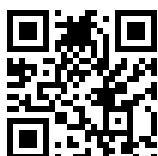


Handbook on the incompatibilities and immunity of the Members of the European Parliament



Handbook on the incompatibilities and immunity of the Members of the European Parliament

Abstract

Upon request by the Committee on Legal Affairs, this handbook, provided by the Policy Department for Citizens' Rights and Constitutional Affairs, summarises, in its first part, the EU legal framework on the incompatibilities and immunity of Members of the European Parliament. Based on national reports, the second part of the handbook gives an overview, for each EU Member State, of the relevant national provisions on the composition of national governments and parliaments as well as those on national parliamentary immunities.

This handbook will be updated regularly based on information received; please hold as reference the date of edition.

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CONTENTS

LIST OF TABLES	21
INTRODUCTORY REMARKS	22
ACKNOWLEDGEMENTS	22
PART I - EU LEGAL FRAMEWORK ON THE INCOMPATIBILITIES AND IMMUNITY OF THE MEMBERS OF THE EUROPEAN PARLIAMENT	23
1. Parliamentary immunities – an overview	23
1.1. Absolute immunity for opinions and votes (Article 8 of the PPI)	24
1.2. Immunity from prosecution, arrest and detention (Article 9 of the PPI)	25
1.3. Relationship between the immunities granted by Articles 8 and 9 of the PPI and the privilege provided for by Article 7 of the PPI	26
1.4. Immunities and fundamental rights: finding the right balance	26
2. Absolute immunity for opinions and votes (Article 8 of the PPI)	29
2.1. Duration of the non-liability	29
2.2. Scope of the non-liability	30
2.2.1. A spatial criterion...	30
2.2.2. ... and an analysis of the “nature and contents” of the speech	31
2.3. Who decides whether the principle of absolute immunity applies?	33
3. Immunity from prosecution, arrest and detention (Article 9 of the PPI)	35
3.1. Duration of the immunity	36
3.2. Scope of the immunity	37
4. Procedures and general principles	39
4.1. Defence of privilege and immunities	39
4.2. Immunity procedures	41
4.2.1. Ordinary procedure for waiver or defence of immunity	41
4.2.2. Urgent procedure	41
4.3. General principles	41
5. Incompatibilities with the office of Member of the European Parliament	43
PART II - NATIONAL REPORTS	45
BELGIUM	47
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	47
1.1 Member of the Government of a Member State.	47
1.1.1 Legal provisions on the composition of the Belgian federal government	47
1.1.2 Denomination of the members of the Belgian federal government	47

1.1.3. Date of the beginning of the term of office	48
1.2. Member of a national parliament	48
1.2.1. Legal provisions on the composition of the Belgian federal parliament	48
1.2.2. Denomination of the members of the Belgian Federal Parliament	48
1.2.3. Date of the beginning of the term of office	49
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	49
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	51
2.1. Legal provisions on the national parliamentary immunities	51
2.1.1. Constitution	51
2.1.2. Implementing provisions	52
2.2. Scope and content of national parliamentary immunities	52
2.2.1. Non-liability principle (Article 58 of the Constitution)	52
2.2.2. Immunity (Article 59 of the Constitution)	52
2.3. National authority entitled to request the immunity of a Belgian member of the European Parliament to be waived	53
BULGARIA	54
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	54
1.1. Member of the Government of a Member State	54
1.1.1. Legal provisions on the composition of the Bulgarian government	54
1.1.2. Denomination of the members of the Bulgarian government	54
1.1.3. Date of the beginning of the term of office	54
1.2. Member of a national parliament	55
1.2.1. Legal provisions on the composition of the Bulgarian Parliament	55
1.2.2. Denomination of the members of the Bulgarian Parliament	55
1.2.3. Date of the beginning of the term of office	55
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	56
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	58
2.1. Legal provisions on the national parliamentary immunities	58
2.1.1. Constitution	58
2.1.2. Implementing provisions	58
2.2. Scope and content of national parliamentary immunities	59
2.2.1. Non-liability principle (Article 69 of the Constitution)	59

2.2.2. Immunity (Article 70 of the Constitution)	60
2.3. National authority entitled to request the immunity of a Bulgarian Member of the European Parliament to be waived	60
CZECH REPUBLIC	61
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	61
1.1. Member of the Government of a Member State	61
1.1.1. Legal provisions on the composition of the Czech government	61
1.1.2. Denomination of the members of the Czech government	61
1.1.3. Date of the beginning of the term of office	62
1.2. Member of a national parliament	62
1.2.1. Legal provisions on the composition of the Czech Parliament	62
1.2.2. Denomination of the members of the Czech Parliament	62
1.2.3. Date of the beginning of the term of office	63
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	64
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	65
2.1. Legal provisions on the national parliamentary immunities	65
2.1.1. Constitution	65
2.1.2. Implementing provisions	66
2.2. Scope and content of national parliamentary immunities	66
2.2.1. Non-liability principle (Article 27(1) and (2) of the Constitution)	66
2.2.2. Immunity (Article 27(3), (4) and (5) of the Constitution)	66
2.3. National authority entitled to request the immunity of a Czech member of the European Parliament to be waived	66
DENMARK	67
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	67
1.1. Member of the Government of a Member State	67
1.1.1. Legal provisions on the composition of the Danish government	67
1.1.2. Denomination of the members of the Danish government	67
1.1.3. Date of the beginning of the term of office	67
1.2. Member of a national parliament	68
1.2.1. Legal provisions on the composition of the Danish Parliament	68
1.2.2. Denomination of the members of the Danish Parliament	68
1.2.3. Date of the beginning of the term of office	68

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	69
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	70
2.1. Legal provisions on the national parliamentary immunities	70
2.1.1. Constitution	70
2.1.2. Implementing provisions	70
2.2. Scope and content of national parliamentary immunities	70
2.2.1. Non-liability principle (Article 57, second sentence of the Constitutional Act)	70
2.2.2. Immunity (Article 57, first sentence, of the Constitutional Act)	70
2.3. National authority entitled to request the immunity of a Danish member of the European Parliament to be waived	71
GERMANY	72
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	72
1.1 Member of the Government of a Member State	72
1.1.1. Legal provisions on the composition of the German government	72
1.1.2. Denomination of the members of the German government	72
1.1.3. Date of the beginning of the term of office	72
1.2. Member of a national parliament	73
1.2.1. Legal provisions on the composition of the German Parliament	73
1.2.2. Denomination of the members of the German Parliament	73
1.2.3. Date of the beginning of the term of office	74
1.3. National authority competent to communicate cases of incompatibility to the European Parliament	74
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	75
2.1. Legal provisions on the national parliamentary immunities	75
2.1.1. Constitution	75
2.1.2. Implementing provisions	75
2.2. Scope and content of national parliamentary immunities	76
2.2.1. Non-liability principle (Article 46(1) of the Basic Law)	76
2.2.2. Immunity (Article 46(2) and (3) of the Basic Law)	76
2.3. National authority entitled to request the immunity of a German member of the European Parliament to be waived	76
ESTONIA	78
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	78

1.1. Member of the Government of a Member State	78
1.1.1. Legal provisions on the composition of the Estonian government	78
1.1.2. Denomination of the members of the Estonian government	78
1.1.3. Date of the beginning of the term of office	78
1.2. Member of a national parliament	79
1.2.1. Legal provisions on the composition of the Estonian Parliament	79
1.2.2. Denomination of the members of the Estonian Parliament	79
1.2.3. Date of the beginning of the term of office	79
1.3. National authority competent to communicate cases of incompatibility to the European Parliament	80
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	81
2.1. Legal provisions on the national parliamentary immunities	81
2.1.1. Constitution	81
2.1.2. Implementing provisions	82
2.2. Scope and content of national parliamentary immunities	83
2.2.1. Non-liability principle (Article 62 of the Constitution)	83
2.2.2. Immunity (Article 76 of the Constitution)	83
2.3. National authority entitled to request the immunity of an Estonian Member of the European Parliament to be waived	84
IRELAND	85
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	85
1.1. Member of the Government of a Member State	85
1.1.1. Legal provisions on the composition of the Irish government	85
1.1.2. Denomination of the members of the Irish government	86
1.1.3. Date of the beginning of the term of office	86
1.2. Member of a national parliament	86
1.2.1. Legal provisions on the composition of the Irish Parliament	86
1.2.2. Denomination of the members of the Irish Parliament	87
1.2.3. Date of the beginning of the term of office	87
1.3. National authority competent to communicate cases of incompatibility to the European Parliament	88
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	89
2.1. Legal provisions on the national parliamentary immunities	89
2.1.1. Constitution	89

2.1.2. Implementing provisions	89
2.2. Scope and content of national parliamentary immunities	90
2.2.1. Non-liability principle	90
2.2.2. Immunity	90
2.3. National authority entitled to request the immunity of an Irish member of the European Parliament to be waived	90
GREECE	91
1. National legal provisions determining the scope and the content of the incompatibilities referred to in the first indent of Article 7(1) AND ARTICLE 7(2) of the 1976 Act	91
1.1. Member of the Government of a Member State	91
1.1.1. Legal provisions on the composition of the Greek Government	91
1.1.2. Denomination of members of the Greek Government	91
1.1.3. Date of the beginning of the term of office	92
1.2. Member of a national parliament	92
1.2.1. Legal provisions on the composition of the Greek Parliament	92
1.2.2. Denomination of Greek Members of Parliament	92
1.2.3. Date of the beginning of the term of office	93
1.3. National authority competent to communicate cases of incompatibility to the European Parliament	93
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	94
2.1. Legal provisions on the national parliamentary immunities	94
2.1.1. Constitution	94
2.1.2. Implementing provisions	94
2.2. Scope and content of national parliamentary immunities	95
2.2.1. Non-liability principle (Article 61 of the Constitution)	95
2.2.2. Immunity (Article 62 of the Constitution)	95
2.3. National authority entitled to request the immunity of a Greek Member of the European Parliament to be waived	96
SPAIN	97
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	97
1.1. Member of the Government of a Member State	97
1.1.1. Legal provisions on the composition of the Spanish government	97
1.1.2. Denomination of the members of the Spanish government	97
1.1.3. Date of the beginning of the term of office	97
1.2. Member of a national parliament	98

1.2.1.	Legal provisions on the composition of the Spanish Parliament	98
1.2.2.	Denomination of the members of the Spanish Parliament	98
1.2.3.	Date of the beginning of the term of office	99
1.3.	National authorities competent to notify to the European Parliament of newly elected Members of the European Parliament and cases of incompatibility	99
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	100
2.1.	Legal provisions on the national parliamentary immunities	100
2.1.1.	Constitution	100
2.1.2.	Implementing provisions	100
2.2.	Scope and content of national parliamentary immunities	100
2.2.1.	Non-liability principle (Article 71.1 of the Constitution)	100
2.2.2.	Immunity (Article 71.2 of the Constitution)	101
2.3.	National authority entitled to request the immunity of a Spanish member of the European Parliament to be waived	101
FRANCE		102
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	102
1.1.	Member of the Government of a Member State	102
1.1.1.	Legal provisions on the composition of the French government	102
1.1.2.	Denomination of the members of the French government	102
1.1.3.	Date of the beginning of the term of office	102
1.2.	Member of a national parliament	103
1.2.1.	Legal provisions on the composition of the French Parliament	103
1.2.2.	Denomination of the members of the French Parliament	103
1.2.3.	Date of the beginning of the term of office	104
1.3.	National authorities competent to notify to the European Parliament of newly elected Members of the European Parliament and cases of incompatibility	104
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	105
2.1.	Legal provisions on the national Parliamentary immunities	105
2.1.1.	Constitution	105
2.1.2.	Implementing provisions	105
2.2.	Scope and content of national parliamentary immunities	106
2.2.1.	Non-liability principle (Article 26 (1) of the Constitution)	106
2.2.2.	Immunity (Article 26 (2) and (3) of the Constitution)	106
2.3.	National authority entitled to request the immunity of a French member of the European Parliament to be waived	106

CROATIA	107
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	107
1.1. Member of the Government of a Member State	107
1.1.1. Legal provisions on the composition of the Croatian government	107
1.1.2. Denomination of the members of the Croatian government	107
1.1.3. Date of the beginning of the term of office	107
1.2. Member of a national Parliament	108
1.2.1. Legal provisions on the composition of the Croatian Parliament	108
1.2.2. Denomination of the members of the Croatian Parliament	109
1.2.3. Date of the beginning of the term of office	109
1.3. National authorities competent to notify to the European Parliament of newly elected Members of the European Parliament and cases of incompatibility	110
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	111
2.1. Legal provisions on the national parliamentary immunities	111
2.1.1. Constitution	111
2.1.2. Implementing provisions	111
2.2. Scope and content of national parliamentary immunities	111
2.2.1. Non-liability principle (Article 75(2) of the Constitution)	111
2.2.2. Immunity (Article 75 (3), (4) and (5) of the Constitution)	112
2.3. National authority entitled to request the immunity of a Croatian member of the European Parliament to be waived	113
ITALY	114
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	114
1.1. Member of the Government of a Member State	114
1.1.1. Legal provisions on the composition of the Italian government	114
1.1.2. Denomination of the members of the Italian government	114
1.1.3. Date of the beginning of the term of office	115
1.2. Member of a national parliament	115
1.2.1. Legal provisions on the composition of the Italian Parliament	115
1.2.2. Denomination of the members of the Italian Parliament	115
1.2.3. Date of the beginning of the term of office	116
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	117

2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	118
2.1.	Legal provisions on the national parliamentary immunities	118
2.1.1.	Constitution	118
2.1.2.	Implementing provisions	118
2.2.	Scope and content of national parliamentary immunities	118
2.2.1.	Non-liability principle (Article 68, first paragraph, of the Constitution)	119
2.2.2.	Immunity (Article 68, second and third paragraphs, of the Constitution)	119
2.3.	National authority entitled to request the immunity of an Italian member of the European Parliament to be waived	120
2.3.1.	Non-liability principle (Article 68, first paragraph, of the Constitution)	120
2.3.2.	Immunity (Article 68, second and third paragraphs, of the Constitution)	120
CYPRUS		122
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	122
1.1.	Member of the Government of a Member State	122
1.1.1.	Legal provisions on the composition of the Cypriot government	122
1.1.2.	Denomination of the members of the Cypriot government	122
1.1.3.	Date of the beginning of the term of office	123
1.2.	Member of a national parliament	123
1.2.1.	Legal provisions on the composition of the Cypriot Parliament	123
1.2.2.	Denomination of the members of the House of Representatives	124
1.2.3.	Date of the beginning of the term of office	124
1.3.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	125
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	126
2.1.	Legal provisions on the national parliamentary immunities	126
2.1.1.	Constitution	126
2.1.2.	Implementing provisions	126
2.2.	Scope and content of national parliamentary immunities	126
2.2.1.	Non-liability principle (Article 83(1) of the Constitution)	126
2.2.2.	Immunity (Article 83(2)-(4) of the Constitution)	127
2.3.	National authority entitled to request the immunity of a Cypriot member of the European Parliament to be waived	127
LATVIA		128

1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	128
1.1.	Member of the Government of a Member State	128
1.1.1.	Legal provisions on the composition of the Latvian government	128
1.1.2.	Denomination of the members of the Latvian government	128
1.1.3.	Date of the beginning of the term of office	128
1.2.	Member of a national parliament	129
1.2.1.	Legal provisions on the composition of the Latvian Parliament	129
1.2.2.	Denomination of the members of the Latvian Parliament	129
1.2.3.	Date of the beginning of the term of office	129
1.3.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	129
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	131
2.1.	Legal provisions on the national parliamentary immunities	131
2.1.1.	Constitution	131
2.1.2.	Implementing provisions	132
2.2.	Scope and content of national parliamentary immunities	132
2.2.1.	Non-liability principle (Article 28 of the Constitution)	132
2.2.2.	Immunity (Articles 29 - 31 of the Constitution)	132
2.3.	National authority entitled to request the immunity of a Latvian member of the European Parliament to be waived	133
LITHUANIA		134
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	134
1.1.	Member of the Government of a Member State	134
1.1.1.	Legal provisions on the composition of the Lithuanian government	134
1.1.2.	Denomination of the members of the Lithuanian government	134
1.1.3.	Date of the beginning of the term of office	134
1.2.	Member of a national parliament	135
1.2.1.	Legal provisions on the composition of the Lithuanian Parliament	135
1.2.2.	Denomination of the members of the Lithuanian Parliament	135
1.2.3.	Date of the beginning of the term of office	135
1.3.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	136
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	137
2.1.	Legal provisions on the national parliamentary immunities	137

2.1.1. Constitution	137
2.1.2. Implementing provisions	137
2.2. Scope and content of national parliamentary immunities	137
2.2.1. Non-liability principle (Article 62 (3) of the Constitution)	137
2.2.2. Immunity (Article 62 (2) of the Constitution)	138
2.3. National authority entitled to request the immunity of a Lithuanian member of the European Parliament to be waived	138
LUXEMBOURG	139
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	139
1.1. Member of the Government of a Member State	139
1.1.1. Legal provisions on the composition of the Luxembourgish government	139
1.1.2. Denomination of the members of the Luxembourgish government	139
1.1.3. Date of the beginning of the term of office	140
1.2. Member of a national parliament	140
1.2.1. Legal provisions on the composition of the Luxembourgish Parliament	140
1.2.2. Denomination of the members of the Luxembourgish Parliament	140
1.2.3. Date of the beginning of the term of office	140
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	141
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	142
2.1. Legal provisions on the national parliamentary immunities	142
2.1.1. Constitution	142
2.1.2. Implementing provisions	142
2.2. Scope and content of national parliamentary immunities	142
2.2.1. Non-liability principle (Article 68 of the Constitution)	143
2.2.2. Immunity (Article 69 of the Constitution)	143
2.3. National authority entitled to request the immunity of a Luxembourgish member of the European Parliament to be waived	143
HUNGARY	144
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	144
1.1. Member of the Government of a Member State	144
1.1.1. Legal provisions on the composition of the Hungarian government	144
1.1.2. Denomination of the members of the Hungarian government	144
1.1.3. Date of the beginning of the term of office	144

1.2. Member of a national Parliament	145
1.2.1. Legal provisions on the composition of the Hungarian National Assembly	145
1.2.2. Denomination of the members of the Hungarian National Assembly	145
1.2.3. Date of the beginning of the term of office	145
1.3. Other functions incompatible with the mandate of a Member of the European Parliament	146
1.4. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	146
2. National immunities as referred to by Article 9 a) of the Protocol on the privileges and immunities of the European Union	148
2.1. Legal provisions on the national parliamentary immunities	148
2.1.1. The Fundamental Law of Hungary	148
2.1.2. Implementing provisions	148
2.2. Scope and content of national parliamentary immunities	150
2.2.1. Non-liability principle (Article 73 of the Act on the Hungarian national Assembly)	150
2.2.2. Immunity (Articles 74 to 79 of the Act on the Hungarian National Assembly)	150
2.3. National authority entitled to request the immunity of a Hungarian member of the European Parliament to be waived	151
MALTA	152
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	152
1.1. Member of the Government of a Member State	152
1.1.1. Legal provisions on the composition of the Maltese government	152
1.1.2. Denomination of the members of the Maltese government	152
1.1.3. Date of the beginning of the term of office	153
1.2. Member of a national parliament	153
1.2.1. Legal provisions on the composition of the Maltese Parliament	153
1.2.2. Denomination of the members of the Maltese Parliament	154
1.2.3. Date of the beginning of the term of office	154
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	154
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	155
2.1. Legal provisions on the national parliamentary immunities	155
2.1.1. Constitution	155
2.1.2. Implementing provisions	155

2.2	Scope and content of national parliamentary immunities in Malta	155
2.2.1.	Non-liability principle (Article 65 (3) of the Constitution)	155
2.2.2.	Immunity (Article 65 (4) of the Constitution)	156
2.3.	National authority entitled to request the immunity of a Maltese member of the European Parliament to be waived	156
THE NETHERLANDS		157
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	157
1.1.	Member of the Government of a Member State	157
1.1.1.	Legal provisions on the composition of the Dutch government	157
1.1.2.	Denomination of the members of the Dutch government	157
1.1.3.	Date of the beginning of the term of office	157
1.2.	Member of a national parliament	158
1.2.1.	Legal provisions on the composition of the Dutch Parliament	158
1.2.2.	Denomination of the members of the Dutch Parliament	158
1.2.3.	Date of the beginning of the term of office	158
1.3.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat.	159
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	160
2.1.	Legal provisions on the national parliamentary immunities	160
2.1.1.	Constitution	160
2.1.2.	Implementing provisions	160
2.2.	Scope and content of national parliamentary immunities	160
2.2.1.	Non-liability principle (Article 71 of the Constitution)	160
2.2.2.	Immunity (Article 119 of the Constitution)	160
2.3.	National authority entitled to request the immunity of a Dutch member of the European Parliament to be waived	161
AUSTRIA		162
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	162
1.1.	Member of the Government of a Member State	162
1.1.1.	Legal provisions on the composition of the Austrian government	162
1.1.2.	Denomination of the members of the Austrian government	162
1.1.3.	Date of the beginning of the term of office	163
1.2.	Member of a national parliament	163
1.2.1	Legal provisions on the composition of the Austrian Parliament	163

1.2.2.	Denomination of the members of the Austrian Parliament	164
1.2.3.	Date of the beginning of the term of office	164
1.3.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	164
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	166
2.1.	Legal provisions on the national parliamentary immunities	166
2.1.1	Constitution	166
2.1.2.	Implementing provisions	167
2.2.	Scope and content of national parliamentary immunities	167
2.2.1.	Non-liability principle (Article 57(1) of the Constitution)	167
2.2.2.	Immunity (Article 57(2) and (3) of the Constitution)	168
2.3.	National authority entitled to request the immunity of an Austrian member of the European Parliament to be waived	169
POLAND		170
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	170
1.1.	Member of the Government of a Member State	170
1.1.1.	Legal provisions on the composition of the Polish government	170
1.1.2.	Denomination of the members of the Polish government	170
1.1.3.	Date of the beginning of the term of office	171
1.2.	Member of a national parliament	171
1.2.1.	Legal provisions on the composition of the Polish Parliament	171
1.2.2.	Denomination of the members of the Polish Parliament	172
1.2.3.	Date of the beginning of the term of office	172
1.3.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	172
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	174
2.1.	Legal provisions on the national parliamentary immunities	174
2.1.1.	Constitution	174
2.1.2.	Implementing provisions	175
2.2.	Scope and content of national parliamentary immunities	175
2.2.1.	Non-liability principle (Article 105 (1) of the Constitution)	175
2.2.2.	Immunity (Article 105 (2), (3), (4) and (5) of the Constitution)	175
2.3.	National authority entitled to request the immunity of a Polish Member of the European Parliament to be waived	176

PORTUGAL**177**

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Electoral Act 177
 - 1.1. Member of the Government of a Member State 177
 - 1.1.1. Legal provisions on the composition of the Portuguese government 177
 - 1.1.2. Denomination of the members of the Portuguese government 177
 - 1.1.3. Date of the beginning of the term of office 177
 - 1.2. Member of a national parliament 178
 - 1.2.1. Legal provisions on the composition of the Portuguese Parliament 178
 - 1.2.2. Denomination of the Members of the Portuguese Parliament 178
 - 1.2.3. Date of the beginning of the term of office 178
 - 1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat 178
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union 180
 - 2.1. Legal provisions on the national parliamentary immunities 180
 - 2.1.1. Constitution 180
 - 2.1.2. Implementing provisions 180
 - 2.2. Scope and content of national parliamentary immunities 181
 - 2.2.1. Non-liability principle (Article 157.1 of the Constitution) 181
 - 2.2.2. Immunity (Article 157.2, 157.3 and 157.4 of the Constitution) 181
 - 2.3. National authority entitled to request the immunity of a Portuguese Member of the European Parliament to be waived 182

