditors noted that the groups 'are Parliament bodies and, in accordance with the Parliament's rules of procedure, they play an important role as regards the powers and internal *modus operandi* of the Institution', pointing out that 'Neither the Parliament's rules of procedure nor the rules governing the use of the appropriations ... define or delimit the activities which the groups may carry out independently of the Institution's *modus operandi*. ... Shortcomings in the rules and this means of organisation give rise to a lack of clarity as regards the respective roles and activities of the groups, of their national

¹ OJ L 158, 17.6.2002, p. 43.

delegations, or even of the political groupings which are linked to them.¹

In its replies, Parliament took the view that 'the political groups should enjoy operational autonomy and that this must be accompanied by the establishment of a regulatory budgetary framework which provides for clear, transparent and effective control', also acknowledging that the 'Rules will have to define the field of activity of the political groups as bodies of Parliament, "lay down the mechanism for the dissolution of a group" and to specify the status of the Non-attached Members.'²

3. The provisions to be introduced

This is the context in which Mr Poettering's following proposal on behalf of the political groups has to be viewed and assessed:

'The political groups shall carry out their duties as part of the activities of the Union, including the tasks allocated to them by the Rules of Procedure. On the basis of the establishment plan of the Secretariat, the political groups shall be provided with a secretariat, administrative facilities and the appropriations entered for that purpose in the budget.

The Bureau shall lay down the rules relating to the provision, implementation and auditing of those appropriations and determine the related delegations of budget implementation powers.

Those rules shall determine the administrative and financial consequences in the event of the dissolution of a political group.'

Your rapporteur suggests that that proposal be approved, with a few minor drafting changes, and that a new paragraph be added to Rule 30 to make it clear that the arrangements are applicable to the non-attached Members. It does not appear appropriate to go into greater detail in the Rules of Procedure.

Obviously, that addition to the Rules does not as such resolve the difficulties raised in practice for Parliament by the activities of the political groups and non-attached Members and by how they operate. The new text can be no more than a starting point. Detailed rules either already exist, such as the Bureau decision of 2 October 2000 on European Parliament support for European political parties (pending approval of the statute of European political parties) or the Internal Rules on the implementation of the European Parliament's budget (adopted by the Bureau on 4 December 2002) or have to be laid down or amended, such as the Rules on the use of appropriations from budget Item 3701, referred to above, the Conference of Presidents having endorsed, on 8 May 2003, proposed provisions submitted to the Bureau, which has consulted the Committee on Budgetary Control. That opinion is pending; it is likely to be delivered in autumn.

In its judgment of 22 March 1990³, the Court of Justice found that '... no provision of the

¹ Court of Auditors, Special Report No. 13/2000 on the expenditure of the European Parliament's political groups, together with the European Parliament's replies, OJ C 181, 28.6.2000, p. 1, paras. 20 and 22.

² op. cit., p. 13.

³ Case C-201/89, Le Pen and the Front National v. Detlef Puhl and others, [1990] ECR I-01183, paragraphs 14

Rules of Procedure of the European Parliament empowers a political group to act on behalf of the Parliament with regard to other institutions or third parties. Moreover, there is no rule of Community law from which it may be inferred that the acts of a political group could be imputed to the European Parliament as an institution of the Communities. ... It must be concluded that the distribution, by a political group, of a publication alleged to be defamatory does not give rise to the non-contractual liability of the Communities.'

The special position of the political groups' temporary staff employed to fill Parliament establishment plan posts under the Conditions of Employment of Other Servants of the European Communities, where the 'employer' and, as appropriate, the 'defendant' is Parliament¹, must be painted up.

Apart from in this specific situation, there must be an express delegating act within, or at least based on, the Rules of Procedure for the financial impact of a political group act to be chargeable to Parliament.

We are therefore unable to agree with the analysis by the Court of Auditors in its special report², referred to above, that 'In relations with third parties outside the Parliament, decisions taken by the groups to use the funds (for example when signing employment, rental or purchasing contracts) are considered to have been taken with the Parliament's authority and to engage its responsibility.'

The legal basis for such a system of delegation can be found in the Financial Regulation³ either by reference to Article 51

'The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down by this Regulation and by their internal rules and within the limits which they lay down in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.'

or by applying Article 56(1) *mutatis mutandis*

'Decisions entrusting executive tasks to the bodies and agencies referred to in Article 54(2) shall include all appropriate arrangements for ensuring the transparency of operations carried out ...'

That question cannot be decided upon in this report, but it could be addressed when the new Item 3701 rules are adopted.

However, reference should be made to the fact that in its resolution of 4 June 2003 on the

and 15.

¹ Judgment of the Court of First Instance of 22 November 1990, Michèle Mommer v. European Parliament, [ECR] 1990 II-00679, paragraphs 18 and 19.

² Court of Auditors, Special Report No. 13/2000 on the expenditure of the European Parliament's political groups, together with the European Parliament's replies, OJ C 181, 28.6.2000, p. 1, para. 21.

³ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248, 16.9.2002, p. 1.

adoption of a Statute for Members of the European Parliament, based on the Rothley report¹, Parliament tackles the question of the legal situation of the political groups in Article 14, stating that they 'shall be part of Parliament' and that they 'may sue and be sued'.

Accordingly, the groups would be given the capacity to bring and defend proceedings and thus would have legal personality in part.

In its work programme for this year, the Court of Auditors gave notice that it would be following up its Special Report No 13/2000 on the political groups, possibly in its annual report (to be published on 4 November 2003). Parliament's authorities will therefore be able to look again into the issue in the light of updated findings.

¹ Report A5-0193/2003.