ROMANIA**183**

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act 183
 - 1.1. Member of the Government of a Member State 183
 - 1.1.1. Legal provisions on the composition of the Romanian government 183
 - 1.1.2. Denomination of the members of the Romanian government 183
 - 1.1.3. Date of the beginning of the term of office 184
 - 1.2. Member of a national parliament 184
 - 1.2.1. Legal provisions on the composition of the Romanian Parliament 184
 - 1.2.2. Denomination of the members of the Romanian Parliament 185
 - 1.2.3. Date of the beginning of the term of office 185
 - 1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat 186

2.	National immunities as referred to by Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	187
2.1.	Legal provisions on the national parliamentary immunities	187
2.1.1.	Constitution	187
2.1.2.	Legislative provisions and rules of procedure	187
2.2.	Scope and content of national parliamentary immunities	188
2.2.1.	Non-liability principle (Article 72(1) of the Constitution)	188
2.2.2.	Immunity (Article 72(2) and (3) of the Constitution)	188
2.3.	National authority entitled to request the immunity of a Romanian member of the European Parliament to be waived	188
SLOVENIA		190
1.	National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	190
1.1.	Member of the Government of a Member State	190
1.1.1.	Legal provisions on the composition of the Slovene government	190
1.1.2.	Denomination of the members of the Slovene government	190
1.1.3.	Date of the beginning of the term of office	191
1.2.	Member of a national parliament	191
1.2.1.	Legal provisions on the composition of the Slovenian Parliament	191
1.2.2.	Denomination of the members of the Slovene Parliament	192
1.2.3.	Date of the beginning of the term of office	193
1.3.	Member of the National Council of the Republic of Slovenia	193
1.3.1.	Election of representatives of functional interests	194
1.3.2.	Election of representatives of local interests	195
1.3.3.	Implementing provisions	195
1.3.4.	Denomination of the members of the National Council	195
1.3.5.	Date of the beginning of the term of office	196
1.3.6.	Immunity	196
1.4.	National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	198
2.	National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	199
2.1.	Legal provisions on the national parliamentary immunities	199
2.1.1.	Constitution	199
2.1.2.	Implementing provisions	199
2.2.	Scope and content of national parliamentary immunities	199
2.2.1.	Non-liability principle (Article 83 (1) of the Constitution)	200

2.2.2. Immunity (Article 83 (2) of the Constitution)	200
2.3. National authority entitled to request the immunity of a Slovenian member of the European Parliament to be waived	200
SLOVAKIA	202
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	202
1.1. Member of the Government of a Member State	202
1.1.1. Legal provisions on the composition of the Slovak government	202
1.1.2. Denomination of the members of the Slovak government	202
1.1.3. Date of the beginning of the term of office	202
1.2. Member of a national parliament	203
1.2.1. Legal provisions on the composition of the Slovak Parliament	203
1.2.2. Denomination of the members of the Slovak Parliament	203
1.2.3. Date of the beginning of the term of office	203
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	204
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	205
2.1. Legal provisions on the national parliamentary immunities	205
2.1.1. Constitution	205
2.1.2. Implementing provisions	206
2.2. Scope and content of national parliamentary immunities	206
2.2.1. Non-liability principle (Article 78(1) and (2) of the Constitution)	206
2.2.2. Immunity (Article 78(3) and (4) of the Constitution)	206
2.3. National authority entitled to request the immunity of a Slovak member of the European Parliament to be waived	207
FINLAND	208
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	208
1.1. Member of the Government of a Member State	208
1.1.1. Legal provisions on the composition of the Finnish government	208
1.1.2. Denomination of the members of the Finnish government	209
1.1.3. Date of the beginning of the term of office	209
1.2. Member of a national parliament	209
1.2.1. Legal provisions on the composition of the Finnish Parliament	209
1.2.2. Denomination of the members of the Finnish Parliament	210
1.2.3. Date of the beginning of the term of office	210

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	211
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	212
2.1. Legal provisions on the national parliamentary immunities	212
2.1.1. Constitution	212
2.1.2. Implementing provisions	212
2.2. Scope and content of national parliamentary immunities	212
2.2.1. Limited liability principle (Section 30 of the Constitution)	212
2.2.2. Immunity (Section 30 of the Constitution)	213
2.3. National authority entitled to request the immunity of a Finnish member of the European Parliament to be waived	213
SWEDEN	214
1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act	214
1.1. Member of the Government of a Member State	214
1.1.1. Legal provisions on the composition of the Swedish government	214
1.1.2. Denomination of the members of the Swedish government	214
1.1.3. Date of the beginning of the term of office	214
1.2. Member of a national parliament	215
1.2.1. Legal provisions on the composition of the Swedish Parliament	215
1.2.2. Denomination of the members of the Swedish Parliament	215
1.2.3. Date of the beginning of the term of office	215
1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat	216
2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union	217
2.1. Legal provisions on the national parliamentary immunities	217
2.1.1. Constitution	217
2.1.2. Implementing provisions	217
2.2. Scope and content of national parliamentary immunities	218
2.2.1. Limited liability principle (Chapter 4, article 12, paragraph 1 of the Instrument of Government)	218
2.2.2. Immunity (Chapter 4, Article 12, Paragraph 2 of the Instrument of Government)	218
2.3. National authority entitled to request the immunity of a Swedish member of the European Parliament to be waived	219

LIST OF TABLES

Table 1: Official names of countries

45

INTRODUCTORY REMARKS

This handbook aims at facilitating the work of the Committee on Legal Affairs, which entails verifying the credentials of the newly elected Members of the European Parliament (MEPs), ruling on the validity of their mandate and considering the requests for the waiver or defence of parliamentary immunity.

The first part of the handbook briefly recalls the legal framework of the European Union (EU) governing the incompatibilities and the immunities of MEPs. In this context, it also incorporates the main parts of an in-depth analysis entitled "The immunity of Members of the European Parliament" previously provided by the Policy Department for Citizens' Rights and Constitutional Affairs¹.

The second part of the handbook is based on national reports summarising, for each EU Member State, the relevant national provisions regulating those national offices which are incompatible with the office of MEP, according to Article 7(1) and (2) of the 1976 Act concerning the election of the Members of the European Parliament by direct universal suffrage, as well as the national parliamentary immunities' systems. Each national report is divided into two chapters: The first chapter reports the national provisions on the composition of the governments and parliaments, the denomination of their respective members as well as the date of the beginning of their term of office. It also identifies the national authorities competent to communicate to Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat. The second chapter provides an overview of the national rules on parliamentary immunities and identifies the national authorities that are competent to request and communicate any waivers of MEPs' immunity.

This handbook is updated regularly. Please hold as reference the date of edition. In the current edition, **the updates concern the second part of the handbook, and, in particular, any changes in national rules, as regards competent national authorities in matters concerning newly elected MEPs, incompatibility and immunity.** These updates are based on official letters from Permanent Representations of the Member States. Please check with the Policy Department for Citizens' Rights and Constitutional Affairs whether the version you are reading is the latest one.

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¹ [The immunity of Members of the European Parliament](#), European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2014. Authors: Rosa Raffaelli and Sarah Salome SY.

PART I - EU LEGAL FRAMEWORK ON THE INCOMPATIBILITIES AND IMMUNITY OF THE MEMBERS OF THE EUROPEAN PARLIAMENT

1. Parliamentary immunities – an overview

The EU enjoys in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union (Article 343, TFEU). In accordance with Articles 8 and 9 of that Protocol (hereinafter PPI), MEPs enjoy a specific regime of immunities, whose scope and manner of application is further clarified by the Rules of Procedure of the European Parliament (RoP) and the case-law of the Court of Justice of the European Union (CJEU).

MEPs, in common with members of national parliaments in most EU Member States, enjoy a double system of immunity: **absolute immunity** for the opinions expressed and votes cast in the exercise of their duties, and **relative immunity** from arrest and detention during the sessions of the European Parliament (Parliament). However, while absolute immunity is based exclusively on EU law, and is therefore uniform for all Members, the scope of relative immunity under Article 9(1) PPI depends, in most cases, on the rules applicable to national Members of Parliament.

Articles 8 and 9 of the PPI, which have the status of EU primary law, provide as follows:

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;*
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.*

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

These provisions are further clarified in EU secondary law, in particular, in Rules 5 to 9 of the European Parliament's Rules of Procedure and in Annex VI thereto.

The Rules of Procedure make it clear that parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members (Rule 5) and that Parliament, in the exercise of its powers in respect of privileges and immunities, acts to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties. In addition, Rules 7 to 9 describe the procedures that Parliament follows when dealing with requests to defend or to waive a Member's immunity, as well as the special

procedure applicable in cases where urgent action is necessary.² Annex VI to the RoP specifies that the committee responsible for privileges and immunities, as well as for verification of Members' credentials, is the Committee on Legal Affairs.³

The CJEU⁴ has confirmed the need to distinguish between the immunity based on "Article 8 of the Protocol, which establishes absolute immunity, the content of which is determined solely by European law and which cannot be waived by the Parliament," and the one based on Article 9 of the Protocol, which "refers to the national rules of the Member State of origin of the Member of the Parliament as regards the terms and scope of the immunity established in favour of that Member" and which "can, if necessary, be waived by the Parliament."

1.1. Absolute immunity for opinions and votes (Article 8 of the PPI)

The immunity provided for in Article 8 serves to protect the freedom of expression of MEPs, as has been expressly recognised by the CJEU.⁵ This rule provides for an absolute immunity barring any judicial proceedings in respect of an opinion expressed or a vote cast in the exercise of parliamentary duties.⁶ This form of immunity falls under the category of **substantive** or **functional immunity** and is also known as **non-liability** or **parliamentary privilege** (*irresponsabilité* in French, *Indemnität* in German, *insindacabilità* in Italian).

In practice, MEPs enjoy an enhanced protection of their freedom of expression with regard to opinions expressed in the exercise of their functions: this immunity therefore aims at protecting the integrity of political discourse and, thus, is of paramount importance for the proper functioning of representative democracy.⁷ Indeed, as underlined by Advocate General Poiares Maduro, "taking measures against a Member in respect of an opinion he has expressed or a vote he has cast in his capacity as an MEP would offend against the institution of Parliament itself, since it would undermine its place as the forum *par excellence* of open debate and democratic deliberation."⁸ This form of immunity, while limited in scope (it covers only votes and opinions expressed in the exercise of the Member's functions), is unlimited in time: as long as the vote or opinion is connected to the Member's mandate, it may not be the subject of any legal proceedings, even once the person steps down from the mandate. Moreover, this immunity depends exclusively on EU law, and its contents and scope of application must be established on the basis of EU law alone.⁹

Absolute immunity of MEPs cannot be waived, nor can it be renounced by the Member concerned. Absolute immunity is, in essence, intended to apply to statements made by Members within the

² See [Rules of Procedure of the European Parliament, 9th parliamentary term \(September 2021\)](#).

³ See [Rules of Procedure, Annex VI, Section XVI, point 10](#).

⁴ See [Judgment of the General Court \(First Chamber\) of 17 January 2013, Bruno Gollnisch v European Parliament, Joined cases T-346/11 and T-347/11, EU:T:2013:23](#), hereinafter 'Bruno Gollnisch case'.

⁵ See [Judgment of the Court of \(Grand Chamber\) of 21 October 2008, Alfonso Luigi Marra v Eduardo De Gregorio and v Antonio Clemente, Joined Cases C-200/07 and C-201/07, EU:C:2007:356](#), hereinafter 'Marra case', para. 27.

⁶ Ibid.

⁷ See Lenaerts, K., "The principle of democracy in the case law of the European Court of Justice", in *International and Comparative Law Quarterly*, 2013, 62(2), 271-315, at 291.

⁸ Opinion of Advocate General Poiares Maduro in the Marra case, 26 June 2008, para. 12.

⁹ [Judgment of the Court \(Grand Chamber\) of 6 September 2011, Patriciello, C 163/10, EU:C:2011:543](#), hereinafter 'Patriciello case', para. 25.

precincts of Parliament; however, it is not impossible that statements expressed outside the Parliament may also amount to an exercise of a Member's duties.¹⁰ In the latter case, doubts may sometimes arise as to whether the opinion was expressed "in the performance of their duties;" the case-law of the CJEU and the practice of the Legal Affairs Committee have therefore clarified how this sentence is to be interpreted, and whose is the power to make a final determination on this matter.

1.2. Immunity from prosecution, arrest and detention (Article 9 of the PPI)

According to the CJEU,¹¹ the objective of Article 9 of the Protocol is to safeguard the independence of Members by ensuring that pressure, in the form of threats of arrest or legal proceedings, is not brought to bear on them during the sessions of the Parliament. It is therefore clear that this immunity falls under the category of **relative immunity**, also referred to as personal immunity (*ratione personae*), or **inviolability** (*inviolabilité* in French, *parlamentarische Unverletzlichkeit* or *Immunisation* in German, *improcedibilità* or *inviolabilità* in Italian).

The scope of MEPs' relative immunity varies depending on the place where the relevant incriminated act has been committed. Members who are in the territory of another Member State, or are travelling to or from the place of meeting of Parliament, enjoy an immunity which is regulated directly by EU law: they are therefore protected from any measure of detention and from legal proceedings, in accordance with Article 9(1)(b) and (2) of the PPI. On the other hand, when a Member is in the territory of his/her own Member State, the scope of his/her immunity depends on national law:¹² MEPs from different Member States enjoy very different regimes of relative immunity (from full protection from arrest, detention and prosecution, to no protection at all).

As a general rule, relative immunity, when applicable, only protects Members as long as they are in office; its aim is to ensure that the exercise of their mandate is not hindered by politically motivated accusations or convictions. Relative immunity is not limited to acts committed in the exercise of the functions, but extends to any act committed by the Member. However, such immunity is temporary: once the Member no longer performs the function, he/she may be subjected to prosecution and detention even for acts committed while in office. Moreover, as is explicitly stated in the third paragraph of Article 9 of the PPI, and regardless of national laws, relative immunity never extends to cover cases in which a Member is caught in the act of committing the crime (*in flagrante delicto*), since in such cases the risk of a politically motivated prosecution is very limited if not absent. Additionally, the European Parliament has the right to waive the immunity in the cases Article 9, first paragraph, subparagraphs (a) and (b) of the PPI, and it generally does so save if, after examining the circumstances of the case, it finds that there are reasons to believe that the prosecution is politically motivated (so called *fumus persecutionis*: see below, at 4. 3).¹³

For the immunity under Article 9, second paragraph, the CJEU has in its judgment of 19 December 2019 in Case *Oriol Junqueras Vies* (C-502/19) stated that a person whose election to Parliament has been

¹⁰ CJEU, *Patriciello* case, cited above, at paras 29-30.

¹¹ See [Judgment of Court of First Instance \(Seventh Chamber\) of 15 October 2008, Ashley Neil Mote v European Parliament, T-345/05, EU:T:2008:440](#), para. 50.

¹² See Hardt, S., *Parliamentary immunity*, Intersentia, Cambridge, 2013.

¹³ For a statistical analysis of decisions taken during the various legislatures (up until the 6th), see European Parliament, OPED, *Non-labile? Inviolabile? Untouchable? The challenge of parliamentary immunities*, 2012, p. 33.

officially proclaimed by the competent authority of the Member State in which the election took place, acquires the status of Member of Parliament from that moment, and consequently enjoys the immunities outlined in the PPI from the moment of the official announcement of the results¹⁴.

1.3. Relationship between the immunities granted by Articles 8 and 9 of the PPI and the privilege provided for by Article 7 of the PPI

In addition to the immunity provided for in Articles 8 and 9 of the PPI, MEPs are also entitled to a special protection of their freedom of movement under Article 7 of the PPI. In particular, Article 7(1) provides that *[n]o administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament*.

In the past, the question has arisen as to the relationship between this privilege and the immunities granted by Articles 8 and 9 of the PPI, in particular since the latter also provides for a special regime of protection of Members who are travelling to and from the place of meeting of the European Parliament. The CJEU finally resolved this issue, finding that the scope of application of Articles 7 and 9 of the PPI is not the same.¹⁵ Indeed, Article 7 refers to administrative or other restrictions to the freedom of movement of MEPs; those restrictions do not include restrictions arising out of legal proceedings, since the latter fall within the scope of Article 9, or of Article 8 in the specific area of opinions expressed and votes cast.¹⁶ Thus, the privilege provided for by Article 7 of the PPI does not apply to restrictions to the freedom of movement of MEPs imposed by courts in the course of legal proceedings (such as bail or detention);¹⁷ and Members who do not enjoy relative immunity under Article 9 (for instance, because it has been waived, because the circumstances of the case are such that it does not apply, or because their national law does not provide for it) may not invoke the privilege under Article 7.

1.4. Immunities and fundamental rights: finding the right balance

The exercise of parliamentary immunity may in some specific cases conflict with rights protected by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR), in particular the **right of access to a court** and the right of **freedom of expression**.

In *Castells vs. Spain*¹⁸ and *Jerusalem vs. Austria*¹⁹, two cases concerning **freedom of expression** under Article 10 of the ECHR, the European Court of Human Rights (ECtHR) recalled that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to their preoccupations and defends their interests.

¹⁴ [Judgment of the Court \(Grand Chamber\) of 19 December 2019, Oriol Junqueras Vies, Case C-502/19, EU:C:2019:1115](#), hereinafter '*Oriol Junqueras Vies case*', para 94.

¹⁵ CJEU, Judgment in the *Mote* case, cited above, para. 47.

¹⁶ *Ibid.*, at para. 49.

¹⁷ See also [Judgment of 15 September 1981, Rt. Hon. Lord Bruce of Donington v Eric Gordon Aspden, 208/80, EU:C:1981:194](#), at para. 14, arguing that the effect of Article 7(1) of the PPI "is to prohibit Member States from imposing *inter alia* by their practices in matters of taxation administrative restrictions on the free movement of Members of the Parliament."

¹⁸ ECtHR *Castells v. Spain* (no. 11798/85), 23 April 1992.

¹⁹ ECtHR *Jerusalem v. Austria* (no. 26958/95), 27 February 2001.

Accordingly, interferences with the freedom of expression of an opposition member of parliament call for the closest scrutiny on the part of the Court (*Castells v Spain*, para. 42).

*A. vs. United Kingdom*²⁰, the first case brought before the ECtHR on the conflict between Article 6 (**right to a fair trial**) of the ECHR and parliamentary immunity, can also be regarded as an important confirmation of the principle of freedom of speech and political debate. The Court concluded that the parliamentary immunity enjoyed by the MP in this case pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. The ECtHR stated that, “in all the circumstances of this case, the application of a rule of absolute Parliamentary immunity cannot be said to exceed the margin of appreciation allowed to States in limiting an individual's right of access to a court (para. 87).” The Court emphasised, however, that in the UK no immunity attaches to statements made outside of Parliament²¹ or to an MP's press statements, even if their contents are repeated subsequently in the parliamentary debate itself. The Court also stressed that, in the UK, victims of defamation do not remain completely without redress, since deliberately misleading statements may be punishable by Parliament as contempt.

In a subsequent case, the Court underlined the need to assess the existence of **a clear connection** between the Member's opinions and a parliamentary activity: thus, for instance, ironic or derisive letters accompanied by toys personally addressed to a prosecutor cannot be construed as falling within the scope of parliamentary functions, but are more consistent with a personal quarrel and, thus, should not be covered by absolute immunity.²² The CJEU has taken over this criterion in his judgement in the *Patriciello* case (“direct and obvious link”)²³.

The question whether parliamentary privilege extends to **the press** was further examined by the Strasbourg Court in *Belpietro v Italy*.²⁴ The case concerned the obligation of an editor of a newspaper to control what is published, in order to prevent the publication of defamatory articles in particular. This duty does not disappear when it concerns an article written by a member of parliament, as otherwise, according to the Court, this would amount to an absolute freedom of the press to publish any statement of members of parliament in the exercise of their parliamentary mandate, regardless of its defamatory or insulting character.

Moreover, the European Commission for democracy through law (the so-called Venice Commission), an advisory body to the Council of Europe, recently adopted a report on the scope and lifting of parliamentary immunity.²⁵ The Venice Commission reviewed the existing national rules on absolute and relative immunity of Members of Parliaments, assessing them in the light of the need to protect the rule of law, and proposed several guidelines and criteria for regulating and lifting parliamentary immunity. Accordingly, it argued that, while national rules on absolute immunity are, as a general rule, well-justified, at least as long as they do not extend to private statements of Members of Parliament, existing domestic rules on relative immunity might need to be reformed so as to limit chances of misuse which might infringe the rule of law, obstruct the course of justice and undermine democracy. Interestingly, the Venice Commission suggested that the rules on immunity applicable in the European

²⁰ ECtHR *A. v. United Kingdom* (no. 35373/97), 17 December 2002.

²¹ See also ECtHR *Kart v. Turkey* (no. 8917/05), 3 December 2009.

²² ECtHR *Cordova v. Italy* (no. 40877/98) and (no. 45649/99), 30 January 2003. For a commentary, see Kloth, M, *Immunities and the right of access to court under Article 6 of the European Convention on Human Rights*, Martinus Nijhoff Publisher, Leiden, 2010, p. 186 ff.

²³ CJEU, Judgment in the *Patriciello* case, cited above, at para. 35.

²⁴ ECtHR *Belpietro v. Italy* (no. 43612/10), judgement of 24 September 2013.

²⁵ See [Venice Commission, Report on the scope and lifting of parliamentary immunities](#), Strasbourg 14 May 2014.

Parliament, as well as in the Parliamentary Assembly of the Council of Europe, could be a source of inspiration for national reforms, since they reflect a common European consensus on the issue.²⁶

²⁶ Ibid., para. 201.

2. Absolute immunity for opinions and votes (Article 8 of the PPI)

According to Article 8 of the PPI:

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

This immunity for votes and opinions ensures that Members of the European Parliament enjoy an enhanced protection of their freedom of expression. It protects MEPs in their capacity as democratically elected representatives of the people, as well as Parliament as the place of political discussion. As clarified by the CJEU, the scope of this immunity must be established on the basis of EU law alone;²⁷ national laws protecting the immunity of national parliamentarians are irrelevant for this purpose.

Absolute immunity protects Members of the European Parliament from any type of proceedings (civil, criminal or administrative) for votes or opinions expressed in the exercise of their duties. Thus, votes and opinions expressed by MEPs in the performance of their duties are subject only to the conventions of parliamentary etiquette, whose application is the responsibility of Parliament alone.²⁸ It has been suggested by Advocate General Jääskinen that this parliamentary immunity includes “not only rights but also responsibilities:” although MEPs benefit, in the exercise of their functions, from substantive immunity, they are still subject to the rules of conduct laid down by the institution, and thus, may be subjected to disciplinary measures, insofar as these are provided for in the RoP.²⁹

2.1. Duration of the non-liability

According to European Parliament’s reports, absolute immunity begins from the time of publication of the results of the elections to the European Parliament; thus, MEPs are granted this form of protection regardless of whether their credentials have (yet) been verified.³⁰ However, this interpretation was previously not unanimously shared by scholars, as some argued that absolute immunity begins after the opening of the first session following the election.³¹ For the immunity under Article 9(2), this issue has been solved by the CJEU in its landmark judgment of 19 December 2019 in Case *Oriol Junqueras Vies* (C-502/19). The CJEU stated that a person whose election to Parliament has been officially proclaimed by the competent authority of the Member State in which the election took place, acquires

²⁷ See CJEU, Judgment in the *Marra* case, para. 26.

²⁸ Also see ECtHR, *A. v. UK*, cited above, at para. 86: the Strasbourg Court took into account the rules on parliamentary discipline to assess the compatibility of absolute immunity with the ECHR (and in particular, with the right to a fair trial), considering them as a way of providing some form of redress to victims of defamation.

²⁹ Opinion of Advocate General Jääskinen in the *Patriciello* case, 9 June 2011, para. 57-59.

³⁰ See report on the request for upholding of the immunity and privileges of Mr Francesco Musotto, 20 June 2003, A5-0248/2003. Mr Musotto had been elected as an MEP in the elections of 10 to 13 June 1999, and charges had been brought against him with reference to an opinion expressed on 16 June 1999. Also see Bruno, A., di Gesù, J., “Lo status del parlamentare europeo,” in Caretti, P., Morisi, M. and Tarli Barbieri, G. (ed.), *Lo status di membro del Parlamento in prospettiva comparata*, 2012, p. 4.

³¹ Article 3 of the 1976 Act states that the term of office of each representative begins and ends at the same time as the five-year period for which he is elected (paragraph 3) and that that period begins ‘at the opening of the first session following each election’ (paragraph 2). It could thus be concluded that, with respect to elected representatives who were not Members of the previous Parliament, parliamentary immunity is effective from the date of opening of the first session following their election. See Caveró Gómez, M., “La inmunidad de los diputados en el Parlamento Europeo,” *Revista de las Cortes Generales*, Separata No 20, 1990, pp. 16 and 17.

the status of Member of Parliament from that moment, and consequently enjoys the immunities outlined in the PPI from the moment of the official announcement of the results³². However, Article 8 remains only applicable after the first (constitutive) plenary session of the newly elected Parliament has taken place. Indeed, the parliamentary mandate of newly elected MEPS which may give rise to "opinions" or "votes" within the meaning of Article 8 PPI only starts at that moment.³³

MEPs enjoy absolute immunity for votes and opinions expressed in the performance of their duties even after the end of their mandate: opinions expressed during the mandate, and constituting an exercise of the functions related to it, cannot be the subject of legal proceedings even once the MEP has stepped down from his/her functions.

2.2. Scope of the non-liability

One of the most complex issues relating to the application of absolute immunity is defining its scope of application. Indeed, MEPs are exempted from liability for the votes they cast and the opinions they express "in the performance of their duties;" while votes can always be considered as an act related to the Member's mandate, the question arises as to when an opinion must be deemed to have been expressed in the performance of duties.

Advocate General Poiares Maduro has suggested that the choice to limit absolute immunity to opinions expressed in the exercise of the functions, which is common to virtually all legal orders, is due to the need to prevent the creation of two classes of citizens - Members of Parliament, on the one hand, who are not amenable to the courts for the statements they make, and ordinary citizens, on the other, who may be subject to the limitations imposed on free speech by civil and criminal law. Indeed, this choice serves to ensure a balance between the **freedom of expression** of Members of Parliament, which is essential for their ability to perform their duties, and the right of citizens to **access to justice**, which is compromised whenever they feel aggrieved by a statement made by a Member of Parliament;³⁴ a narrow interpretation of parliamentary immunity is therefore necessary to protect the very foundations of **the rule of law**.³⁵ Thus, the question of which opinions are covered by parliamentary privilege is one which is essential for the correct functioning of democracy and the rule of law.

2.2.1. A spatial criterion...

Initially, scholars tended to agree that, while MEPs' absolute immunity covered opinions expressed in the precincts of the Parliament, be it during plenaries or in meetings of parliamentary bodies (such as committees or political groups), it did not extend to opinions expressed outside the context of Parliament and its bodies. Thus, for instance, it was usually argued that speeches at party congresses

³² CJEU, Judgment in the *Oriol Junqueras Vies* case, cited above, para 94.

³³ See Article 5(3) of the Electoral Act.

³⁴ See Opinion of Advocate General Poiares Maduro in the *Marra* case, para. 31.

³⁵ See *Lenaerts, K.*, cited above, at p. 291; ECtHR, *Cordova v. Italy*, cited above, para. 59.

or in election campaigns would not be covered by any immunity.³⁶ In practice, this resulted in the immunity being limited to the opinions expressed within the precincts of Parliament, in accordance with the constitutional traditions of several Member States.³⁷

This restrictive interpretation, however, has been gradually expanded, so as to cover even opinions expressed outside the precincts of Parliament. Indeed, as elaborated by Advocate General Poiares Maduro, historically parliamentary privilege was limited to speech in Parliament because, at the time, political discourse was concentrated within Parliament. In modern democracies, political discourse and debate on matters of public relevance takes place in a much broader forum, which includes printed and electronic media and the internet. Members of Parliaments are now expected to engage in dialogue with the civil society and present their ideas not only on the floor of Parliament, but also in the *fora* that civil society provides; consequently, the criterion determining which statements were made in the exercise of a Member's duties cannot be spatial, since the spatial criterion would be too narrow.³⁸ Subsequently, Advocate General Jääskinen elaborated further on this point: while agreeing that "the limitation of the scope of absolute immunity only to the place or seat of the Parliament no longer corresponds to the contemporary reality of political debate and cannot therefore succeed as an exclusive criterion," he also stressed "the importance of parliamentary premises as a privileged place of political debate."³⁹

This interpretation has been subsequently endorsed by the CJEU itself: in its decision in the case concerning Mr Patriciello, the Court ruled that "statements made by a Member of the European Parliament are not to lose this immunity merely because they were made outside the precincts of the European Parliament." Thus, the Court found that, while absolute immunity "is in essence intended to apply to statements made by those members within the very precincts of the European Parliament," it is not impossible that a statement made beyond those precincts may amount to an opinion expressed in the performance of their duties, because "whether or not it is such an opinion depends, not on the place where the statement was made, but rather on its character and content."⁴⁰ The Court then moved to identify the criterion to be used to ascertain whether a statement made by an MEP outside Parliament is covered by absolute immunity.

2.2.2. ... and an analysis of the "nature and contents" of the speech

It should now be clear that opinions expressed by MEPs beyond the precincts of Parliament may, in some cases, be considered as an exercise of parliamentary duties, and therefore be covered by absolute immunity. The criterion to be used to determine whether such opinions are covered by absolute

³⁶ See European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, [Parliamentary immunity in the European Parliament](#), 2007, page 8; also see Senén Hernández, M., "Inviolabilidad e inmunidad en el Parlamento Europeo", in *Revista de las Cortes Generales*, 1986, vol. 9, 319-333, at 322.

³⁷ Passaglia, P., "Introduzione," in Passaglia, P. (ed.), [L'insindacabilità delle opinioni espresse dai parlamentari](#).

³⁸ See Opinion of Advocate General Poiares Maduro in the *Marra* case, paras 33 to 35.

³⁹ In his Opinion, he therefore argued that opinions expressed by MEPs in the premises of the Parliament should not be treated in the same way as their speeches in other fora of political debate. See Opinion of Advocate General Jääskinen in the *Patriciello* case, para. 68-70.

⁴⁰ CJEU, Judgment in the *Patriciello* case, cited above, at paras 28 to 30.

immunity is one based on their character and content:⁴¹ it is therefore essential to examine the content of the opinion in order to evaluate whether it was expressed "in the performance of duties."

According to the Opinion of Advocate General Poiares Maduro, absolute immunity is to be interpreted broadly and offer wide protection, so as to secure a safe space for public discourse to take place.⁴² However, this rule is subject to two qualifications, which limit the application of the absolute immunity principle ensuring a fair balance between the privileges of MEPs, as elected representatives of the people, and the rights of ordinary citizens, and in particular their right to access to justice.

First, the opinion at issue must be about a genuine matter of public interest. Only a statement on an issue of general concern will be covered by absolute immunity; opinions expressed in the context of cases or disputes with other individuals that concern a MEP personally but have no wider significance for the general public are not protected. Indeed, if parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members, as clarified by Rule 5(2) RoP, it can only cover opinions that are relevant for such independence. This interpretation requires a clear focus on the nature of the subject-matter of the opinion. Even a possibly offensive or inaccurate statement may be protected, but only if it is linked to the expression of a particular point of view in discussing a matter of public interest.

Secondly, a distinction must be drawn between factual allegations against particular individuals and opinions. Article 8 of the Protocol expressly refers to "opinions", i.e., value judgments, which cannot be proven right or wrong: thus, when an MEP makes a value judgment about an issue of general importance, no matter how upsetting or offensive some people may find it, this should fall within the scope of application of the absolute immunity principle. On the contrary, Article 8 cannot cover factual allegations against other individuals: the person about whom the statement was made must be able to take recourse to courts to clear his/her name and the speaker should be called upon to prove the truth of his/her allegations, irrespective of whether he is a Member of Parliament.⁴³

Since the CJEU did not address this point in its decision in the *Marra* case, the issue arose again in the *Patriciello* case. Advocate General Jääskinen, in his Opinion, while moving from an analysis of the two criteria identified above (the distinction between factual allegations and value judgments, and the notion of genuine public interest), proposed a slightly different approach, suggesting the need to use an "organic" rather than "functional" link.⁴⁴ Indeed, after criticising the "functional" link and arguing that the concept of "opinion" should also include statements of facts, the Advocate General proposed that the Court should introduce a criterion specific to the nature of the duties of an MEP, on the basis of the case-law of the European Court of Human Rights and of the nature of the immunity, which is granted to allow the performance of the tasks of the Union (Article 343 TFEU). This criterion would link substantive immunity not to the content of a Member's comments, but rather to the relationship between the context in which those comments were made and the parliamentary work of the Parliament: thus, immunity would cover the activities of a MEP, not when he deals with matters which

⁴¹ CJEU, Judgment in the *Patriciello* case, cited above, para. 30.

⁴² See Opinion of Advocate General Poiares Maduro, cited above, para. 37.

⁴³ See Opinion of Advocate General Poiares Maduro, cited above, paras 35 to 40. The Advocate General also cites the case-law of the ECtHR, in particular, its judgment in the case *Patrino, Cascini and Stefanelli v. Italy*, in which the Court emphasised that the defendant had not expressed general political opinions on the relationship between the judiciary and the executive, but had attributed to the claimant specific acts of wrongful conduct and had suggested that they were criminally liable.

⁴⁴ See Opinion of Advocate General Jääskinen, cited above, at para. 74.

are of concern only to a national politician but when he carries out activities as a European parliamentarian.⁴⁵

The CJEU finally addressed the question of the scope of absolute immunity in its judgment in the *Patriciello* case. There, the Court ruled that a statement made by an MEP beyond the precincts of Parliament and giving rise to prosecution does not constitute an opinion expressed in the performance of his/her parliamentary duties unless that statement amounts to a subjective appraisal having a direct, obvious link with the performance of those duties.⁴⁶ More specifically, the Court held that "opinion", for the purpose of Article 8 of the PPI, must be understood "in a wide sense to include remarks and statements that, by their content, correspond to **assertions amounting to subjective appraisal**."⁴⁷ Moreover, in order to enjoy immunity, an opinion must have been expressed by an MEP "in the performance of [his/her] duties:" thus, there needs to be a link between the opinion expressed and the parliamentary duties. The Court draws an important conclusion from the scope of the absolute immunity, which is capable of preventing prosecution and trial of the offending MEP, and thus of denying the person damaged by his/her statement any judicial remedy whatsoever. For this reason, the connection between the opinion expressed and parliamentary duties must be direct and obvious: the statement must present **a direct and obvious link with a general interest of concern to citizens**.⁴⁸

Finally, it must be stressed that, even when an opinion is not considered to have been expressed in the exercise of the functions of an MEP, it might still be covered by the immunity foreseen by Article 9 of the PPI, if the relative immunity granted by national law of the Member State concerned so provides. Thus, once it is established that an opinion expressed beyond the precincts of Parliament does not have a direct and obvious link with the functions of an MEP, it remains to be seen whether it is covered by the immunity provided for in Article 9 of the PPI, based on the immunity granted to national parliamentarians under national law (for further details, see below, at 3.2).⁴⁹

2.3. Who decides whether the principle of absolute immunity applies?

One of the issues that have arisen, over time, concerning the application of the principle of absolute immunity is that of the competence to take a final, binding decision on whether a statement made by an MEP beyond the precincts of Parliament has been expressed in the exercise of his/her functions (and is therefore covered by absolute immunity) or not.

⁴⁵ See Opinion of Advocate General Jääskinen, cited above, at para. 96-107.

⁴⁶ CJEU, Judgment in the *Patriciello* case, conclusions.

⁴⁷ Ibid., para. 32.

⁴⁸ Ibid., paras 33 to 36. According to Hardt, the CJEU thus endorsed the "organic" criterion proposed by Advocate General Jääskinen, thus ensuring full compatibility of its interpretation of absolute immunity with the case-law of the ECtHR: see Hardt, S., cited above, at 53. However, others have held that the Court actually followed the Opinion of Advocate General Poiares Maduro (see e.g. Passaglia, P., cited above, at 106) and, indeed, the criteria identified by the Court seem to have much more in common with his interpretation. The judgment of the Court has been criticised as creating "a real danger that the European "public space" should become one not of vibrant discussion and competing narratives, but one in which expression is chilled for fears of civil or criminal prosecution just as any other individual would be:" see Mehta, R. S., "Sir Thomas' blushes: protecting parliamentary immunity in modern parliamentary democracies," in *European Human Rights Law Review*, 2012, 3, 309-318, at 318.

⁴⁹ See P. Passaglia, cited above, p. 109, for a list of recent decision in which the European Parliament first excluded the application of Article 8 of the PPI, and then examined a request to waive the immunity of the MEP concerned under Article 9.

The issue has been resolved by the CJEU, in its judgment in the *Marra* case. In that case, which concerned an alleged episode of distribution of insulting leaflets, the referring court had asked the CJEU to clarify who has the final competence to determine whether an opinion is covered by the MEPs' immunity, and more specifically whether national courts are required to request Parliament to waive a Member's immunity, and to await the Parliament's decision before ruling on the existence of such immunity.

The CJEU ruled that, in order to establish "whether the conditions for the absolute immunity provided for in Article 9 [now, Article 8] of the Protocol are met, the national court is not obliged to refer that question to the Parliament. The Protocol does not confer on the Parliament the power to determine, in cases of legal proceedings against one of its Members in respect of opinions expressed or votes cast by him, whether the conditions for applying that immunity are met." Consequently, the CJEU stated that "such an assessment is within the exclusive jurisdiction of the national courts which are called on to apply such a provision, and which have no choice but to give due effect to that immunity if they find that the opinions or votes at issue were expressed or cast in the exercise of parliamentary duties." In case of doubts as to the interpretation and application of Article 8 of the PPI, the national courts may refer a question to the Court under the procedure for references for preliminary rulings, but in no case are they obliged to refer the decision to Parliament.⁵⁰

In the same case, the Court also clarified the interpretation and modes of application of the Rules of Procedure of the European Parliament, and in particular, the relevance of the procedure laid down for the defence of privileges and immunity of MEPs (now Rule 7). As recognised by the Court, "the Rules of Procedure are rules of internal organisation and cannot grant powers to the Parliament which are not expressly acknowledged by a legislative measure, in this case by the Protocol." Thus, "even if the Parliament, pursuant to a request from the Member concerned, adopts, on the basis of those rules, a decision to defend immunity, that constitutes an opinion which does not have binding effect with regard to national judicial authorities." A decision of Parliament to defend the immunity of a MEP for an opinion he expressed, adopted in accordance with Rule 7 of the RoP, is in no way binding on the national judge.⁵¹ However, as the Court also clarified, the principle of sincere cooperation between the European institutions and the national authorities (explicitly recalled in Article 18 of the PPI) also applies in the context of the immunities of MEPs. Thus, when the competent national court is informed that a procedure for defence of the privileges and immunities of the MEP concerned has been initiated, it must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible.⁵² Yet, the final decision as to the application of the absolute immunity principle rests exclusively with the national court; if it finds that absolute immunity applies, it must dismiss the action brought against the Member, and Parliament may not waive his/her immunity.

⁵⁰ CJEU, Judgment in the *Marra* case, cited above, paras 32 to 35.

⁵¹ Ibid., paras 38 to 39. The Court further stressed that, once the national court has established that absolute immunity applies in a specific case, it is bound to respect that immunity, as is the Parliament: this type of immunity cannot be waived by the Parliament (para 44).

⁵² Ibid., paras 41 to 43.

3. Immunity from prosecution, arrest and detention (Article 9 of the PPI)

According to Article 9 of the PPI:

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

The text of Article 9 draws a clear distinction between the relative immunity that MEPs enjoy while in the territory of their Member State of election, which depends on the immunity granted to national Members of Parliament, and the one accorded to them while in the territory of any other Member State, or while travelling to and from the place of meeting of the European Parliament, which is regulated directly by EU law. In all cases, the inviolability of the MEPs is without prejudice to Parliament's right to exercise its right to waive the immunity of one of its Members.

This disparity of treatment has a historical reason: when the PPI was first adopted as an additional Protocol to the founding treaties of the three European Communities, the Assembly still consisted of delegates appointed by national parliaments from amongst their members, and Article 9 of the PPI became a compromise between member states with divergent concerns and traditions. In fact, at the time of drafting, all founding members except for the Netherlands had already extended a form of inviolability to their own members of parliament. Consequently, the Netherlands was unwilling to grant the European representatives a level of inviolability which the Dutch national parliamentarians themselves did not enjoy. On the other hand, the other member states were against limiting the protection enjoyed by the MEPs to non-liability. Therefore, it was agreed to differentiate between acts committed in a MEP's home country and those committed in another member state: For acts committed in their own country, MEPs have the same level of protection as members of their national parliament, whereas in other member states, MEPs are protected from prosecution by **Union immunity** (Article 9(b)). It has also been argued that this exceptional position for MEPs was created to avoid the national embarrassment of having a member of parliament face criminal charges in another member state.⁵³ In any event, as said, this immunity can also be waived as that of Article 9(1)(a), except if the Member is found in the act of committing an offence (*in flagrante delicto*).

This regime remained unchanged even after Parliament became a directly elected institution. Parliament has been calling for an amendment of the regime of immunities of MEPs, through the adoption of a common Statute for MEPs, already since 1983.⁵⁴ Subsequent calls for reform of the PPI,

⁵³ See [The European Parliament's quest for representative autonomy: An internal perspective](#), Buitenweg, K.M. (2016).

⁵⁴ See Resolution on the Statute of Members of the European Parliament, 15 September 1983, in OJ C 277, 17.10.1983, p. 135.

while numerous, have not led to any changes,⁵⁵ notwithstanding a decision taken by Council in 2005 to look into this issue.⁵⁶ The current regime of immunities still relies on national laws, thus leading to significant disparities between MEPs⁵⁷ and to difficulties for Parliament itself, whenever it needs to adopt a decision on the waiver of parliamentary immunity.

3.1. Duration of the immunity

Article 9, first paragraph, provides that Members enjoy the immunity granted by this rule **“during the sessions of the European Parliament”**. In practice, immunity is effective throughout the Member's five-years term of office, save in cases of resignation, incompatibility or death.⁵⁸

The precise meaning of the expression “during the sessions of the European Parliament” has been further defined in two judgments of the CJEU from which it can be concluded that Parliament holds **an annual session lasting 12 months** during which its Members enjoy the immunity defined in the PPI, even in the periods between part-sessions⁵⁹.

Since the immunity foreseen by Article 9, first paragraph, is a “personal” immunity, i.e. a form of **inviolability** of the person of Members of the European Parliament to ensure the normal functioning of the institution, Parliament has interpreted it as also covering actions committed by the Member before his/her election.⁶⁰ Thus, this immunity shields MEPs from being tried, during their mandate, even for facts committed before its beginning – but only as long as they are MEPs. Once a person ceases to be a Member of the European Parliament, this type of immunity ceases to apply and he may be tried for any action committed before or during the mandate, save of course for votes cast and opinions expressed in the exercise of his/her functions (to which Article 8 of the PPI continues to apply).

For Article 9, second paragraph, as mentioned before, the CJEU has stated that a person whose election to Parliament has been officially proclaimed by the competent authority of the Member State in which the election took place, acquires the status of Member of Parliament from that moment, and

⁵⁵ See for instance European Parliament resolution of 24 April 2009 on parliamentary immunity in Poland 2008/2232(INI), para. 7. For some historical remarks, and a summary of actions undertaken by the European Parliament in order to reform the current regime and ensure uniformity, see European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, [Parliamentary immunity in the European Parliament](#), 2007, cited above, pp. 4-5.

⁵⁶ See Declaration of the Representatives of the Member States, meeting within Council, of 3 June 2005 (doc. Council 9737/05).

⁵⁷ Indeed, some EU Member States do not grant national parliamentarians any form of relative immunity (e.g. the Netherlands, United Kingdom), whereas others attribute them protection from arrest or detention (e.g. Italy, France) or even from criminal prosecution (e.g. Spain). The system has even been called “discriminatory”: see Hardt, S., cited above, at 44.

⁵⁸ See OPPD, *Non-liable? Inviolable? Untouchable?* cited above, p. 23. This interpretation of the words “during the sessions” was confirmed in Judgment of 10 July 1986, *Roger Wybot v Edgar Faure and others*, 149/85, EU:C:1986:310, in which the Court held that “the European Parliament must be considered to be in session, even if it is not actually sitting, until the decision is taken closing its annual or extraordinary sessions.”

⁵⁹ See [Judgment of the Court of 12 May 1964, Albert Wagner v Jean Fohrmann and Antoine Krier](#), 101/63, EU:C:1964:28 and Judgment of the Court of 10 July 1986, *Roger Wybot v Edgar Faure and others* 149/85, EU:C:1986:310. See also [Parliamentary immunity in the Member States of the European Union and in the European Parliament, Working Paper, Legal Affairs Series W 8 / rev](#), European Parliament, Directorate-General for Research, 1999.

⁶⁰ See [Parliamentary immunity in the European Parliament](#), 2007, cited above, p. 6. Also see, in the Annex to the same publication, the Table summarising the requests for waiver of parliamentary immunity of Members of the European Parliament decided on since the first parliamentary term.

consequently enjoys the immunities outlined in the PPI from the moment of the official announcement of the results⁶¹.

3.2. Scope of the immunity

Article 9, first paragraph, of the PPI, provides for an immunity covering any action not falling under the scope of Article 8, that is: votes cast and opinions expressed not in the exercise of the MEP's functions; and any action which cannot be considered as an opinion or a vote. As clarified by the CJEU, Article 9 concerns immunity in legal proceedings relating to acts other than those referred to in Article 8.⁶² Consequently, a Member cannot claim to benefit, under Article 9, of national provisions on absolute immunity, as this type of immunity is already exclusively covered by Article 8.⁶³

As already mentioned, the scope of the immunity under Article 9 varies depending on whether the MEP concerned finds himself in the territory of his/her own Member State, or in that of another Member State. In the first case, the scope of the relative immunity depends entirely on that of the immunity granted by national law to national parliamentarians:⁶⁴ thus, some MEPs enjoy no immunity at all, whereas others are granted very broad protection from prosecution, arrest and detention. In the second case, on the contrary, the scope of the immunity is specified by EU law itself: Article 9, first paragraph, subparagraph (b) makes it clear that MEPs are protected from any measure of detention and from legal proceedings for acts committed in that country. In these cases, a waiver of immunity needs to be requested, except for acts committed *in flagrante delicto*.

Whenever the applicable immunity is that deriving from Article 9, first paragraph, subparagraph (a), Parliament is conferred powers in accordance with national law. Thus, if national law confers on the national Parliament the power to request suspension of a prosecution against one of its Members, the same power is also granted to Parliament with regard to MEPs⁶⁵.

One question that has arisen in the past is whether the immunity provided for in Article 9, first paragraph, subparagraph (a) only covers criminal proceedings or also extends to civil proceedings. Initially, it was argued that, since none of the six founding Member States of the European Communities granted their national parliamentarians immunity from civil proceedings, it could be inferred that they did not intend to grant a broader relative immunity to Members of the European Parliament. This interpretation was also supported by the practice of Parliament itself.⁶⁶ However, in September 2003, Parliament adopted a decision defending one of its Members from civil proceedings; in the Explanatory Statement to the Report adopted by the Committee on Legal Affairs and the Internal Market, it was clarified that, in the case at hand, the level of damages claimed (roughly EUR 150 000) was clearly

⁶¹ CJEU, Judgment in the *Oriol Junqueras Vies* case, cited above, para 94.

⁶² See CJEU, Judgment in the *Marra* case, cited above, para. 45.

⁶³ Also see European Parliament, Committee on Legal Affairs, [Stocktaking of parliamentary committee activities during the 7th legislature](#), p. 97.

⁶⁴ In the words of the CJEU: "the extent and scope of the immunity enjoyed by Members of the Parliament in the territory of their own State are to be determined by the various national laws to which that provision refers." See *Bruno Gollnisch* case, cited above.

⁶⁵ *Idem.*, paras 51 ff.

⁶⁶ See [Parliamentary immunity in the European Parliament](#), cited above, p. 12.

intended to be punitive, and therefore to have a deterrent effect similar to a criminal charge.⁶⁷ Consequently, relative immunity may extend, under certain circumstances, to civil proceedings.

Another problematic issue has been whether the relative immunity of MEPs also applies when they are called to testify in Court. In the past, Parliament has received several requests to authorise its Members to testify in Court, or to waive their immunity in order to allow them to do so. However, as recognised by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities in 1996,⁶⁸ MEPs do not require, and should not require, Parliament's authorisation to appear as witnesses or experts. Indeed, this is further clarified by Rule 6 of the RoP, which states that where Members are required to appear as witnesses or expert witnesses, there is no need to request a waiver of immunity, provided that the date and time of the hearing does not make it difficult for them to perform their parliamentary duties, and that they are not obliged to testify concerning information obtained confidentially in the exercise of their mandate.

As clarified in Article 9, third paragraph, relative immunity never applies when a Member is found in the act of committing an offence (*in flagrante delicto*), and it can always be waived in both cases of Article 9, first paragraph, subparagraph (a) and (b) by Parliament. The procedure for waiver of the immunity is further detailed in the Rules of Procedure and will be examined below.

⁶⁷ See [Report on the request for defence of parliamentary immunity and privileges submitted by Jannis Sakellariou, 12 September 2003](#), A5-0309/2003, Explanatory Statement: "Damages whose primary purpose is punitive are generally awarded to the victim of a wrongful act. In US law, the focus is on the deterrent nature of punitive damages: the aim is to discourage the perpetrator from repeating the act, which prompted the damages award and potential imitators from perpetrating such an act for the first time. Given that, in recent years, this legal instrument has increasingly become an established part of the legal systems of the EU Member States, through the recognition and enforcement of foreign court judgments, such as those handed down in the USA, there is every possibility that it will be used as a roundabout means of taking legal action against Members in a manner similar to criminal proceedings. The reference to 'legal proceedings' in the 1965 text of the PPI must thus today be interpreted as covering an attempt to secure punitive damages by means of civil proceedings."

⁶⁸ See the Minutes of Proceedings of the sitting of Wednesday, 27 March 1996, in OJ C 117, 22.4.1996, p. 5.

4. Procedures and general principles

The Rules of Procedure of the European Parliament include a detailed description of the procedures to be followed in cases concerning privileges and immunities of MEPs. These include: the procedure to request defence of parliamentary immunity, which can apply to cases of absolute immunity and of relative immunity alike; the procedure to decide on requests for waiver of the relative immunity of a MEP; and the procedure to be followed in case urgent action is needed. Moreover, the Rules of Procedure recall several general principles: for instance, that parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members and that in the exercise of its powers in respect of privileges and immunities, Parliament acts to uphold its integrity as a democratic legislative assembly and to secure the independence of its Members in the performance of their duties (Rule 5). In addition, the Committee on Legal Affairs has, over the years, developed a practice of its own, from which several general principles can be inferred.

4.1. Defence of privilege and immunities

Rule 7 of the Rules of Procedure provides for the possibility to request Parliament to decide whether the authorities of a Member State have breached the immunity of a Member or a former Member. Such a request to defend a Member's immunity may be made in any case affecting the privileges and immunity of Members: i.e., it may arise from breaches of the Members' freedom of movement, of their absolute immunity, or of their relative immunity.

Under Rule 7, the request to defend a Member's immunity is only admissible if no request for defence or waiver of the immunity has already been received in respect of the same legal proceedings; moreover, the request is not to be considered if a request for waiver of the immunity in respect of the same legal proceedings is subsequently received. The procedure aims to ensure that Parliament is informed of any case of alleged breach of the immunity of its Members. In practice, Members may submit requests to defend their immunity when they claim that certain proceedings violate absolute immunity for opinions and votes (for instance, because the national court considers certain opinions not to have been expressed in the exercise of parliamentary functions), or when they claim that a court is proceeding against them in violation of Article 9 of the PPI, without having obtained waiver of their relative immunity.

This procedure has been introduced following concerns voiced by Italian MEPs after the reform of national rules concerning parliamentary immunity; indeed, in 1993, the relevant constitutional rules were amended⁶⁹ and no longer require the waiver of the immunity to initiate criminal proceedings, MEPs were concerned that they could be charged and tried without the Parliament even being aware of the trial, in particular in cases regarding their absolute immunity for opinions and votes. The procedure is drawn from the practice created by the Italian Constitutional Court in its judgment 1150/88, and allows Members to request Parliament to decide on the applicability of the immunity in any given case.⁷⁰

⁶⁹ Legge Costituzionale 29 ottobre 1993, n. 3, [Modifica dell'articolo 68 della Costituzione](#).

⁷⁰ See [European Parliament resolution of 11 June 2002 on the immunity of Italian Members and the Italian authorities' practices on the subject \(2001/2099\(REG\)\)](#). Also see P. Caretti, M. Morisi and G. Tarli Barbieri, cited above, p. 6.

The case-law of the CJEU has further clarified two important points: firstly, that the procedure for defence of the immunity may be applied both in cases concerning the relative immunity of MEPs and in cases where their absolute immunity for opinions and votes is at stake; and secondly, that Parliament's decision to defend the immunity of an MEP in cases concerning the application of Article 8 of the PPI is only indicative, and not binding for the competent national Court.

As regards the application of the procedure for defence of the immunity in cases of relative immunity under Article 9 of the PPI, the CJEU clarified in the *Gollnisch* case⁷¹ that, since a MEP can be deprived of his/her immunity only if the Parliament has waived it, defence of immunity is conceivable where, in the absence of a request for waiver of a Member's immunity, immunity is endangered by the action of the police or judicial authorities. Consequently, a decision of the Parliament in response to a request to defend the immunity of an MEP is conceivable only where no request for waiver of that immunity has been submitted to the Parliament by the competent national authorities.⁷²

On the other hand, the Court's decision in the *Marra* case made it clear that the procedure for defence of the immunity also applies to absolute immunity for opinions expressed and votes cast in the exercise of parliamentary duties.⁷³ As mentioned above (see Chapter 2), the Court ruled that the decision of the European Parliament to defend a Member's absolute immunity, adopted in accordance with Rule 7 of the RoP, is in no way binding on the national judge.⁷⁴ Thus, the final decision as to whether an opinion is, or is not, covered by the absolute immunity is the exclusive competence of the proceeding national judge, who may, if in doubt as to the interpretation of the relevant EU rules, refer the case to the CJEU for a preliminary ruling on the matter. Moreover, given that the decision of Parliament to defend, or not to defend, the Member's immunity produces no binding legal effects, it may not be the subject of an action for annulment in front of the Court of Justice, as foreseen by Article 263 TFEU.⁷⁵ However, in accordance with the principle of sincere cooperation, if Parliament initiates a procedure for defence of the immunity and the competent national court is informed of the fact, it must stay the judicial proceedings until Parliament has issued its opinion.⁷⁶

Finally, Rule 7 RoP also makes it clear that, in cases of requests for defence of parliamentary immunity, if Parliament took the decision not to defend it, the Member concerned may make a request for reconsideration of the decision, submitting new evidence. Such request may only be made exceptionally. It is inadmissible if the President considers that the new evidence submitted is not sufficiently substantiated to warrant reconsideration, or if proceedings have been instituted against the decision under Article 263 of the Treaty on the Functioning of the European Union (which provides for the CJEU's power to review the legality of acts adopted by institutions and bodies of the Union).

⁷¹ See Judgment in the *Bruno Gollnisch* case, cited above, paras 51 ff.

⁷² The Court then continues to state that conversely, where a request for waiver of immunity is made by the national authorities, the Parliament must take a decision to waive or not to waive immunity. In such a case, defence of immunity no longer has any *raison d'être*, since either the Parliament waives immunity and the defence of immunity is no longer conceivable, or it refuses to waive immunity and defence of immunity is unnecessary, since the national authorities are advised that their request for waiver of immunity has been rejected by the Parliament and since immunity therefore precludes the measures which those authorities could or would take. *Ibid.*, at para. 56.

⁷³ See Judgment in the *Marra* case, cited above, para 37.

⁷⁴ *Ibid.*, paras 38 to 39.

⁷⁵ See [Order of the General Court of 5 September 2012, Nigel Paul Farage v European Parliament and Jerzy Buzek, T-564/11, EU:T:2012:403](#) para. 27.

⁷⁶ *Ibid.*, paras 41 to 43.

4.2. Immunity procedures

The procedure for waiver of immunity of an MEP is described in detail in the European Parliament's Rules of Procedure, and is further specified through the practice of the competent committee, namely the Committee on Legal Affairs.

4.2.1. *Ordinary procedure for waiver or defence of immunity*

Rule 9 of the RoP clarifies in detail the procedure to be followed in immunity cases:

Under the Rules of Procedure, a request for the waiver of immunity addressed to the President by a national competent authority as well as a request by a MEP or former MEP that his/her or her immunity be defended, are announced in the plenary and subsequently referred to the committee responsible, namely the Committee on Legal Affairs. The committee may ask the authority concerned for any information or explanation that it deems necessary. Additionally, the MEP concerned should be given an opportunity to be heard and present any documents or other written evidence. After examining the request, the committee adopts, *in camera*, a recommendation to approve or reject the request for the waiver (or defence) of immunity. At the plenary session following the adoption of the committee's recommendation, Parliament considers and votes on the proposal for decision included in the committee's report. Following the vote, the President immediately communicates Parliament's decision to the MEP concerned and to the competent authority of the Member State concerned.

Following the general revision of the European Parliament's Rules of Procedure adopted in December 2016, Parliament only examines requests for the waiver of a Member's immunity that have been transmitted by the judicial authorities or by the Permanent Representations of the Member States.

4.2.2. *Urgent procedure*

Rule 8 of the RoP sets out a specific procedure to be followed in urgent cases. This Rule allows the President of the European Parliament to take an initiative to assert the privileges and immunities of a Member, as a matter of urgency, when the Member has been arrested or had his/her freedom of movement curtailed in apparent breach of his/her privileges and immunities. Before taking such a decision, the President must consult the Chair and rapporteur of the Committee on Legal Affairs; moreover, afterwards, the President must notify the committee of that initiative and inform Parliament. At its next meeting, the Committee on Legal Affairs takes cognisance of the President's initiative and, if it deems it necessary, it may prepare a report for submission to Parliament.

4.3. General principles

As has been clarified above, the role of the Committee on Legal Affairs in matters of immunity is of the utmost importance; this has been explicitly recognised by the Rules of Procedure, which empower the Committee to lay down principles for the application of Rule 9. Indeed, over the years, the Committee has developed a practice of its own in dealing with immunity cases, and it consistently applies the same principles.

In particular, the Committee's practice has been to propose to waive immunity unless there is *fumus persecutionis*, that is to say, a suspicion founded on established facts that the legal proceedings have been instituted with the intention of causing damage to the Member's political activity and thus Parliament's independence.⁷⁷ Indicia of the existence of *fumus persecutionis* are, for instance, the fact that a Member stands accused of criminal charges for facts that, in the case of an ordinary citizen, would only lead to administrative proceedings, while the prosecuting authority has attempted to withhold information on the nature of the charges from the Member concerned;⁷⁸ the uncertainty as to the status and sources of the evidence adduced as a basis for the charges;⁷⁹ the timing of the prosecution (during an electoral campaign, years after the alleged offences were committed) and the overtly political aims of the private individual bringing the prosecution (who claimed to be acting on behalf of citizens who objected in general terms to the Member carrying out a public activity,⁸⁰ and the uncertainties as to the elements on which the request for waiver of immunity was based and the serious doubts surrounding the proceedings, including the reasons underlying the request for waiver of immunity.⁸¹

Other general criteria to which the Committee on Legal Affairs has frequently made reference in its reports on cases of immunity, as a guidance in order to take its decisions, are the particularly serious nature of the charges and whether the laws of Member States other than the State of origin of the MEP concerned lay down less severe penalties for the act in question, or do not even regard it as a criminal offence.⁸² Decisions to waive the immunity of an MEP have been taken following to allegations of corruption or other serious criminal activities (such as fraud or membership of the Camorra), but also in cases concerning minor and clearly non-political crimes (such as road traffic offences).⁸³ Moreover, in a case concerning opinions expressed by an MEP, the Committee held that immunity should not be defended when the statements concerned are contrary to Article 21 of the Charter of Fundamental Rights of the European Union and could have attracted penalties under (then) Rule 153 RoP. In that case, the Committee clarified that Article 8 of the PPI serves to ensure that MEPs enjoy freedom of speech, but that this freedom does not authorise slander, libel, incitement to hatred, questioning the honour of others, or any utterance contrary to Article 21 of the Charter of fundamental rights of the European Union.⁸⁴

⁷⁷ See Committee on Legal Affairs, [Stocktaking of parliamentary committee activities during the 7th legislature](#), cited above, at page 98. See also [Judgment of the General Court \(Seventh Chamber\) of 30 April 2019, Briois v European Parliament, T-241/18](#), para 66.

⁷⁸ See [Committee report A7-0047/2011; European Parliament decision of 8 March 2011 on the request for waiver of the immunity and privileges of Elmar Brok](#).

⁷⁹ See [Committee report A7-0195/2013; European Parliament decision of 11 June 2013 on the request for defence of the immunity and privileges of Małgorzata Handzlik](#).

⁸⁰ See [Committee report A7-0030/2009; European Parliament decision of 20 October 2009 on the request for waiver of the immunity of Marek Siwiec](#).

⁸¹ See [Committee report A8-0333/2018; European Parliament decision of 23 October 2018 on the request for waiver of the immunity of Manolis Kefalogiannis](#).

⁸² See for instance *ibid*.

⁸³ See Corbett, R., Jacobs, F., Shackleton, M., *The European Parliament*, Jon Harper Publishing, London 2011, at 72.

⁸⁴ See [Committee Report A7-0245/2014; European Parliament decision of 2 April 2014 on the request for defence of the immunity and privileges of Mario Borghezio](#). Also see Committee on Legal Affairs, [Stocktaking of parliamentary committee activities during the 7th legislature](#), cited above, at page 104.

5. Incompatibilities with the office of Member of the European Parliament

Under the terms of Article 12 of the Act of 20 September 1976 concerning the election of the Members of the European Parliament by direct universal suffrage, as amended by Council Decision 93/81/Euratom, by Council decision 2002/772/EC and most recently by Council Decision (EU, Euratom)⁸⁵ ('1976 Act'), the European Parliament (Parliament) is required to verify the credentials of its Members (MEPs). For this purpose, it takes note of the results declared officially by the Member States and rules on any disputes that may arise out of the provisions of the 1976 Act, with the exclusion of those arising out of the national provisions to which the Act refers.

The credentials of newly elected MEPs are verified on the basis of both the declaration of non-incompatibility and the declaration of financial interests, the latter being provided for by Rules 3 and Rule 11 of and Annex I to Rules of Procedure of the European Parliament⁸⁶. Article 7(1) and (2) of the 1976 Act lays down the list of incompatible offices which include, inter alia, the office of "member of the Government of a Member State" and that of "member of a national parliament". In accordance with Rule 3(2) of Rules of Procedure, "where it is established from facts verifiable from sources available to the public that a Member of the European Parliament holds an incompatible office within the meaning of Article 7(1) and (2) of the 1976 Act, Parliament [...] shall establish that there is a vacancy."

Pursuant to Article 7(3) of the 1976 Act, Member States may establish supplementary incompatibilities under national law. The existence of such incompatibilities is examined by national authorities. Therefore, the "incompatibilities at national level" fall outside the scope of this handbook.

The procedure for the verification of credentials is set out in Rule 3 of the Rules of Procedure. Based on the official notification of the full results of the election received from the competent authorities of the Member States, Parliament's committee responsible for the verification of credentials, namely the Committee on Legal Affairs, prepares a report. On the basis of this report, Parliament rules on the validity of the mandate of each MEP and on "any disputes referred to it pursuant to the provisions of the Act of 20 September 1976, other than those which, under that Act, fall exclusively under the national provisions to which that Act refers" (Rule 3(3)). Such disputes may relate to the holding of an incompatible office under Article 7(1) of the Electoral Act.

In addition, MEPs whose election has been notified to Parliament are required to declare in writing, before taking their seat in Parliament, that they do not hold any office incompatible with that of MEP within the meaning of Article 7(1) or (2) of the 1976 Act. The confirmation of the validity of their mandate is conditional upon the latter declaration and the declaration of financial interests provided for by Rule 3 and Rule 11 of and Annex I to Rules of Procedure (Rule 3(3)). Nevertheless, until such time as Members' credentials have been verified or a ruling has been given on any dispute, and provided that Members have previously signed the declaration of non-incompatibility, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto (Rule 3(2)). The reason for this rule is that, even if Parliament shall verify credentials without delay (Rule 3(1)), the verification process can take several months, during which it would be unacceptable to impede MEPs from exercising their mandate.

⁸⁵ Available at: <https://eur-lex.europa.eu/eli/dec/2018/994/oj>.

⁸⁶ Available at: <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20150909+TOC+DOC+XML+V0//EN>.

The identification of an incompatibility starts the procedure set forth by Rule 3(2), second subparagraph, with the President of Parliament, to whom the issue might have been flagged by the Secretariat, informing Parliament about the incompatibility. Parliament is then required to establish a vacancy.

By virtue of Article 12 of the Electoral Act, only the disputes relating to the provisions of the said Act, other than the national provisions to which the act refers, can be decided by Parliament. Disputes arising from national provisions or from EU law provisions different from those of the Electoral Act do not fall within the competence of Parliament and must therefore be relinquished to national authorities and, on a possible application from the European Commission, to the CJEU⁸⁷.

This is the reason why Article 12 of the Electoral Act provides that Parliament must limit itself to taking note of the results declared officially by the Member States.

⁸⁷ See judgment of 7 July 2005. *Jean-Marie Le Pen v European Parliament*. C-203/03, paragraphs 50 and 51, and ; and [Judgment of 30 April 2009. *Italian Republic \(C-393/07\) and Beniamino Donnici \(C-9/08\) v European Parliament*, joint cases C-393/07 and C-9/08, paragraphs 55, 56 and 57.](#)

PART II - NATIONAL REPORTS

Table 1: Official names of countries

Short name in English geographical name	Official name in English (protocol name)	Official name, source language(s) (protocol name)	Country Code
Belgium	Kingdom of Belgium	Royaume de Belgique/ Koninkrijk België/ Königreich Belgien	BE
Bulgaria	Republic of Bulgaria	Република България	BG
Czech Republic	Czech Republic	Česká republika	CZ
Denmark	Kingdom of Denmark	Kongeriget Danmark	DK
Germany	Federal Republic of Germany	Bundesrepublik Deutschland	DE
Estonia	Republic of Estonia	Eesti Vabariik	EE
Ireland	Ireland	Éire/Ireland	IE
Greece	Hellenic Republic	Ελληνική Δημοκρατία	EL
Spain	Kingdom of Spain	Reino de España	ES
France	French Republic	République française	FR
Croatia	Republic of Croatia	Republika Hrvatska	HR
Italy	Italian Republic	Repubblica italiana	IT
Cyprus	Republic of Cyprus	Κυπριακή Δημοκρατία	CY
Latvia	Republic of Latvia	Latvijas Republika	LV
Lithuania	Republic of Lithuania	Lietuvos Respublika	LT

Luxembourg	Grand Duchy of Luxembourg	Grand-Duché de Luxembourg	LU
Hungary	Hungary	Magyarország	HU
Malta	Republic of Malta	Repubblika ta' Malta	MT
The Netherlands	Kingdom of the Netherlands	Koninkrijk der Nederlanden	NL
Austria	Republic of Austria	Republik Österreich	AT
Poland	Republic of Poland	Rzeczpospolita Polska	PL
Portugal	Portuguese Republic	República Portuguesa	PT
Romania	Romania	România	RO
Slovenia	Republic of Slovenia	Republika Slovenija	SI
Slovakia	Slovak Republic	Slovenská republika	SK
Finland	Republic of Finland	Suomen tasavalta/ Republiken Finland	FI
Sweden	Kingdom of Sweden	Konungariket Sverige	SE

BELGIUM

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1 Member of the Government of a Member State.

1.1.1 Legal provisions on the composition of the Belgian federal government

The composition of the Belgian federal government is established by Articles 99 and 104 of the Belgian Constitution.⁸⁸

Article 99 of the Constitution reads as follows: "The Council of Ministers is composed of no more than fifteen members. With the possible exception of the prime minister, the Council of Ministers is composed of an equal number of Dutch-speaking members and French-speaking members."⁸⁹

Article 104 (paragraphs 1 and 2) of the Constitution reads as follows: "The King appoints and dismisses the federal secretaries of State. These are members of the Federal Government. They do not form part of the Council of Ministers. They are deputies to a minister."⁹⁰

1.1.2 Denomination of the members of the Belgian federal government

Pursuant to the provisions mentioned in paragraph 1.1., members of the Belgian federal government are the following:

- *Premier Ministre, Eerste Minister, Premierminister (Prime Minister),*
- *Vice-Premier Ministre, Vice-Eersteminister, Vizepremierminister (Deputy Prime Minister),*
- *Ministre, Minister, Minister (Minister),*
- *Secrétaire d'Etat, Staatssecretaris, Staatssekretär (Secretary of State).*

⁸⁸ For an English translation, please see [Belgian Constitution, March 2021](#).

⁸⁹ "Le Conseil des ministres compte quinze membres au plus. Le Premier Ministre éventuellement excepté, le Conseil des ministres compte autant de ministres d'expression française que d'expression néerlandaise." "De Ministerraad telt ten hoogste vijftien leden. De Eerste Minister eventueel uitgezonderd, telt de Ministerraad evenveel Nederlandstalige als Franstalige ministers." "Der Ministerrat zählt höchstens fünfzehn Mitglieder. Den Premierminister eventuell ausgenommen, zählt der Ministerrat ebenso viele niederländischsprachige wie französischsprachige Minister".

⁹⁰ "Le Roi nomme et révoque les secrétaires d'État fédéraux. Ceux-ci sont membres du Gouvernement fédéral. Ils ne font pas partie du Conseil des ministres. Ils sont adjoints à un ministre." "De Koning benoemt en ontslaat de federale staatssecretarissen. Zij zijn lid van de federale Regering. Zij maken geen deel uit van de Ministerraad. Zij worden toegevoegd aan een minister." "Der König ernennt und entläßt die föderalen Staatssekretäre. Sie sind Mitglieder der Föderalregierung. Sie gehören dem Ministerrat nicht an. Sie sind einem Minister beigeordnet".

1.1.3. Date of the beginning of the term of office

Under the terms of Article 96 of the Constitution, members of the Belgian federal government are appointed by the King. The date of the beginning of the term of office of the members of the government shall be considered the date the federal government is sworn in by the King.⁹¹

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Belgian federal parliament

Constitution

The Belgian federal parliament is composed by the House of Representatives and the Senate. Indeed, Articles 42, 63 (1) and 67 (1) of the Belgian Constitution rule that: "The members of the two Houses represent the Nation [...]"⁹²; "The House of Representatives is composed of one hundred and fifty members"⁹³; "The Senate is composed of sixty senators [...]"⁹⁴. Whereas according to Article 61 of the Constitution, the members of the House of Representatives are all elected directly by citizens, the Senate is composed by two types of appointed members. Indeed, fifty senators are appointed by and within the parliaments of the Regions and of the Communities and ten senators are appointed by the fifty others (Article 67 §1 of the Constitution).

Implementing provisions

More detailed provisions concerning the composition and the organisation of the House of Representatives and of the Senate are contained in their respective Rules of Procedure⁹⁵. Additional provisions concerning the election of representatives and the appointment of senators are contained in the Electoral Law ("Code électoral" / "Kieswetboek" / "Wahlgesetzbuch").⁹⁶

1.2.2. Denomination of the members of the Belgian Federal Parliament

Pursuant to the provisions mentioned in paragraph 2.1., members of the Belgian federal parliament are the following:

- *Membre de la Chambre des représentants, lid van de Kamer van volksvertegenwoordigers, Mitglied der Abgeordnetenversammlung (Member of the House of Representatives); Membres de la Chambre des représentants, leden van de Kamer van volksvertegenwoordigers, Mitglieder der Abgeordnetenversammlung (Members of the House of Representatives),*

⁹¹ Also see [Article 96\(2\) of the Constitution](#), according to which, in the case of a vote of no confidence, the successor to the prime minister takes office when the new Federal Government is sworn in.

⁹² "Les membres des deux Chambres représentent la Nation [...]"; "De leden van beide Kamers vertegenwoordigen de Natie [...]"; "Die Mitglieder der beiden Kammern vertreten die Nation [...]".

⁹³ "La Chambre des représentants compte cent cinquante membres"; "De Kamer van volksvertegenwoordigers telt honderdvijftig leden"; "Die Abgeordnetenversammlung zählt hundertfünfzig Mitglieder."

⁹⁴ Le Sénat est composé de soixante sénateurs [...]; "De Senaat telt zestig senatoren [...]"; "Der Senat setzt sich aus sechzig Senatoren zusammen [...]".

⁹⁵ The Rules of Procedure are available in French at: https://www.senate.be/doc/Reglement_2019_F.pdf; in Dutch at https://www.senate.be/doc/Reglement_2019_N.pdf; and in English at https://www.dekamer.be/kvcr/pdf_sections/publications/reglement/reglement_UK.pdf.

⁹⁶ See [Code électoral - Kieswetboek](#) (in French and Dutch).

- *Sénateur/Sénatrice, senator, Senator (Senator); Sénateurs, senatoren, Senatoren (Senators).*

Additionally, Members of the Belgian federal parliament may also be so designated:

- *président/présidente, voorzitter, Präsident (President),*
- *vice-président/vice-présidente, ondervoorzitter, Vizepräsident (Vice-President),*
- *président/présidente de commission, commissievoorzitter, Kommissionspräsident (Committee Chairperson),*
- *membre du Bureau, bureaulid, Präsidiumsmitglied (Bureau Member),*
- *membre du comité de gouvernance (in the House of Representatives) or membre du comité de gestion (in the Senate), lid van het bestuurscomité (in the House of Representatives) or lid van het beheerscomité (in the Senate), Mitglied des geschäftsführenden Ausschusses (Member of the management committee).*

1.2.3. Date of the beginning of the term of office

House of Representatives

Members of the House of Representatives officially begin their term of office from the day of taking oath of office.⁹⁷ Rule 2(4) of the Rules of Procedure of the House of Representatives stipulates: "Before taking up their seats, the Members are obliged to swear the oath in a plenary and public sitting."⁹⁸

The verification of credentials is established by Article 48 of the Constitution and the procedure is determined by Rules 2(1) and 2(3) of the Rules of Procedure of the House of Representatives.

Senate

Senators begin their term of office on the day of taking oath of office. Article 6 of the Rules of Procedure of the Senate states: "Before taking up their seats, the Members of the Senate are obliged to swear the oath in a public sitting."⁹⁹

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Pursuant to Federal Law of 23 March 1989¹⁰⁰ on the election of the European Parliament, most recently amended by the Federal Law of 19 March 2019, the authority entitled to send to the European Parliament the list of persons elected and the documents necessary to verify their credentials is the Secretary-general of the House of Representatives (*le greffier de la Chambre des représentants; de griffier*

⁹⁷ However, in practice Parliamentarians have been considered as having taken up their mandate (and therefore as covered by the parliamentary immunity) regardless of the oath, once the results of the elections have been published on the resolute condition of a declaration of non-validity of their election after the verification of the credentials by the assembly. See [L'inviolabilité parlementaire, Chambre des Représentants – Précis de Droit Parlementaire](#), Service juridique, April 2015, p. 22-23.

⁹⁸ "Avant d'entrer en fonction, les membres sont tenus de prêter serment en séance plénière et publique."; "De leden zijn verplicht, alvorens hun ambt te aanvaarden, in een openbare vergadering de eed af te leggen."; "Vor ihrem Amtsantritt haben die Abgeordneten in der Vollversammlung und in der öffentlichen Sitzung ihren Eid abzulegen."

⁹⁹ "Avant d'entrer en fonction, les membres du Sénat sont tenus de prêter serment en séance publique" [...]; "Vóór zij hun mandaat opnemen, moeten de senatoren de eed afleggen in de openbare vergadering [...]".

¹⁰⁰ See [Loi du 23 mars 1989 relative à l'élection du Parlement européen](#) (in French and Dutch).

van de Kamer van volksvertegenwoordigers; der Greffier der Abgeordneten-kammern)¹⁰¹. This has also been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Belgium to the EU¹⁰². In addition, the letter states that the Secretary-general of the House of Representatives is also responsible for communicating any cases of incompatibility.

According to Article 37, paragraph 2 of the above-mentioned Federal Law: "At the end of the procedure described in Article 43, the Secretary-general of the House of Representatives shall send the European Parliament the records, accompanied by a joint list of persons elected and the documents necessary to verify their credentials".¹⁰³

Article 43 reads as follows: "The House of Representatives shall rule on the validity of electoral proceedings with regard to both full elected members and their substitutes. It shall rule on complaints lodged on the basis of the provisions of this law. Any complaint against the election must be made in writing and lodged with the Secretary-general of the House of Representatives within ten days following the election. The decision taken by the House of Representatives on the complaint shall be attached to the documents referred to in Article 37, paragraph 2." ¹⁰⁴

¹⁰¹ For clarification: the term "greffier" ought to translate to "registrar". Indeed, the organigramme of the administration of the House of Representatives attaches this function to the Secretary-general. However, this is but an administrative organisation of the task of registrar. Consequently, one can *de facto* refer to Secretary-general, but by law the person is acting in capacity of registrar.

¹⁰² Letter dated 2 December 2020.

¹⁰³ Au terme de la procédure prévue à l'article 43, le greffier de la Chambre des Représentants adresse au Parlement européen les procès-verbaux, accompagnés d'une liste commune des élus ainsi que les documents nécessaires à la vérification de leurs pouvoirs."; "Na de beëindiging van de in artikel 43 voorziene procedure zendt de griffier van de Kamer van Volksvertegenwoordigers de processen-verbaal met een gezamenlijke lijst van de gekozenen, alsmede de nodige bescheiden voor het onderzoek van de geloofsbrieven van de gekozenen aan het Europese Parlement."

¹⁰⁴ "La Chambre des Représentants statue sur la validité des opérations électorales en ce qui concerne tant les élus effectifs que leurs suppléants. Elle statue sur les réclamations introduites sur la base des dispositions de la présente loi. Toute réclamation contre l'élection doit être formulée par écrit et introduite auprès du greffier de la Chambre des Représentants dans les dix jours de l'élection. La décision prise par la Chambre des Représentants sur la réclamation est jointe aux documents prévus à l'article 37, alinéa 2."; "De Kamer van Volksvertegenwoordigers doet uitspraak over de geldigheid van de kiesverrichtingen, zowel wat de gekozenen als hun opvolgers betreft. Zij beslist over de bezwaren die worden ingebracht op grond van de bepalingen van deze wet. Elk bezwaar tegen de verkiezing moet binnen de tien dagen te rekenen van de dag van de verkiezing, schriftelijk worden ingediend bij de griffier van de Kamer van Volksvertegenwoordigers. De door de Kamer van Volksvertegenwoordigers getroffen beslissing in verband met het bezwaar wordt gevoegd bij de stukken bedoeld bij artikel 37, tweede lid."

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Belgium, the parliamentary immunities are granted to the members of the parliament by Articles 58 and 59 of the Constitution.

Article 58

No member of either House can be prosecuted or be the subject of any investigation with regard to opinions expressed and votes cast by him in the exercise of his duties¹⁰⁵.

Article 59

Except in the case of a flagrant offence, no member of either House may, during a session and in criminal matters, be directly referred or summoned before a court or be arrested, except with the authorisation of the House of which he is a member.

Except in the case of a flagrant offence, coercive measures requiring the intervention of a judge cannot, during a session and in criminal matters, be instituted against a member of either House, except by the first President of the appeal court at the request of the competent judge. This decision is to be communicated to the President of the House concerned.

All searches or seizures executed by virtue of the preceding paragraph can be performed only in the presence of the President of the House concerned or a member appointed by him.

During the session, only the officers of the public prosecutor's office and competent officers may institute criminal proceedings against a member of either House.

The member concerned of either House may at any stage of the judicial enquiry request during a session and in criminal matters that the House of which he is a member suspend proceedings. To grant this request, the House concerned must decide by a majority of two thirds of the votes cast.

Detention of a member of either House or his prosecution before a court is suspended during the session if the House of which he is a member so requests".¹⁰⁶

Article 120

Within the federal constellation, the organisation of the Regions and the Communities that are part of the Belgian state structure is also described in the Constitution. In particular, the parliaments of the Regions and the Communities are organised by virtue of Articles 115 to 120 of the Constitution. The immunities of the Members of the Regional and Community Parliaments are extended by a reference to those of the Members of the Federal parliament. Article 120 of the Constitution holds that "all

¹⁰⁵ Unofficial translation of Article 58 of the Belgian Constitution.

For the French official version of the Belgian Constitution please see [La Constitution belge, mars 2021](#).

For the Dutch official version of the Belgian Constitution please see [De Belgische Grondwet, Maart 2021](#).

¹⁰⁶ Unofficial translation of Article 59.

members of Community and Regional Parliaments benefit from the immunities described in Articles 58 and 59." Therefore, Members of those Parliaments enjoy the same immunities as their federal counterparts.

2.1.2. *Implementing provisions*

The implementing rules of Article 59 of the Constitution are contained in the Rules of Procedure of the House of Representatives, in Article 160. No similar provision can be found in the Rules of Procedure of the Senate.¹⁰⁷

2.2. *Scope and content of national parliamentary immunities*

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. *Non-liability principle (Article 58 of the Constitution)*

Pursuant to Article 58 of the Constitution, members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their functions. Members of the House of Representatives and Senators are therefore exempted from any civil, criminal, or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities. This exemption begins to apply once the Member of Parliament has taken up office and continues to apply after the end of their term of office. It is absolute (it cannot be waived by the Parliament).

However, it must be indicated that Members of Parliament remain subject to internal disciplinary sanctions in accordance with the Rules of Procedure imposed by the competent bodies of their assembly.

2.2.2. *Immunity (Article 59 of the Constitution)*

Pursuant to Article 59 of the Constitution, Members of Parliament in session cannot be arrested nor referred to a court of law without the permission of the assembly they belong to. This protection does not apply when the Member of Parliament is caught *in flagrante delicto*. Since 1997, the assembly only needs to give its permission for the arrest and the referral to a court of law, not for the investigation itself anymore.¹⁰⁸ The immunity is only valid during the term of office¹⁰⁹.

Moreover, in accordance with Article 59 (5) of the Constitution, Members of Parliament may always request the assembly to ask for suspension of their prosecution: such a decision is to be taken by a two thirds majority of votes cast. The assembly may also decide, of its own initiative, to request such

¹⁰⁷ For an analysis of the Belgian rules on non-liability, see [L'irresponsabilité parlementaire, Chambre des Représentants – Précis de Droit Parlementaire](#), Service Juridique, May 2015.

¹⁰⁸ There are, however, additional guarantees: in particular, the acts of the investigation that require the presence of a judge (coercive measures) may only be carried out against a Member of the Parliament if authorized by the First President of the Court of Appeals, and after informing the President of the House. Additionally, the President (or his/her representative) must be present during searches or seizures against Parliamentarians.

¹⁰⁹ For an analysis of the Belgian rules on parliamentary immunity, see [L'inviolabilité parlementaire](#), cited above, p. 22-23.

suspension, or suspension of the Member's detention: in this case, the decision is taken by simple majority, in accordance with Article 59 (6) of the Constitution.

2.3. National authority entitled to request the immunity of a Belgian member of the European Parliament to be waived

According to the above-mentioned letter¹¹⁰ from the Permanent Representation of Belgium, the Belgian authority entitled to request the waiver of the immunity is Brussels Public Prosecutor's Office (*Parquet de Bruxelles; Parket van Brussel; Brüsseler Staatsanwaltschaft*), but the request should be transmitted to the European Parliament by the Protocol Directorate of the Federal Public Service for Foreign Affairs (*Service public fédéral Affaires Etrangères, Direction du Protocole; Federale Overheidsdienst Buitenlandse Zaken, Directie Protocol; Federale Overheidsdienst Buitenlandse Zaken; Föderaler Öffentlicher Dienst Auswärtige Angelegenheiten, Protokolldirektion*).

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¹¹⁰ Letter dated 2 December 2020.

BULGARIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Bulgarian government

Constitution

The composition of the Bulgarian government is established by Article 108 (1) of the Constitution which reads as follows: "The Council of Ministers shall consist of a Prime Minister, Deputy Prime Ministers and ministers."¹¹¹

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: Rules on the organization of the Council of Ministers and its administration, adopted by Government Decree No 229 of 23 September 2009¹¹², in particular Article 5.

The exact number of ministries and their competences are established by the Parliament on a proposal by the Prime Minister, according to Article 84, points 6 and 7 of the Constitution.

1.1.2. Denomination of the members of the Bulgarian government

Pursuant to the provisions mentioned in paragraph 1.1, the members of the Bulgarian government are the following:

- *Министър-председател (Prime Minister),*
- *Заместник министър-председател (Deputy Prime Minister),*
- *Министър (Minister); Министри (Ministers).*

1.1.3. Date of the beginning of the term of office

There are no explicit provisions in the Bulgarian legislation fixing the moment when the term of office of the government starts. There are two possibilities.

¹¹¹ The text in Bulgarian reads "Чл. 108. (1) Министерският съвет се състои от министър-председател, заместник министър-председатели и министри."

The Bulgarian Constitution is available, in Bulgarian, at: <https://www.parliament.bg/bg/const>; and in English, at: <https://www.parliament.bg/en/const>.

¹¹² Promulgated in State Gazette (SG) No 78 of 02.10.2009, last amendments promulgated in SG No 57 of 19.07.2019. The title in Bulgarian is: "Устройствен правилник на Министерския Съвет и на неговата администрация, приет с Постановление на Министерския Съвет No 229 от 23.09.2009г." See <http://lex.bg/bg/laws/ldoc/2135646627> (for a consolidated version in Bulgarian).

The first possibility is the date on which the National Assembly appoints the government. According to the practice, the National Assembly adopts three decisions: on the appointment of the Prime Minister, on the structure of the Council of Ministers and on the composition of the Council of Ministers. The procedure for forming the government is laid down in Article 99 of the Constitution.

The second possibility is the date on which the members of the Council of Ministers swear before the National Assembly the oath as referred to by Article 76 (2) of the Constitution.

In its Decision No 1 of 16 January 1992¹¹³, the Constitutional Court held that the date on which the members of the government start exercising their duties shall be considered the date the members take an oath before the National Assembly¹¹⁴.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Bulgarian Parliament

Constitution

The composition of the Bulgarian Parliament is established by Article 63 of the Constitution which reads: "The National Assembly shall consist of 240 members."¹¹⁵ Bulgarian Parliament has one chamber with the official denomination: Народно събрание (National Assembly).

Implementing provisions

More detailed provisions concerning the composition and the organisation of the National Assembly are contained in its Rules of Procedure: Rules of organisation and procedure of the National Assembly¹¹⁶.

1.2.2. Denomination of the members of the Bulgarian Parliament

Pursuant to the provisions mentioned in paragraph 1.2.1, members of the Bulgarian Parliament are the following:

Народен представител (Member of Parliament, or literally "People's representative")

1.2.3. Date of the beginning of the term of office

There are no provisions in the Bulgarian legislation fixing the moment when the mandate of a Member of Parliament starts. There are different interpretations.

¹¹³ Constitutional Court Decision No 1 of 16.01.1992 on constitutional case No 18 of 1991 (State Gazette No 11 of 07.02.1992).

¹¹⁴ The case before the Constitutional Court concerned the mandate of members of Parliament but the Court held that the decision shall apply by analogy to President, Vice President and the members of the Council of Ministers, who are required to take the same oath.

¹¹⁵ Article 63 of the Constitution reads: "Народното събрание се състои от 240 народни представители".

¹¹⁶ Promulgated in State Gazette No. 35/02.05.2017, amended and supplemented, SG No. 34/20.04.2018. See <https://www.parliament.bg/bg/rulesoftheorganisations> (for a consolidated version in Bulgarian) and <https://www.parliament.bg/en/rulesoftheorganisations> (for a consolidated version in English).

Under the terms of Article 76 (2) of the Bulgarian Constitution and Article 3(2) of the Rules of organisation and procedure of the National Assembly, all Members of the Bulgarian Parliament are sworn in at the constituent session (the first sitting following the elections) of the National Assembly, by taking the following oath: "I swear in the name of the Republic of Bulgaria to observe the Constitution and the laws of the country and in all my actions to be guided by the interests of the people. I have sworn." Taking the oath is documented by signing individual oath papers.

The Constitutional Court held in Decision No. 1 of 16 January 1992 that "taking the oath provided for in Article 76 (2) of the Constitution determines the start of the exercising of their [Members of Parliament] duties".¹¹⁷

In a later case, involving the interpretation of a provision of the Constitution¹¹⁸ fixing the mandate of the National Assembly to four years, the Constitutional Court held that the four-year mandate starts on the election day (Decision n° 5 of 2001¹¹⁹).

According to Article 15 (1) of the financial rules on the implementation of the budget of the National Assembly,¹²⁰ the remuneration of the Members of Parliament is paid as of the election day.

The term of office of a Member of Parliament who fills in a vacancy starts on the date of the adoption of the decision of the Central Electoral Commission with which the new Member of Parliament is declared elected, in accordance with Article 302 (1) of the Election Code.¹²¹

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

The Chairman of the National Assembly of the Republic of Bulgaria is the competent national authority for communicating cases of incompatibility regarding MEPs in accordance with national and EU law as well as notifying of the MEPs elected in Bulgaria and entitled to take a vacant seat. This has been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Bulgaria to the EU.

According to Article 388 of the Election Code, "after the official announcement of the election results, the Chairman of the National Assembly shall notify the President of the European Parliament of the elected Members of the European Parliament from the Republic of Bulgaria".

Article 391 of the Election Code reads as follows: "The term of office of Member of the European Parliament from Republic of Bulgaria shall end on resignation, death or in case of incompatibilities under Article 389 of the Election Code." However, there is no procedure for the implementation of this article.

According to national law, the Constitutional Court is competent to establish the ineligibility or incompatibility of Members of the National Assembly (Article 72, para. 2 of the Constitution), a possibility that is not limited in time and can be undertaken throughout the mandate. However, in the

¹¹⁷ Constitutional Court Decision No 1 of 16.01.1992 on constitutional case No 18 of 1991 (State Gazette No 11 of 07.02.1992).

¹¹⁸ Article 64 (1) reads: "The National Assembly shall be elected for a term of four years".

¹¹⁹ Constitutional Court Decision No 5 of 22.03.2001 on constitutional case No 5 of 2001 (State Gazette No 30/2001).

¹²⁰ Annex to the Rules of Organisation and procedure of the National Assembly.

¹²¹ *Изборен кодекс*, available at: <http://www.lex.bg/bq/laws/ldoc/2135182336>.

case of MEPs, the Constitutional Court is only competent to rule on the legality of the elections no later than 15 days after the announcement of the election results by the Central Electoral Commission (Article 394 of the Election Code).

The above-mentioned letter¹²² states that the Central Electoral Commission terminates the powers vested in a MEP elected in Bulgaria by a dedicated decision, when the conditions stipulated in the Electoral Code are satisfied, acting on a proposal from the Chairman of the Bulgarian National Assembly accompanied by the relevant evidence. The Central Electoral Commission then declares the name of the next person on the list of candidates from the respective political party.

¹²² Letter dated 29 July 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In the Republic of Bulgaria, the parliamentary immunities are granted to the members of the national Parliament by Articles 69 and 70 of the Constitution.

Article 69

Members of the National Assembly shall not be held criminally liable for their opinions or votes in the National Assembly.

Article 70

(1) A Member of the National Assembly shall be immune from detention or criminal prosecution except for the perpetration of a criminal offence, and in such case the permission of the National Assembly or, in between its session, of the Chairperson of the National Assembly, shall be required. No permission shall be required when a Member is detained *in flagrante delicto*; the National Assembly or, in between its session, the Chairperson of the National Assembly, shall be notified forthwith.

(2) No permission for initiating criminal prosecution shall be required, where the Member of the National Assembly has given his consent thereto in writing.

2.1.2. Implementing provisions

The implementing rules of Articles 69 and 70 of the Constitution are contained in Article 138 of the Rules of organisation and procedure of the National Assembly which reads as follows:

Article 138

(1) Members of the National Assembly may not be taken into custody and shall not be liable to criminal prosecution, save for a committed crime of a general nature and, then, by consent of the National Assembly or, when the Assembly is not in session (Article 45, paragraph 2), of the Chairperson of the National Assembly.

(2) No consent to custody shall be required when the Member concerned is caught in the act of committing a grave crime, in which case the National Assembly, or, when the Assembly is not in session (Article 45, paragraph 2), its Chairperson, shall be notified immediately.

(3) Where there is sufficient data to the effect that a Member of the National Assembly has committed a crime of a general nature, the Chief Prosecutor shall direct a substantiated request to the National Assembly or, when the Assembly is not in session, to its Chairperson, for permission to institute criminal proceedings. Sufficient data shall be enclosed with such request.

(4) Permission to initiate criminal proceedings shall not be required in case there is agreement in writing by the Member of the National Assembly. The Member of the National Assembly shall submit his/her agreement to the Chairperson of the National Assembly in person who shall notify forthwith

the Chief Prosecutor and inform the National Assembly at the first sitting following the submission of the agreement. Once given by a Member of the National Assembly the agreement cannot be withdrawn.

(5) Except for the cases envisaged in paragraph 4, the request of the Chief Prosecutor and the data therewith shall be considered by the National Assembly, which shall rule thereon not earlier than 5 days after the receipt of the request. If so requested, and if the Member concerned appears before it, the National Assembly shall hear the Member concerned.

(6) When the National Assembly is not in session (Article 45, paragraph 2), the permission to institute criminal proceedings against a Member shall be issued by the Chairperson of the National Assembly. Such permission so issued shall be tabled for approval by the Members of the National Assembly at the first sitting of the Assembly.

(7) Where the criminal proceedings conclude with a prison sentence for a premeditated crime or the execution of the prison sentence for any other crime is not suspended, the National Assembly shall adopt a resolution to terminate the powers of the Member concerned before the end of his/her term.

(8) Where the Chief Prosecutor has requested that the Member concerned be taken into custody, the National Assembly shall pass a separate resolution on such request following the procedure laid down in paragraphs 1 to 7. The Assembly may rescind a permission already given.

(9) The provisions of Article 70 of the Constitution of the Republic of Bulgaria shall apply, also, where criminal proceedings against a Member of the National Assembly had been instituted prior to his election.

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 69 of the Constitution)

Pursuant to Article 69 of the Constitution, members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their functions. Members of Parliament are therefore exempted from any criminal liability which could stem from opinions expressed or votes cast when carrying out their parliamentary activities. This exemption continues to apply after the end of their term of office and also covers opinions expressed outside the parliamentary premises, as long as they are made while performing their duties as Members of Parliament (Constitutional Court Decision № 10 of 27 July 1992¹²³).

¹²³ See Constitutional Court Decision No 10 of 27.07.1992 on constitutional case No 13 of 1992 (State Gazette No 63/1992). The Chairperson of the National Assembly may take disciplinary measures against Members of Parliament who violate the rules on Parliamentary conduct, in accordance with Article 156 of the Rules of organisation and procedure of the National Assembly.

2.2.2. Immunity (Article 70 of the Constitution)

Pursuant to Article 70(1) of the Constitution, the permission of the National Assembly is needed in order to subject the member to detention and to criminal prosecution.

Article 138 of the Rules of organisation and procedure of the National Assembly contains the relevant procedure. According to paragraph 9 of the same article, "The provisions of Article 70 of the Constitution of the Republic of Bulgaria shall apply, also, where criminal proceedings against a Member of the National Assembly had been instituted prior to his election."

The permission of the National Assembly is, however, not required in two cases.

Firstly, when a member has given his/her consent to be criminally prosecuted (Article 70(2) of the Constitution). The agreement, which has to be in writing, must be submitted to the Chairperson of the National Assembly in person who should then notify the Prosecutor General and inform the National Assembly. Once the Member has given his/her consent, it cannot be withdrawn (Article 38(4) of the Rules of organisation and procedure of the National Assembly).

Secondly, when a Member is arrested *in flagrante delicto* (Article 70(1) of the Constitution). In such cases, the National Assembly (or its Chairperson, if the Assembly is not in session) shall be notified immediately (Article 70(1) of the Constitution and Article 138(2) of the Rules of organisation and procedure of the National Assembly).

2.3. National authority entitled to request the immunity of a Bulgarian Member of the European Parliament to be waived

The above-mentioned letter from the Permanent Representation of Bulgaria¹²⁴ states that in accordance with the Constitution and laws of the Republic of Bulgaria, the competent national authority that may seek waiver of the immunity of a Member of the European Parliament is the Prosecutor General of the Republic of Bulgaria. The Bulgarian Constitution does not contain express provisions granting powers to the national bodies competent to seek waiver of the immunity of MEPs. The provisions governing the authorities competent to seek waiver of the immunity of members of the national parliament are laid down in the Rules on the organisation and procedure of the National Assembly (PODNS), including the Rules on the organisation and procedure of the 44th National Assembly which were promulgated in State Gazette (SG) No 35 of 2 May 2017 and in force as of that date, as amended (see SG No 34 of 20 April 2018). According to Article 138 of the PODNS, the body competent to seek permission for the prosecution of a member of the national parliament is the Prosecutor General of the Republic of Bulgaria.

§ § §

¹²⁴ Letter dated 29 July 2020.

CZECH REPUBLIC

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1 Legal provisions on the composition of the Czech government

Constitution

The composition of the Czech government is established by the second paragraph of Article 67 of the Constitution, which reads as follows: "The Government shall consist of the Prime Minister, Deputy Prime Ministers and Ministers".¹²⁵

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: "Zákon č. 2/1969 Sb. o zřízení ministerstev a jiných ústředních orgánů státní správy České republiky, ve znění pozdějších předpisů" (Act No 2/1969 on the organisation of the ministries and other state bodies, as amended), in particular Articles 1 and 2.

1.1.2 Denomination of the members of the Czech government

Pursuant to the provisions mentioned in Article 67 of the Constitution, members of the Czech government are the following:

- *Předseda vlády (Prime Minister)*
 - *female: předsedkyně vlády,*
- *Místopředseda vlády (Deputy Prime Minister)*
 - *feminine: místopředsedkyně vlády,*
 - *plural masculine: místopředsedové vlády,*
 - *plural feminine: místopředsedkyně vlády,*
- *Ministr (Minister)*
 - *feminine: ministryně,*
 - *plural masculine: ministři,*
 - *plural feminine: ministryně.*

¹²⁵ "Vláda se skládá z předsedy vlády, místopředsedů vlády a ministrů". An English translation of the Constitution, see [Constitution of the Czech Republic of 16 December 1992](#).

1.1.3. *Date of the beginning of the term of office*

In accordance with Art. 68(2) of the Constitution, the Prime Minister and Ministers are appointed by the President. Under the terms of Article 69 of the Constitution¹²⁶ the date of the beginning of the term of office of the members of the government shall be considered the date they are sworn in by the President of the Republic.

1.2. Member of a national parliament

1.2.1. *Legal provisions on the composition of the Czech Parliament*

Constitution

The composition of the Czech Parliament is established by the second paragraph of Article 15 of the Constitution, which reads as follows: "The Parliament shall have two chambers which shall be the Chamber of Deputies and the Senate".¹²⁷

The following Article 16 of the Constitution fixes the number of the Deputies and of the elective Senators which respectively amounts to two hundred and to eighty-one. Deputies are elected for a term of four years, while Senators are elected for a term of six years (elections for one third of the Senate take place every two years).

Implementing provisions

More detailed provisions concerning the composition and the organisation of the Chamber of Deputies and of the Senate are contained in their respective Rules of Procedure which are adopted in the form of law (*zákon*).¹²⁸

1.2.2. *Denomination of the members of the Czech Parliament*

Pursuant to the provisions mentioned in paragraph 2.1., members of the Czech Parliament are the following:

- *Předseda Poslanecké sněmovny (President of the Chamber of Deputies)*
 - *feminine: předsedkyně Poslanecké sněmovny,*
- *Místopředseda Poslanecké sněmovny (Vice-President of the Chamber of Deputies)*
 - *feminine: místopředsedkyně Poslanecké sněmovny,*
 - *plural masculine: místopředsedové...,*
 - *plural feminine: místopředsedkyně...,*

¹²⁶ In accordance with Art. 68(2) of the Constitution, the Prime Minister and Ministers are appointed by the President. Normally, they take the oath on the day of appointment. Article 69 of the Czech Constitution reads as follows: (1) Each Member of Government shall take an oath of office administered by the President of the Republic. (2) The oath taken by a Member of the Government shall read: "I hereby swear allegiance to the Czech Republic. I swear to uphold its Constitution and laws and to implement them. I swear upon my honour that I shall conscientiously perform my office and shall not misuse my position".

¹²⁷ "Parlament je tvořen dvěma komorami, a to Poslaneckou sněmovnou a Senátem."

¹²⁸ The texts of the Rules of Procedure of the Chamber of Deputies and the Senate are available at (respectively): http://www.psp.cz/docs/laws/1995/90_index.html; and http://www.senat.cz/informace/zakon106/zakony/zak107.php?ke_dni=14.12.2012&O=9.

- *Poslanci (Deputies)*,
 - plural feminine: *poslankyně*,
- *Předseda Senátu (President of the Senate)*
 - feminine: *předsedkyně Senátu*,
- *Místopředseda Senátu (Vice-Presidents of the Senate)*
 - feminine: *místopředsedkyně Senátu*,
 - plural masculine: *místopředsedové...*,
 - plural feminine: *místopředsedkyně...*,
- *Senátoři (Senators)*
 - plural feminine: *senátorky*.

1.2.3. Date of the beginning of the term of office

Chamber of Deputies

Under the terms of Article 19(3) of the Constitution and Article 2 of the Rules of Procedure of the Chamber of Deputies, the mandate of every Deputy is established on his/her election. They officially begin their term of office from the opening of the first sitting following their proclamation by the National Electoral Committee within the period of one month after the announcement of the results of elections.

At the first sitting following elections, Deputies take the following oath, as provided by Article 23(3) of the Constitution: "I hereby swear my allegiance to the Czech Republic. I swear to uphold its Constitution and its laws. I swear on my honour that I shall discharge my office in the interest of all the people, and to the best of my belief." ¹²⁹ Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

Senate

Under the terms of Article 19(3) of the Constitution and Article 2 of the Rules of Procedure of the Senate, the mandate of every Senator is established on his/her election. They officially begin their term of office from the opening of the first sitting following their proclamation by the State Election Commission within the period of one month after the announcement of the results of elections.

At the first sitting following elections, Senators take the oath provided by Article 23(3) of the Constitution. Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

Article 25 of the Constitution

A Deputy or Senator's mandate shall lapse:

- (a) upon his refusal to take the oath of office or upon taking the oath with reservations,
- (b) upon the expiration of the electoral term,
- (c) when he resigns his seat,
- (d) upon his loss of eligibility to hold office,
- (e) for Deputies, upon the dissolution of the Assembly of Deputies,
- (f) when an incompatibility of offices under Article 22 arises.

¹²⁹ Slibuji věrnost České republice. Slibuji, že budu zachovávat její Ústavu a zákony. Slibuji na svou čest, že svůj mandát budu vykonávat v zájmu všeho lidu a podle svého nejlepšího vědomí a svědomí.

Article 26 of the Constitution

Deputies and Senators shall perform their duties personally in accordance with their oath of office; in addition, they shall not be bound by anyone's instructions.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

The Czech authority competent for submitting a notification to the European Parliament regarding both the cases of incompatibility and the names of the elected MEPs is the State Election Commission alongside with the Secretariat at the Department of Elections of the Ministry of the Interior). This has been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of the Czech Republic to the EU¹³⁰.

¹³⁰ Letter dated 24 July 2020. See also (Czech version only): <https://www.mvcr.cz/clanek/statni-volebni-komise-93402.aspx?q=Y2hudW09Mq%3d>.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In the Czech Republic, the parliamentary immunities are granted to the members of the national Parliament by Article 27 of the Constitution which reads as follows:

Current text of the Constitution (see Subsection 4):

“Article 27

- (1) There shall be no legal recourse against Deputies or Senators for their votes in the Chamber of Deputies or Senate respectively, or in the bodies thereof.
- (2) Deputies and Senators may not be criminally prosecuted for speeches in the Chamber of Deputies or the Senate respectively, or in the bodies thereof. Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are a member.
- (3) In respect of administrative offenses, Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are a member, unless a statute provides otherwise.
- (4) Deputies and Senators may not be criminally prosecuted except with the consent of the chamber of which they are a member. If that chamber withholds its consent, such criminal prosecution shall be foreclosed for the duration of their mandate.
- (5) Deputies and Senators may be arrested only if they are apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately announce such an arrest to the President of the chamber of which the detained member of Parliament is a member; if, within twenty-four hours of the arrest, the President of the chamber does not grant consent with the handing over of the detainee to a court, the arresting authority shall be obliged to release him. At the very next meeting of that chamber, the chamber shall take a final decision as to whether such a member may be prosecuted.”¹³¹

¹³¹ The Czech wording of this Article is the following:

“Článek 27

- (1) Poslanec ani senátor nelze postihnout pro hlasování v Poslanecké sněmovně nebo Senátu nebo jejich orgánech.
- (2) Za projevy učiněné v Poslanecké sněmovně nebo Senátu nebo v jejich orgánech nelze poslance nebo senátora trestně stíhat. Poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem.
- (3) Za přestupky poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem, pokud zákon nestanoví jinak.
- (4) Poslanec ani senátor nelze trestně stíhat bez souhlasu komory, jejímž je členem. Odepře-li komora souhlas, je trestní stíhání po dobu trvání mandátu vyloučeno.
- (5) Poslanec nebo senátor lze zadržet, jen byl-li dopaden při páčání trestného činu nebo bezprostředně poté. Příslušný orgán je povinen zadržení ihned oznámit předsedovi komory, jejímž je zadržený členem; nedá-li předseda komory do 24 hodin od zadržení souhlas k odevzdání zadrženého soudu, je příslušný orgán povinen ho propustit. Na své první následující schůzi komora rozhodne o přípustnosti stíhání s konečnou platností.”

2.1.2. *Implementing provisions*

The implementing rules of Article 27 of the Constitution are contained in the Rules of Procedure of the Chamber of Deputies and in the Rules of Procedure of the Senate.

2.2. *Scope and content of national parliamentary immunities*

The system of immunity applicable to members of the Czech Parliament represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. *Non-liability principle (Article 27(1) and (2) of the Constitution)*

Pursuant to Article 27(1) and (2) of the Constitution, members of the Parliament are not liable for their voting in the Chamber of Deputies or in the Senate, or in their bodies. No Deputy or Senator may be criminally prosecuted for statements made in the Chamber of Deputies or in the Senate, or in their bodies. For such statements, MP's are subject only to the disciplinary jurisdiction of the chamber of which they are members.

2.2.2. *Immunity (Article 27(3), (4) and (5) of the Constitution)*

Pursuant to Article 27(3), (4) and (5) of the Constitution, the authorisation of the Chamber to which the member belongs is needed in order to subject the member to the following measures:

See Article 27, Subsection 3 – 5, of the Constitution (Section 2.1.1).

2.3. *National authority entitled to request the immunity of a Czech member of the European Parliament to be waived*

. According to the above-mentioned letter from the Permanent Representation of the Czech Republic¹³², "The authority competent to request the waiver of immunity shall be a law enforcement authority. Pursuant to the provisions of Section 12(1) of Act No. 141/1961 Coll. on Criminal Procedure (Criminal Procedure Code), as amended, criminal justice authorities shall mean a court, a public prosecutor's office or a police authority. According to Article 15(7) of the General Instruction of the Prosecutor General No. 9/2019 on the Conduct of Public Prosecutors in Criminal Proceedings, *if the criminal complaint concerns a Member or Senator of the Parliament of the Czech Republic, a judge of the Constitutional Court or a judge, and if the conditions for issuing a resolution pursuant to Section 160(1) of the Criminal Procedure Code are met, the relevant public prosecutor shall ensure that consent is obtained in accordance with the provisions of the Constitution and other legal regulations. The same shall apply to Members of the European Parliament.* In the light of the above, as well as the wording of Rule 9(12) of the Rules of Procedure of the European Parliament, the competent authority to transmit a request for the waiver of parliamentary immunity to the European Parliament will be exclusively the public prosecutor's office or the court with material and territorial jurisdiction".

¹³² Letter dated 24 July 2020.

DENMARK

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Danish government

Constitution

Pursuant to Article 14 of the Constitutional Act of Denmark,¹³³ "The King¹³⁴ shall appoint and dismiss the Prime Minister and the other Ministers. He shall decide upon the number of Ministers and upon the distribution of the duties of government among them."

Implementing provisions

There are no implementing provisions specifically on the government's composition.

1.1.2. Denomination of the members of the Danish government

In accordance with Article 14 of the Constitutional Act, members of the Danish government are the following:

- *Statsminister (Prime Minister),*
- *Minister (Minister); Ministre (Ministers).*

1.1.3. Date of the beginning of the term of office

Pursuant to Article 14 of the Constitutional Act, the King (currently the Queen) appoints and dismisses the Prime Minister and the other Ministers. He determines their number and the division of competences between them. This is done by a royal decree.

There are no other detailed rules on the formalities of the nomination. The term of office of the Prime Minister and other Ministers begins once the Queen has signed the royal decree of appointment and the Prime Minister has signed it too. This is a constitutional practice in accordance with Article 14 of the Constitutional Act.

¹³³ An English translation of the Danish Constitution is available at: <https://english.stm.dk/>. The Constitution has not been amended since 1953.

¹³⁴ Read "Queen" since the denomination "King" covers the current monarch. In the Folketing's publication [My Constitutional Act with explanations](#), the explanations to Article 14 it states the following: "The Queen has no real influence on who will be a Minister or who will be dismissed. The Queen appoints the Ministers recommended by the Prime Minister. When a new Prime Minister is to be appointed, the current Prime Minister and the Queen decide which politician will be able to put together a majority of the Members of Parliament. The person in question may never have a majority against him or her. The Queen then appoints that person to be the new Prime Minister."

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Danish Parliament

Constitution

The Danish Parliament is the "*Folketing*". According to Article 28 of the Constitutional Act the *Folketing* consists of one assembly of not more than one hundred and seventy-nine members, of whom two members shall be elected in the Faroe Islands and two members in Greenland. Pursuant to Article 32 of the Constitutional Act, members are elected for a period of four years. However, the King may at any time issue writs for a new election, with the effect that the existing seats shall be vacated upon a new election, except that writs for an election shall not be issued after the appointment of a new Ministry until the Prime Minister has appeared before the *Folketing*. In practice, the monarch does so at the request of the Prime Minister.

Implementing provisions

More detailed rules on the election of Parliament are contained in the Parliamentary Elections Act.¹³⁵ More detailed provisions concerning the composition and the organisation of the *Folketing* are contained in the Standing Orders of the Parliament (*Folketingets forretningsorden*).¹³⁶

1.2.2. Denomination of the members of the Danish Parliament

Pursuant to the provisions mentioned in paragraph 1.2., members of the Danish Parliament are the following:

- *Folketingets formand (Speaker)*,
- *Folketingets 1./2./3./4. næstformand (First/Second/Third/Fourth Deputy Speaker); Folketingets næstformænd (Deputy Speakers)*,
- *Medlem af Folketinget (Member of Parliament); Medlemmer af Folketinget (Members of Parliament)*.

1.2.3. Date of the beginning of the term of office

Under the terms of Article 35 (1) and (2) of the Constitution "A newly elected *Folketing* shall assemble at twelve o'clock noon on the twelfth weekday after the day of election, unless the King has previously summoned a meeting of its members. Immediately after the proving of the mandates the *Folketing* shall constitute itself by the election of a Speaker and deputy speakers."

The validation of the mandates is done by Parliament itself, in accordance with Article 33 of the Constitutional Act. This takes place upon a recommendation from a temporary committee consisting of 21 members of Parliament (see Article 1 (2)-(9) of the Standing Orders of the Parliament). The same provision of the Standing Orders of the Parliament as well as Article 32 (7) of the Constitution foresee

¹³⁵ An English translation of the Parliamentary Elections Act (consolidated act no. 137 of 7 February 2019) is available at the website of the Ministry of Social Affairs and the Interior: [Folketing \(Parliamentary\) Elections Act](#).

¹³⁶ See [Forretningsorden for Folketinget](#), with amendments until April 2021.

For an English translation see [Standing Orders of the Danish Parliament - 2021](#).

that only a member whose mandate has been validated and who has made a declaration of loyalty to the Constitutional Act can fully exercise his/her mandate as Member of Parliament.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Pursuant to Sections 40 and 41 of the Members of the European Parliament Elections Act,¹³⁷ the *Folketing* informs the European Parliament about the result of the elections in order for the European Parliament to verify the Member's credentials. The *Folketing* decides on the validity of the election of a candidate; moreover, if the question of validity arises during the election period or if the person loses his/her eligibility, it may take a decision on this. The Permanent Representation of Denmark to the EU has confirmed this, stating that the Secretariat of Law in the *Folketing* notifies to the European Parliament of the names of the MEPs elected in Denmark and of cases of incompatibility¹³⁸.

¹³⁷ For an English translation, see the website of the Ministry of Social Affairs and the Interior: [Members of the European Parliament Elections Act](#) (consolidated act no. 140 of 7 February 2019).

¹³⁸ Information received from the Permanent Representation by email on 9 July 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

The immunities of the members of the national Parliament are established by Article 57 of the Constitutional Act which reads as follows:

Article 57

"No member of the *Folketing* shall be prosecuted or imprisoned in any manner whatsoever without the consent of the *Folketing*, unless he is taken *in flagrante delicto*. Outside the *Folketing* no member shall be held liable for his utterances in the *Folketing* save by the consent of the *Folketing*".

2.1.2. Implementing provisions

There are no specific provisions for the implementation of the constitutional provisions concerning national parliamentary immunities.

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 57, second sentence of the Constitutional Act)

According to Article 57, second sentence, of the Constitutional Act, the non-liability for opinions expressed in the *Folketing* can be waived with the consent of the *Folketing*. In practice, such consent is never given: therefore, there is a total non-liability for any opinion or vote cast by members of the *Folketing* in the exercise of their functions. Moreover, while the text of Article 57 specifically refers to utterances in the *Folketing*, this rule is generally understood as covering any exercise of freedom of speech in connection with the performance of duties.

This immunity covers not only members in office, but also those who have left office with regard to utterances made when they were members of the *Folketing*.

2.2.2. Immunity (Article 57, first sentence, of the Constitutional Act)

Pursuant to Article 57, first sentence, of the Constitutional Act, members of the Parliament cannot be prosecuted or imprisoned without the consent of the *Folketing*. This immunity covers only public

criminal prosecution and applies neither to investigation, interrogation and fines, nor to civil actions or criminal cases resulting from private prosecutions.¹³⁹

This immunity does not cover cases where the Member is caught in *flagrante delicto*. This provision only covers Members in office; however, if prosecution started before the person concerned took up the office as a member of the Danish Parliament, it follows from parliamentary practice and the purpose of Article 57 that the consent of the *Folketing* is required to continue the prosecution. Once the mandate has ceased, prosecution can take place also for offences committed during the exercise of parliamentary mandate.

2.3. National authority entitled to request the immunity of a Danish member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the MEPs elected in Denmark. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

If the public prosecutor considers a request for waiver justified, it transmits the request to the Ministry of Justice (*Justitsministeriet*) which ensures the necessary further action to be taken. This has been confirmed by the Permanent Representation of Denmark to the EU.¹⁴⁰

§ § §

¹³⁹ Private prosecution is foreseen for cases where the criminal act has to be prosecuted by a private party (in most cases by the victim of the act) and not by the public prosecutor. The persons having competence to prosecute are listed in Article 725 of the [Danish Administration of Justice Act \(Retsplejeloven\)](#), consolidated act no. 938 of 10 September 2019. The types of acts being submitted to private prosecution are the following: breach of confidentiality, defamation and retaliation. Private prosecution is also foreseen in nearly all legislation in the field of intellectual property.

¹⁴⁰ Information received from the Permanent Representation by email on 26 November 2020.

GERMANY

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1 Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the German government

Constitution

The composition of the German government is established by Article 62 of the Basic Law for the Federal Republic of Germany¹⁴¹, which reads as follows: "The Federal Government shall consist of the Federal Chancellor and the Federal Ministers."

Implementing provisions

More detailed provisions concerning the composition and the organisation of the German government are contained in Articles 62 to 69 of the Basic Law, in the Rules of Procedure of the Government (GOBReg/ *Geschäftsordnung der Bundesregierung*¹⁴²) and in the Rules of Procedure of the Federal Ministries (GGO/ *Gemeinsame Geschäftsordnung der Bundesministerien*¹⁴³).

1.1.2. Denomination of the members of the German government

Pursuant to the provisions mentioned in paragraph 1.1.1., members of the German government are the following:

- *Bundestkanzler/Bundestkanzlerin* (Federal Chancellor),
- *Bundesminister* (Federal Minister).

1.1.3. Date of the beginning of the term of office

Under the terms of the second paragraph of Article 64 of the Basic Law, on taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in Article 56 before the *Bundestag* (Parliament).¹⁴⁴ It follows that the act of taking the oath and the taking of the office must be kept apart.¹⁴⁵ The notion of "taking of the office" (*Amtsübernahme*) is not specified in the Basic Law or other legislative acts. The taking of the office takes place after the swearing of the oath, as each Minister

¹⁴¹ For the "Basic Law" (*Grundgesetz*), the Constitution of the Federal Republic of Germany, see [Grundgesetz für die Bundesrepublik Deutschland](#). An English translation is available at: [Basic Law for the Federal Republic of Germany](#).

¹⁴² See [Geschäftsordnung der Bundesregierung](#).

¹⁴³ See [Gemeinsame Geschäftsordnung der Bundesministerien \(GGO\)](#).

¹⁴⁴ A list of the current members of the Federal Government can be found here: <http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/Bundeskabinett/bundeskabinett.html>

¹⁴⁵ See, in particular, Maunz/Dürig, *Grundgesetz-Kommentar* (2019), Rnr. 35 ff.

actually takes over his/her Department and as the Chancellor actually takes over the direction of his/her office and of the activities of the Government. No additional formalities are required.

It is necessary to distinguish the taking of the office from the beginning of the official relationship under public law. According to § 2(2) of the Federal Ministers Act (*Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung*, or *BMinG*¹⁴⁶), the latter begins, in principle, when the President delivers the certificate of appointment, or, if the swearing of the oath took place beforehand, at the moment of the swearing in.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the German Parliament

Constitution

Germany has two legislative bodies: the German Bundestag and the Bundesrat. Concerning the German Bundestag, Article 38(1) of the Basic Law stipulates: "Members of the German Bundestag shall be elected in general, direct, free, equal, and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience."

The Bundesrat consists of members of the governments of the federal states (*Länder*). Article 50 of the Basic Law stipulates: "The *Länder* shall participate through the Bundesrat in the legislation and administration of the Federation and in matters concerning the European Union." Although, according to the jurisprudence of the Federal Constitutional Court, the Bundesrat is not to be regarded as the "second chamber of a single legislative body, which would participate in the legislative procedure on an equal footing with the first chamber",¹⁴⁷ the Bundestag and the Bundesrat form a two-chamber system in the context of the EU law.

Implementing provisions

More detailed provisions concerning the composition and the organisation of the *Bundestag* and the *Bundesrat* are contained in Articles 38 to 53 of the Basic Law and in the rules of procedure of these two constitutional bodies (*Geschäftsordnung des Deutschen Bundestages*¹⁴⁸ and *Geschäftsordnung des Bundesrates*¹⁴⁹).

1.2.2. Denomination of the members of the German Parliament

Pursuant to the provisions mentioned in paragraph 1.2.1., members of the German Parliament are the following:

- *Abgeordnete des Deutschen Bundestages* (Members of the German Bundestag).

The designation for the Bundesrat is:

¹⁴⁶ See [Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung](#).

¹⁴⁷ Federal Constitutional Court (BVerfG), Ruling of 25.06.1974, 2BvF 2, 3/73, paragraph 76.

¹⁴⁸ See [Geschäftsordnung des Deutschen Bundestages](#). For an English translation, see: [Rules of Procedure of the German Bundestag](#).

¹⁴⁹ See [Geschäftsordnung des Bundesrates \(GO BR\)](#).

- *Mitglieder des Bundesrates (Members of the Bundesrat).*

1.2.3. Date of the beginning of the term of office

Under the terms of Article 45 of the *Bundeswahlgesetz*¹⁵⁰ (Federal Election Law), Members of the Bundestag begin their term of office after the official election results are announced, at the opening of the first session of the newly elected *Bundestag*.¹⁵¹

The Bundesrat has no electoral terms. Its members are members of the 16 federal state governments. The members change only when there are elections or changes of government in the federal states. Under constitutional law it is also referred to as an "eternal organ".

1.3. National authority competent to communicate cases of incompatibility to the European Parliament

The conditions to lose membership in the European Parliament are listed in § 22(2) No. 1 - 15 of the Law on the Election of Members of the European Parliament from the Federal Republic of Germany (*Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland*, or *EuWG*¹⁵²). Pursuant to § 23(5) of the *EuWG*, the President of the German *Bundestag* (*Präsident des Deutschen Bundestages*) informs the President of the European Parliament immediately of the reasons and exact moment of the loss of membership in the European Parliament, once it has been decided during the procedure for the scrutiny of elections¹⁵³ or by the Council of Elders or the President of the German *Bundestag*.¹⁵⁴ According to § 23(1) No. 5 of the *EuWG*, also the European Parliament can state the incompatibility of a German Member of the European Parliament, in which case either the President of the German *Bundestag* or the *Bundesregierung* will communicate to the European Parliament the information necessary for taking the decision.

¹⁵⁰ See [Bundeswahlgesetz \(BWG\)](#).

¹⁵¹ Article 45(1) provides that: "Ein gewählter Bewerber erwirbt die Mitgliedschaft im Deutschen Bundestag nach der abschließenden Feststellung des Ergebnisses für das Wahlgebiet durch den Bundeswahlausschuss (§ 42 Abs. 2 Satz 1) mit der Eröffnung der ersten Sitzung des Deutschen Bundestages nach der Wahl. Eine Ablehnung des Erwerbs der Mitgliedschaft muss vor der ersten Sitzung gegenüber dem Landeswahlleiter schriftlich erklärt werden. Eine Erklärung unter Vorbehalt gilt als Ablehnung. Die Erklärung kann nicht widerrufen werden."

¹⁵² [Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland](#).

¹⁵³ According to the Election Scrutiny Law, in German [Wahlprüfungsgesetz or WPrüfG](#).

¹⁵⁴ Article 23(5) provides as follows: "Der Präsident des Deutschen Bundestages unterrichtet den Präsidenten des Europäischen Parlaments unverzüglich über den Grund und den Zeitpunkt des Verlustes der Mitgliedschaft, wenn darüber im Wahlprüfungsverfahren oder durch den Ältestenrat oder den Präsidenten des Deutschen Bundestages entschieden worden ist."

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Germany the parliamentary immunities are granted to the members of the *Bundestag* by Article 46 of the Basic Law which reads as follows:

Article 46

- (1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a remark made by him in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults.
- (2) A Member may not be called to account or arrested for a punishable offence without permission of the Bundestag unless he is apprehended while committing the offence or in the course of the following day.
- (3) The permission of the Bundestag shall also be required for any other restriction of a Member's freedom of the person or for the initiation of proceedings against a Member under Article 18.
- (4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag."¹⁵⁵

There are no provisions on immunity and indemnity for members of the Bundesrat.

2.1.2. Implementing provisions

The implementing rules of Article 46 of the Basic Law are contained in Rule 107 of the *Geschäftsordnung des Deutschen Bundestages* and its Annex 6. Additional rules are also contained in the federally applicable Guidelines for criminal and administrative penalties (*Richtlinien für das Straf- und Bußgeldverfahren* or *RiStBV*¹⁵⁶), that include the administrative rules applicable to the procedure in criminal cases against members of the Bundestag and of the European Parliament (in particular, at No. 191 to No. 192b RiStBV).

¹⁵⁵ "(1) Ein Abgeordneter darf zu keiner Zeit wegen seiner Abstimmung oder wegen einer Äußerung, die er im Bundestage oder in einem seiner Ausschüsse getan hat, gerichtlich oder dienstlich verfolgt oder sonst außerhalb des Bundestages zur Verantwortung gezogen werden. Dies gilt nicht für verleumderische Beleidigungen. (2) Wegen einer mit Strafe bedrohten Handlung darf ein Abgeordneter nur mit Genehmigung des Bundestages zur Verantwortung gezogen oder verhaftet werden, es sei denn, dass er bei Begehung der Tat oder im Laufe des folgenden Tages festgenommen wird. (3) Die Genehmigung des Bundestages ist ferner bei jeder anderen Beschränkung der persönlichen Freiheit eines Abgeordneten oder zur Einleitung eines Verfahrens gegen einen Abgeordneten gemäß Artikel 18 erforderlich. (4) Jedes Strafverfahren und jedes Verfahren gemäß Artikel 18 gegen einen Abgeordneten, jede Haft und jede sonstige Beschränkung seiner persönlichen Freiheit sind auf Verlangen des Bundestages auszusetzen."

¹⁵⁶ For an unofficial consolidated version of the Guidelines, see [Richtlinien für das Strafverfahren und das Bußgeldverfahren \(RiStBV\)](#).

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 46(1) of the Basic Law)

Pursuant to Article 46 (1) of the Basic Law, members of the *Bundestag* are not liable for the opinions expressed or votes cast in the exercise of their functions. Members of the *Bundestag* are therefore exempted from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed or vote cast when carrying out their parliamentary activities in the *Bundestag* or in its committees. The non-liability continues to apply after the end of their term of office. The non-liability principle does not apply to defamatory insults.

2.2.2. Immunity (Article 46(2) and (3) of the Basic Law)

Pursuant to Article 46(2) and (3) of the Basic Law, the authorisation of the *Bundestag* is needed in order to subject a member to the following measures:

- *prosecution or arrest for a punishable offence,*
- *any restriction of personal freedom,*
- *the opening of proceedings against a member under Article 18 of the Basic Law¹⁵⁷ (Forfeiture of basic rights).*

This authorisation is not required if the member of the *Bundestag* is apprehended in the act of committing a punishable offence or in the course of the following day.

Pursuant to Article 46 (4) of the Basic Law, any criminal proceedings and any proceedings under Article 18 (Forfeiture of basic rights) against a member, any detention and any other restriction of his/her personal freedom shall be suspended upon the request of the *Bundestag*.

2.3. National authority entitled to request the immunity of a German member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the German members of the European Parliament.

The Act on the Legal Status of Members of the European Parliament (§ 5, EuAbgG¹⁵⁸) provides that the indemnity and immunity of Members of the European Parliament shall be determined in accordance with Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities.

¹⁵⁷ Article 18 [Forfeiture of basic rights] : Whoever abuses the freedom of expression, in particular the freedom of the press (paragraph (1) of Article 5), the freedom of teaching (paragraph (3) of Article 5), the freedom of assembly (Article 8), the freedom of association (Article 9), the privacy of correspondence, posts and telecommunications (Article 10), the rights of property (Article 14), or the right of asylum (Article 16a) in order to combat the free democratic basic order shall forfeit these basic rights. This forfeiture and its extent shall be declared by the Federal Constitutional Court.

¹⁵⁸ See [Gesetz über die Rechtsverhältnisse der Mitglieder des Europäischen Parlaments aus der Bundesrepublik Deutschland \(Europaabgeordnetengesetz - EuAbgG\)](#).

In addition to EU provisions, MEPs are governed by the law of their country of origin and are subject to the same rules as members of their national parliament.

Pursuant to Nr. 1 of the "*Grundsätze in Immunitätsangelegenheiten*" (Principles governing matters relating to immunity) as laid down in Annex 6 of the rules of procedure of the *Bundestag*, the authorities entitled to request waiver of the immunity of a member of the *Bundestag* are the following:

- *public prosecutors' offices, courts, professional disciplinary courts under public law, as well as professional associations exercising supervision by virtue of a law;*
- *in private prosecution proceedings, the court, before it opens the main trial pursuant to Section 383 of the Code of Criminal Procedure;*
- *the creditor in executioner proceedings insofar as the court cannot take action without his request;*
- *the Parliamentary Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure of the Bundestag.*¹⁵⁹

According to the information received from the Permanent Representation of the Federal Republic of Germany to the European Union¹⁶⁰, the authority entitled to request the immunity of a German member of the European Parliament to be waived and to notify such a request to the European Parliament is *Bundesministerium für Justiz und für Verbraucherschutz* (the Federal Ministry of Justice and Consumer Protection).

§ § §

¹⁵⁹ The original German text provides the following: "Berechtigt zur Stellung eines Antrages auf Aufhebung der Immunität sind a) die Staatsanwaltschaften, Gerichte, Ehren- und Berufsgerichte öffentlich-rechtlichen Charakters sowie berufsständische Einrichtungen, die kraft Gesetzes Standesaufsicht ausüben, b) im Privatklageverfahren das Gericht, bevor es nach §383 StPO das Hauptverfahren eröffnet, c) der Gläubiger im Vollstreckungsverfahren, soweit das Gericht nicht auch ohne dessen Antrag tätig werden kann, d) der Ausschuss für Wahlprüfung, Immunität und Geschäftsordnung".

¹⁶⁰ Information received from the Permanent Representation by email on 2 October 2020.

ESTONIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Estonian government

Constitution

The composition of the Estonian government is established by Article 88 of the Constitution,¹⁶¹ holding that the Government of the Republic comprises the Prime Minister and ministers. Article 99 of the Constitution stipulates that Members of the Government of the Republic may not hold any other governmental office, or belong to the management board or supervisory board of a commercial enterprise.

Implementing provisions

Article 12 (2-1) of the Government of the Republic Act¹⁶² stipulates that a minister shall be deemed to have submitted a letter of resignation upon his or her election as a Member of the European Parliament if he or she fails to inform the National Electoral Committee within ten days as of the day on which the election results are announced that he or she wishes to continue in his or her current office and decline the mandate of a Member of the European Parliament.

1.1.2. Denomination of the members of the Estonian government

Members of the Estonian government are the following:

- *peaminister (Prime Minister),*
- *minister (Minister); ministrid (Ministers).*

1.1.3. Date of the beginning of the term of office

Pursuant to Article 91 of the Constitution and to Article 6 of the Government of the Republic Act, the date of the beginning of the term of office of the members of the Government is the date when the Government takes an oath of office before the *Riigikogu* (Parliament of Estonia).

¹⁶¹ For the text of the Constitution, see [Eesti Vabariigi põhiseadus](#).
For an official English translation, see [The Constitution of the Republic of Estonia](#).

¹⁶² For the text of the Government of the Republic Act, see [Vabariigi Valitsuse seadus](#).
For an English translation, see [Government of the Republic Act](#).

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Estonian Parliament

The composition of the *Riigikogu* (Parliament of Estonia) is established by Article 60 of the Constitution, holding that the *Riigikogu* comprises one hundred and one members. Members of the *Riigikogu* are elected in free elections according to the principle of proportional representation. Elections are general, uniform and direct. Voting is secret. Any citizen of Estonia who has attained twenty-one years of age and is eligible to vote may stand in an election of the *Riigikogu*.

Article 63 of the Constitution holds that a member of the *Riigikogu* may not hold any other governmental office. Pursuant to Article 64, the mandate of a member of the *Riigikogu* is suspended upon his or her appointment as member of the Government of the Republic, and is restored upon his or her release from the duties of a member of the Government of the Republic.

According to point 1 of Article 75 of the European Parliament Election Act¹⁶³ and Article 25 of the Status of the members of the *Riigikogu* Act¹⁶⁴, the member of the *Riigikogu* may not be a member of the European Parliament. Under Article 9(6) of the Status of the members of the *Riigikogu* Act, a member of the *Riigikogu* is deemed to have submitted a letter of resignation if, within ten days as of the day on which the results of the election to the European Parliament are announced, he or she fails to inform the National Electoral Committee that he or she wishes to continue in his or her current office and to decline the mandate of a member of the European Parliament.

1.2.2. Denomination of the members of the Estonian Parliament

Members of the *Riigikogu* are:

- *Riigikogu liige* (Member of the *Riigikogu*); *Riigikogu liikmed* (Members of the *Riigikogu*).
- From among its members the *Riigikogu* elects a President and two Vice-Presidents:
- *Riigikogu esimees* (President of the *Riigikogu*),
- *Riigikogu aseesimees* (Vice-President of the *Riigikogu*); *Riigikogu aseesimehed* (Vice-Presidents of the *Riigikogu*).

1.2.3. Date of the beginning of the term of office

According to Article 61 of the Constitution, the mandate of members of the *Riigikogu* commences on the day the results of the election are announced.

¹⁶³ See [Euroopa Parlamendi valimise seadus](#). For an English translation, see [European Parliament Election Act](#).

¹⁶⁴ See [Riigikogu liikme staatuse seadus](#). For an English translation, see [Status of Members of the Riigikogu Act](#).

1.3. National authority competent to communicate cases of incompatibility to the European Parliament

Pursuant to Article 72 of the European Parliament Election Act, the National Electoral Committee shall register the elected Members of the European Parliament and forward its resolution to the European Parliament.

If a candidate who is elected holds an office that is incompatible (under national law) with the office of a Member of the European Parliament at the time of the declaration of election results, he or she must notify the National Electoral Committee, within ten days after the date of declaration of election results, whether he or she agrees to participate in the work of the European Parliament or wishes to continue in his or her current office and decline the mandate.¹⁶⁵ Article 75 enlists such offices as:

- the President of the Republic;
- persons serving in offices appointed by the *Riigikogu*, the President of the Republic, the Government of the Republic, the Prime Minister or the head of a government agency or another state agency, except the chairman of a board if the appointment is made by the *Riigikogu* pursuant to law;
- the Chairman of the Board of *Eesti Pank*;
- rural municipality or city mayors;
- members of a rural municipality or city council.

If the elected candidate agrees to participate in the work of the European Parliament, he or she must submit a copy of his or her letter of resignation from his or her current office to the National Electoral Committee.

If a candidate who is elected declines the mandate to the European Parliament, he or she shall be replaced by an alternate member. The replacement of a candidate who is elected shall be formulated by a decision of the National Electoral Committee which shall be forwarded to the European Parliament.

If a person is offered a seat in the *Riigikogu* (Article 72(4) of the European Parliament Election Act) or an office in the Estonian Government (Article 12(2') of the Government of the Republic Act), he or she, and subsequently the National Electoral Committee, shall decide upon his or her resignation.¹⁶⁶

According to Article 76(2) of the European Parliament Election Act, the National Electoral Committee shall immediately notify the European Parliament if an Estonian Member of the European Parliament assumes an office not compatible with the mandate of a Member of the European Parliament. In that case, the authority of a Member of the European Parliament shall terminate prematurely and he or she shall be replaced by an alternate member. That replacement shall be formulated by a resolution of the National Electoral Committee which shall be forwarded to the European Parliament.

¹⁶⁵ As explained above, the members of the *Riigikogu* and the Government (which are also offices incompatible with the one of the Member of the European Parliament) must notify the National Electoral Committee only if they wish to decline the mandate of the Member of the European Parliament.

¹⁶⁶ Official letter of 10 December 2020 sent to the President of the European Parliament by the Permanent Representation of Estonia to the European Union.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Estonia, parliamentary immunities are granted by Articles 62 and 76 of the Constitution.

Article 62

A member of the *Riigikogu* is not bound by his or her mandate, and may not bear legal liability for any vote cast or any political statement made by him or her in the *Riigikogu* or in any of its bodies.

Article 76

Members of the *Riigikogu* are immune from prosecution. Criminal charges against a member may only be brought on a proposal of the Chancellor of Justice and with the consent of a majority of the members of the *Riigikogu*.

2.1.2. Implementing provisions

The implementing provisions can be found in Article 18 and in Articles 18¹ – 18⁵ of the Status of Member of *Riigikogu* Act.¹⁶⁷ Additionally, more specific implementing rules of Article 76 of the Constitution are contained in Chapter 14¹ of the Code of Criminal Procedure.¹⁶⁸

¹⁶⁷ § 18. Immunity

- (1) Members of the Riigikogu are exempt from legal liability for votes cast or political statements made by them in the Riigikogu or in any of its bodies.
- (2) Members of the Riigikogu are inviolable. No member of the Riigikogu may be obstructed in the performance of his or her duties.
- (3) Members of the Riigikogu may not invoke their immunity in connection with acts that are not related to the exercise of free mandate, or to escape legal liability.
- (4) Members of the Riigikogu cannot waive their immunity. They may, by communicating to the President of the Tallinn Court of Appeal, to the Committee of Constitutional Affairs or to the Chancellor of Justice the corresponding declaration of consent in a format that allows reproduction in writing, agree to the performance of isolated procedural acts provided in subsections 1, 3 and 4 of section 382² of the Code of Criminal Procedure and covered by immunity.
- (5) Where this obstructs the performance of his or her duties, a member of the Riigikogu may not be ordered to participate in administrative or civil court proceedings or in misdemeanour proceedings, or compelled to attend any such proceedings, unless the member of the Riigikogu has consented to that in a format that allows reproduction in writing.
- (6) The preparation of the statement of charges regarding a member of the Riigikogu and the performance of any procedural acts of which the subject is a member of the Riigikogu is subject to the provisions of Chapter 14¹ of the Code of Criminal Procedure.

§ 18¹. Limitation period

- (1) When a member of the Riigikogu is suspected of having committed a criminal offence, the running of the limitation period of that offence is suspended.
- (2) The running of the limitation period resumes when the Riigikogu consents to the preparation of the statement of charges concerning the member of the Riigikogu or when the mandate of that member expires.

§ 18². Special rules concerning the immunity of members of the Riigikogu in relation to misdemeanour proceedings

- (1) In the event that a member of the Riigikogu commits a misdemeanour offence, he or she may be subjected to direct coercion insofar as this is inevitably necessary for fixing the fact of the offence.
- (2) Any sentence of detention that a member of the Riigikogu is ordered to serve is to be served during a time when this does not interfere with his or her participation in the work of the Riigikogu.

§ 18³. Special rules concerning the immunity of members of the Riigikogu in relation to the application of special state supervision measures provided in the Law Enforcement Act

Where there is a need to counteract a heightened threat to a person's physical inviolability, physical liberty or highly valuable property, or in the presence of a heightened threat that a breach of public order is already being perpetrated or is about to be perpetrated, a member of the Riigikogu may, without his or her consent, be subjected to the special state supervision measures that are provided in the Law Enforcement Act and that interfere with the performance of his or her duties.

§ 18⁴. Protection of postal items and of messages transmitted through an electronic communication network by or to a member of the Riigikogu

- (1) The seizure and examination, under s. 89 of the Code of Criminal Procedure, of a postal item sent by or to a member of the Riigikogu may be performed in respect of the member of the Riigikogu only where this is necessary to prove an offence that he or she is considered to have committed.
- (2) Any work-related messages that a member of the Riigikogu sends or receives through an electronic communication network are protected by immunity. This does not apply when procedural acts under ss. 3822(1) and 3822(4) of the Code of Criminal Procedure are performed in respect of the member of the Riigikogu with the approval of the President of the Tallinn Court of Appeal or the Chancellor of Justice.

§ 18⁵. Application to withdraw the immunity of a member of the Riigikogu

In order to obtain the consent for performing a procedural act or laying a statement of charges whose subject is a member of the Riigikogu, the Chancellor of Justice or the Prosecutor General presents a reasoned application in which he or she convincingly shows why it is not possible to attain the aim by other means.

¹⁶⁸ See [Kriminaalmenetluse seadustik](#). For an official English translation, see [Code of Criminal Procedure](#).

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 62 of the Constitution)

Pursuant to Article 62 of the Constitution, a member of the *Riigikogu* shall not be held legally liable for votes cast or political statements made by him or her in the *Riigikogu* or in any of its bodies.

2.2.2. Immunity (Article 76 of the Constitution)

Pursuant to Article 76 of the Constitution, the consent of the majority of the members of the *Riigikogu* is necessary in order to bring criminal charges against a member of the *Riigikogu*. The procedure is specified in the Code of Criminal Procedure.

In criminal procedure, the immunity of members of the *Riigikogu* is regulated by Chapter 14¹ of the *Code of Criminal Procedure*, the current version of which also entered into force on 1 January 2015.

The process for waiving parliamentary immunity can conditionally be divided into two stages.

The first stage – "partial waiver of immunity" – is applied to a member of the *Riigikogu* when a number of procedural acts have to be carried out in their regard for the purpose of collecting evidence for a criminal procedure; such acts may include arrest, search, physical examination and surveillance. This stage can be omitted.

In the second stage – "complete waiver of immunity" – on the basis of the collected evidence, the Chancellor of Justice asks the plenary assembly of the *Riigikogu* to allow for a preparation of a statement of charges against a member of the *Riigikogu*. After the consent is received, the criminal proceedings against a member of the *Riigikogu* are continued, as provided in the Code of Criminal Procedure.

During the first stage, in order for the immunity to be partially waived (i.e. for carrying out various procedural acts before the plenary assembly of the *Riigikogu* has consented to allow a statement of charges to be prepared), the following institutions must give their consent:

- 1) consent of the Chairman of the Administrative Chamber of Tallinn Circuit Court – for the application of preventive measures (excl. arrest), search, physical examination, seizure of property, and carrying out surveillance. The consent must be requested by the Prosecutor General;
- 2) consent of the Constitutional Committee of the parliament – for the detention of a member of the *Riigikogu* as a suspect, forced internment in a medical institution for examination, or application of custody, compelled attendance or arrest as preventive measures in their regard. This consent must also be requested by the Prosecutor General;
- 3) consent of the Chancellor of Justice – for searching the parliamentary premises and taking along the physical evidence, documents and means of communication found there, and handing over the work-related correspondence of a member of the *Riigikogu* recorded in the servers of the parliament. This consent must also be requested by the Prosecutor General.

These consents are not necessary if a member of the *Riigikogu* is apprehended in the act of committing a criminal offence in the first degree.

During the second stage (complete waiver of immunity), the Chancellor of Justice, at the request of the Prosecutor General, asks the plenary assembly of the *Riigikogu* to allow for a preparation of a statement of charges against a member of the *Riigikogu*. This can only be done after receiving the consent of the majority of the parliament.

2.3. National authority entitled to request the immunity of an Estonian Member of the European Parliament to be waived

Pursuant to Article 1(3¹) of the Chancellor of Justice Act,¹⁶⁹ "The Chancellor of Justice makes proposals to the President of the European Parliament to waive immunity prescribed by the Protocol on the privileges and immunities of the European Communities [now European Union] from Members of the European Parliament elected from Estonia." It follows that *Õiguskantsler* (the Chancellor of Justice) is the national authority competent to request waiver of the immunity of an Estonian Member of the European Parliament, as confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Estonia to the European Union¹⁷⁰.

§ § §

¹⁶⁹ See [Õiguskantsleri seadus](#). For the official English translation, see [Chancellor of Justice Act](#).

¹⁷⁰ Letter dated 10 December 2020.

IRELAND

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Irish government

Constitution

The composition of the Irish government is established by Article 28(1) of the Irish Constitution¹⁷¹, which reads as follows: "The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this Constitution".

According to Article 28(5) and (6) of the Constitution, the Government is headed by a prime minister called the *Taoiseach*, and a deputy prime minister called the *Tánaiste*. The *Taoiseach* is appointed by the President after being designated by *Dáil Éireann* (the lower house of Parliament), in accordance with Article 13(1) of the Constitution. The deputy Prime Minister (*Tánaiste*) is appointed by the President of Ireland upon the nomination of the Prime Minister (*Taoiseach*). The President appoints all ministers after they have been chosen by the *Taoiseach* and approved by the *Dáil*, in accordance with Article 13(2) of the Constitution.

Article 28(7) stipulates that the *Taoiseach* (Prime Minister), *Tánaiste* (Deputy Prime Minister) and the Minister for Finance must be members of *Dáil Éireann*. The other members of Government must be members of either the *Dáil* or *Seanad* but no more than two may be members of the *Seanad*.

Implementing provisions

The above-mentioned provisions of the Constitution are further supplemented by the following act of secondary law: the Ministers and Secretaries Act, 1924¹⁷² and its amendments, which contain the detailed provisions regarding the functions of the Government in general.

According to Section 4 of the Ministers and Secretaries (Amendment) (No. 2) Act, 1977¹⁷³, the expression "Minister of the Government" means a member of the Government having charge of a Department of State.

It is worth specifying that according to these provisions, the Government is advised by the Attorney General who is not formally a member of the Government but participates in its meetings. Similarly, the Chief Whip may also attend meetings of the Government but is not a part of the Government. Members of the Government are also assisted by Ministers of State, often just referred to as 'junior ministers' who are, however, not part of the Government and do not take part in its meetings.

¹⁷¹ For the official English version, see [Constitution of Ireland](#).

¹⁷² See [Ministers and Secretaries Act, 1924](#).

¹⁷³ See [Ministers and Secretaries \(Amendment\) \(No. 2\) Act, 1977](#).

1.1.2. Denomination of the members of the Irish government

Pursuant to the provisions mentioned in paragraph 1.1., members of the Irish government are the following:

- *The Taoiseach (Prime Minister),*
- *The Tánaiste (Deputy Prime Minister); Tánaistí (Deputy prime Ministers),*
- *Aire Rialtais (Minister of Government); Airi Rialtais (Ministers of Government).*

1.1.3. Date of the beginning of the term of office

Article 13(1) 1° of the Irish Constitution provides that: "The President shall, on the nomination of *Dáil Éireann*, appoint the *Taoiseach*, that is, the head of the Government or Prime Minister."

Article 13(1) 2° of the Constitution further provides that: "The President shall, on nomination of the *Taoiseach* with the previous approval of *Dáil Éireann*, appoint the other members of the Government." According to Article 13(1) 3° of the Constitution, the President shall, on the advice of the *Taoiseach*, accept the resignation or terminate the appointment of any member of the Government.

Therefore, the date on which the term of office of the members of the Irish government commences is the day upon which they are appointed by the President.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Irish Parliament

Constitution

The composition of the Irish Parliament is established by Article 15(1)1°-2° of the Irish Constitution, which reads as follows: "The National Parliament shall be called and known, and is in this Constitution generally referred to, as the *Oireachtas*. The *Oireachtas* shall consist of the President and two Houses, viz.: a House of Representatives to be called *Dáil Éireann* and a Senate to be called *Seanad Éireann*".

According to Article 16(2) of the Constitution, the number of members of the House of Representatives shall from time to time be fixed by law, but the total number of members of *Dáil Éireann* shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population.

The *Dáil* currently consists of 160 members; the most recent elections were held 8 February 2020.

Members of *Dáil Éireann* are elected by citizens aged 18 years and over.

According to Article 18 of the Constitution, the Senate is composed by sixty members, of whom eleven are nominated and forty-nine are elected. Eleven members are nominated by the Prime Minister (*Taoiseach*). Six members are elected by the graduates of two universities: - three each by the National University of Ireland and the University of Dublin (Trinity College). The remaining forty-three are elected by five panels representing vocational interests namely, National Language and Culture, Literature, Art, Education; Agriculture and Fisheries; Labour; Industry and Commerce; and Public Administration.

Implementing provisions

More detailed provisions concerning the composition and the organization of the Chamber of Deputies and the Senate are contained in their respective Standing Orders¹⁷⁴.

1.2.2. Denomination of the members of the Irish Parliament

Pursuant to the provisions mentioned in paragraph 2.1., members of the House of Representatives (*Dáil Éireann*) are the following:

- *Teachta Dála (Deputy); Teachtaí Dála (Deputies).*¹⁷⁵
- *Pursuant to the provisions mentioned in paragraph 2.1., members of the Senate (Seanad Éireann) are the following:*
- *Seanadóir (Senator); Seanadóirí (Senators).*

*1.2.3. Date of the beginning of the term of office**House of Representatives - Dáil Éireann*

The term of office of a member of *Dáil Éireann* commences when that person is deemed to stand elected. Section 126 of the Electoral Act 1992¹⁷⁶ provides that: "On the completion of the counting of the votes the returning officer shall determine and declare the result of the poll and the candidates deemed to be elected shall thereupon stand elected." Section 118 of the Electoral Act 1992 sets out the meaning of the term 'deemed to be elected' in the following manner: "'deemed to be elected' means deemed to be elected for the purpose of the counting of the votes but without prejudice to the declaration of the result of the poll."

It follows that there is a distinction between a returning officer deeming someone to be elected for the purposes of the counting of votes and deeming someone to stand elected as a result of the declaration of the poll. Put simply, therefore, when a returning officer goes through a round of votes and deems someone to be elected, the person concerned is not actually deemed to be a Member. It is only at the point (often some days later) when all of the votes, counts and re-counts have taken place that the returning officer declares the result of the poll, at which point all candidates stand elected. The critical date, therefore, is the date the returning officer declares the result of the poll in its entirety. It follows, therefore, that this is the date upon which the Deputies' term of office commences and, crucially, the date upon which they begin to enjoy the privileges and immunities associated with being a member of Parliament.

Senate - Seanad Éireann

The rules governing the election of Senators are set out in several pieces of legislation, depending on whether one is referring to the election of Panel Members or University Members. According to Section 53 of the *Seanad Electoral (Panel Members) Act, 1947*,¹⁷⁷ the *Seanad* returning officer: "shall, in the

¹⁷⁴ The texts of the *Dáil* and of the *Seanad* Standing Orders are available at: <http://www.oireachtas.ie/parliament/about/publications/standingorders/>.

¹⁷⁵ The abbreviations TD for singular and TDs for plural are normally used.

¹⁷⁶ See [Electoral Act, 1992](#).

¹⁷⁷ See [Seanad Electoral \(Panel Members\) Act, 1947](#).

presence of such candidates as may be in attendance, ascertain separately ... the result of a *Seanad* general election in respect of each panel and shall declare to be elected from such panel the candidates who are so ascertained to be elected." Section 23 of the *Seanad* Electoral (University Members) Act, 1937,¹⁷⁸ provides for a similar arrangement with respect to University Members: "As soon as conveniently may be after the close of the poll at an election in a university constituency, the returning officer at such election shall, in the presence of such candidates and their respective agents as may be in attendance, ascertain the result of the election ... and shall declare to be elected the candidates who are so ascertained to be elected." Therefore, the term of office of the Panel and University Members commences when, following the ascertainment of the result of the election, the returning officer declares to be elected those candidates ascertained to be elected. Therefore, this is the date upon which they begin to enjoy the privileges and immunities associated with being a member of Parliament.

The eleven nominated members are to be nominated, with their prior consent, by the *Taoiseach* who is appointed after a general election. As there is no legislation governing the procedure for nominating these Members, their term of office commences on the date of their nomination by the *Taoiseach*.

1.3. National authority competent to communicate cases of incompatibility to the European Parliament

The 1997 European Parliament Elections Act (as amended)¹⁷⁹ states that the Clerk of the *Dáil* (House of Representatives) informs the European Parliament about newly elected Members of the European Parliament following an election to the European Parliament and also when a vacancy in the Irish group of Members of the European Parliament has been filled from the list of replacement candidates.

The European Parliament Elections Act 1997 also sets out cases of incompatibility with membership of the European Parliament,¹⁸⁰ but it does not entrust any national authority with the task of communicating cases of incompatibility to the European Parliament. However, according to an official letter sent to the President of the European Parliament by the Permanent Representation of Ireland to the European Union, queries may be referred to the Head of the Franchise Section of the Department of Housing, Planning and Local Government.¹⁸¹

¹⁷⁸ See [Seanad Electoral \(University Members\) Act, 1937](#).

¹⁷⁹ See [European Parliament Elections Act, 1997](#) and [European Parliament Elections \(Amendment\) Act 2004](#).

¹⁸⁰ According to the law, persons who are holding offices incompatible with Membership of the European Parliament cease to hold such offices on election to the European Parliament, while Members of the European Parliament who are subsequently appointed to an office that is incompatible with membership of the European Parliament, or who are otherwise disqualified from being a Member of the European Parliament, cease to be Members of the European Parliament.

¹⁸¹ Letter dated 26 November 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Ireland the parliamentary immunity is granted to the members of the national Parliament (*Oireachtas*) by Article 15 (10), (12) and (13) of the Irish Constitution which read as follows:

Article 15

10. Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

[...]

12. All official reports and publications of the *Oireachtas* or of either House thereof and utterances made in either House wherever published shall be privileged.

13. The members of each House of the *Oireachtas* shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.

2.1.2. Implementing provisions

The Committees of the Houses of the *Oireachtas* (Privilege and Procedure) Act, 1976, extended the privileges enjoyed by Members when in their respective Chamber to when they are in Committees of either/both Houses. According to Section 2 of the Act, "A member of either House of the *Oireachtas* shall not, in respect of any utterance in or before a committee, be amenable to any court or any authority other than the House or the Houses of the *Oireachtas* by which the committee was appointed". Section 2 also provides for the following, which is of relevance: "(a) The documents of a committee and the documents of its members connected with the committee or its functions, (b) all official reports and publications of a committee, and (c) the utterances in a committee of the members, advisers, officials and agents of the committee, wherever published shall be privileged."

There is no formal procedure for waiving parliamentary immunity, although the Standing Orders of *Dáil Éireann*¹⁸² (n. 71) provide for a manner of complaint by persons who are named or identified by a member of the House or a Committee in the course of proceedings in a way which adversely affects their reputation or invades their privacy.

¹⁸² See [Dáil Éireann Standing Orders relative to Public Business 2020](#).

Additionally, Article 17 of the 2009 Defamation Act¹⁸³ has extended absolute privilege to statements made in the European Parliament by members of that Parliament, and to all witnesses appearing before both *Oireachtas* and European Parliament committees. Article 2 of the same Act updated the definition of 'utterances' to include oral or written statements, images, sounds, gestures and any other method of signifying meaning.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the *Oireachtas* consist in the freedom of speech of the Member of Parliament ("non-liability"), and a limited protection against arrest and taking into custody ("immunity").

2.2.1. Non-liability principle

The members of each House of the *Oireachtas* shall not be amenable to any court or any authority other than the House itself in respect of any utterance in either House. This privilege protects members both in the House and, pursuant to legislation, at Committee hearings, and is of unlimited duration.

This non-liability only extends to statements made outside the Houses of the *Oireachtas* if these are identical to statements made within the Houses. This is in order to protect the privilege to which members of the Houses of the *Oireachtas* are entitled in respect of their statements in the Houses.

2.2.2. Immunity

Deputies and Senators may not be arrested when going to, returning from or being within the precincts of either of the Houses of Parliament (the *Dáil* or *Seanad*). This privilege does not apply to arrest for treason, felony or breach of the peace.

If a member of either House acts in a way that amounts to an abuse of a privilege, the relevant Committee on Procedures and Privileges may recommend disciplining the member.

2.3. National authority entitled to request the immunity of an Irish member of the European Parliament to be waived

As confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Ireland to the European Union, any request to the President of the European Parliament to seek a waiver on a member of the European Parliament's immunity must be submitted by a Judge of the High Court, a Judge of the Court of Appeal or a Judge of the Supreme Court as the case may be. Separately, a request may be made by the Permanent Representation of Ireland to the European Union.¹⁸⁴

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¹⁸³ Available at: [Defamation Act 2009](#).

¹⁸⁴ Letter dated 26 November 2020.

GREECE

1. National legal provisions determining the scope and the content of the incompatibilities referred to IN the first indent of Article 7(1) AND ARTICLE 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Greek Government

Constitution

By virtue of Article 81(1) of the Hellenic Constitution,¹⁸⁵ "The Cabinet, which shall be composed of the Prime Minister and the Ministers, constitutes the Government. The composition and functioning of the Cabinet shall be specified by law. One or more Ministers may be appointed Vice Presidents of the Cabinet, by decree initiated by the Prime Minister. A statute shall regulate the status of Deputy Ministers, Ministers without portfolio and Undersecretaries who may be members of the Cabinet, as well as the status of permanent Undersecretaries."

It follows that the Government is constituted by the Cabinet (Ministerial Council), which is composed of the Prime Minister and the Ministers.

Implementing provisions

Law 4622/2019 governs the composition and functioning of the Government and its relevant bodies, also providing for its competences, limitations and incompatibilities of its members.

Pursuant to Article 1(2) of Law 4622/2019, Vice Presidents form part of the Government even in those exceptional cases where a presidential decree specifies that they are not in charge of a ministry (Article 12(5) of Law 4622/2019). Moreover, article 1(2) provides that Undersecretaries are not members of the Cabinet, although they may be invited by the Prime Minister to attend its sittings without a right to vote.

The Constitution¹⁸⁶ states that any professional activity whatsoever of members of the Government and Undersecretaries shall be in abeyance during the discharge of their duties. Under Article 70 of Law 4622/2019, this provision is extended to any posts held in any capacity in a public sector legal entity. Additional incompatibilities (such as undertaking state contracts) are also provided for in the same article.

1.1.2. Denomination of members of the Greek Government

The following terms are used in the Constitution and in legislative instruments:

- Πρωθυπουργός (Prime Minister),
- Αντιπρόεδρος της Κυβέρνησης (Vice President of the Government),
- Υπουργός (Minister); Υπουργοί (Ministers),

¹⁸⁵ As revised by the parliamentary resolution of November 25 2019 of the IX Revisionary Parliament.

¹⁸⁶ Article 81(3).

- Υπουργός Επικρατείας (*Minister of State*); Υπουργοί Επικρατείας (*Ministers of State*),
- Αναπληρωτής Υπουργός (*masculine*), Αναπληρώτρια Υπουργός (*feminine*) (*Deputy Minister*); Αναπληρωτές Υπουργοί (*Deputy Ministers*).

As mentioned above, relevant legislation specifies that undersecretaries¹⁸⁷ are not part of the government. However, this possibility exists, as provided for by the Constitution (Article 81).¹⁸⁸

1.1.3. Date of the beginning of the term of office

According to article 37 of the Constitution, the President of the Republic appoints the Prime Minister, who must take the oath of office before taking up his/her duties (Article 10(2) of Law 4622/2019). On the Prime Minister's recommendation, the President of the Republic appoints and dismisses the other members of the Cabinet and the Undersecretaries. The law (Article 10 of Law 4622/2019) specifies that they shall be appointed by decree and are required to take the oath of office, but it does not specify that this must take place before they take up their duties. The President of the Republic shall relieve the Cabinet from its duties if it resigns, or if Parliament withdraws its confidence (art. 38 of the Constitution).

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Greek Parliament

Constitution

According to Article 51 of the Constitution, the Members of the Parliament represent the nation and are elected through direct, universal and secret ballot by the citizens who have the right to vote. The number of Members of Parliament is specified by law, but may not be below two hundred or over three hundred.

Articles 55 to 58 of the Constitution include detailed provisions regarding incompatibilities and disqualifications of the Members of the Parliament.

Implementing provisions

The electoral law currently in force¹⁸⁹ establishes that the number of Members of Parliament shall be 300 and lays down electoral methods and procedures.

1.2.2. Denomination of Greek Members of Parliament

The Members of the Hellenic Parliament are designated as follows:

- βουλευτής (Member of Parliament), βουλευτές (Members of Parliament)

¹⁸⁷ Υφυπουργός (Undersecretary), Υφυπουργοί (Undersecretaries) are sometimes designated in French by the terms '*ministre adjoint*' or '*secrétaire d'État*'; in English the term generally used is 'Deputy Minister'.

¹⁸⁸ However, Article 85 of the Constitution specifies that the members of the Cabinet and Undersecretaries are collectively responsible for the policy of the government, and each of them is severally responsible for the actions or omissions within his/her powers, according to the provisions of statutes on the liability of Ministers.

¹⁸⁹ Codified by Presidential Decree 96/2007, re-amended early in 2008 and re-codified by Presidential Decree 26/2012, recently amended by Law 4406/2016, and again by Law 4654/2020.

1.2.3. Date of the beginning of the term of office

Under Article 59 of the Constitution, Members of Parliament are required to take the oath of office 'before undertaking the discharge of their duties'.

Article 53 of the Constitution states that Members of the Parliament are elected for a term of four consecutive years, commencing on the day of the general elections¹⁹⁰.

Moreover, with regard to the incompatibilities of Members of the Greek Parliament¹⁹¹, Article 57 of the Constitution states that 'Members of Parliament must, within eight days of the day in which their election becomes final, select between their parliamentary office and the above-stated job or capacities.' If they fail to make such a statement within the deadline, they forfeit their parliamentary office *ipso jure*.

Members of Parliament proclaimed as such by the competent tribunals and whose election is contested before the Special Highest Court¹⁹² continue to discharge their duties (and benefit from parliamentary immunity) pending the publication of the final judgment of the latter Court.

Members of the Hellenic Parliament forfeit their office in the circumstances specified by the Constitution,¹⁹³ as well as by other Constitutional provisions regarding their financing (such as exceeding electoral expenditure or infringement of certain provisions regarding the electoral campaign¹⁹⁴).

Pursuant to article 60(2) of the Constitution, resignation from parliamentary office is effectuated "as soon as the Member of Parliament submits a written declaration to the Speaker of the Parliament; this declaration is irrevocable."

1.3. National authority competent to communicate cases of incompatibility to the European Parliament

While for the names of Members elected to the European Parliament and, where relevant, those replacing them, the competent authority is the Elections Directorate of the Ministry of the Interior, cases of incompatibility are under the remit of the Ministry for Foreign Affairs. However, in both situations, the notifying authority is the Ministry of Foreign Affairs¹⁹⁵.

¹⁹⁰ It must be noted that, when in 2007 a number of Members of the European Parliament were elected to the Greek Parliament, the European Parliament established that their seats in the European Parliament were vacant from the day of the inaugural sitting of the Greek Parliament, during which the Members present were required to take the oath of office (26 September 2007).

¹⁹¹ This is applicable also to the Greek MEPs.

¹⁹² Set up under Article 100 of the Constitution and functioning in accordance with Law 345/1976.

¹⁹³ Articles 55 to 58 (failure to state their choice between their parliamentary office and duties incompatible with it within eight days of their election, loss of civic rights, and subsequent engagement in activities incompatible with their duties). Forfeiture of office falls within the jurisdiction of the Special Highest Court.

¹⁹⁴ Article 29(2) of the Constitution and Law 3023/2002 on the funding of political parties (as subsequently amended).

Information based on an official letter of 29 October 2020 from the Permanent Representation of Greece to the EU to the President of the European Parliament.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

The immunities of Greek Members of Parliament are set out in Articles 61 and 62 of the Constitution, which are worded as follows:

Article 61

1. A Member of Parliament shall not be prosecuted or in any way interrogated for an opinion expressed or a vote cast by him in the discharge of his parliamentary duties.

2. A Member of Parliament may be prosecuted only for libel, according to the law, after leave has been granted by Parliament. The Court of Appeals shall be competent to hear the case. Such leave is deemed to be conclusively denied if Parliament does not decide within 45 days from the date the charges have been submitted to the Speaker. In case of refusal to grant leave or if the time-limit lapses without action, no charge can be brought for the act committed by the Member of Parliament.

This paragraph shall be applicable as of the next parliamentary session¹⁹⁶.

3. A Member of Parliament shall not be liable to testify on information given to him or supplied by him in the course of the discharge of his duties, or on the persons who entrusted the information to him or to whom he supplied such information.

Article 62

During the parliamentary term the Members of Parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. Likewise, a member of a dissolved Parliament shall not be prosecuted for political crimes during the period between the dissolution of Parliament and the declaration of the election of the members of the new Parliament. Leave shall be deemed not granted if Parliament does not decide within three months of the date the request for prosecution by the public prosecutor was transmitted to the Speaker. The three month limit is suspended during the Parliament's recess. No leave is required when Members of Parliament are caught in the act of committing a felony.¹⁹⁷

2.1.2. Implementing provisions

The rules applicable to Members of the Hellenic Parliament¹⁹⁸ state that requests by the Prosecutor's Office for authorisation to institute criminal proceedings against a Member of Parliament shall be submitted to the Parliament by the Minister for Justice after they have been examined by the Attorney of the Hellenic Supreme Civil and Criminal Court. Article 83 of the Standing Orders of the Hellenic

¹⁹⁶ This sentence has been contained in the text of the Constitution since its adoption in 1975.

¹⁹⁷ Here, the Constitution uses the technical term 'felony' (*κακούργημα*) as opposed to the (wider) notion of 'offence'.

¹⁹⁸ Article 83 of the Standing Orders of the Greek Parliament.

Parliament¹⁹⁹ specifies the procedure applicable to requests from the Public Prosecutor's Office for the waiver of immunity. The Speaker of the House forwards these requests to the Committee on Parliamentary Ethics²⁰⁰, which invites the affected Member of the Parliament for a hearing, in order to examine whether the request for waiver is related to the political or parliamentary activity of the Member in question, or whether it entails a biased intent. The Committee prepares a reasoned report, without examining the foundations of the accusation, and forwards it to the Plenary that decides upon the waiver.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to Members of Parliament represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 61 of the Constitution)

Any liability generated on the occasion of a vote cast or an opinion expressed by a Member of the Parliament during the discharge of his duties, be it criminal or civil²⁰¹, falls within the scope of Article 61 of the Constitution. For example, non-liability covers opinion or vote in an inquiry committee, but not opinions expressed in private or political party meetings, even if they take place in the Parliament chambers, neither it covers passive bribery or violation of the road traffic code neither insult or defamation during participation in a television broadcast. It does not cover manslaughter, personal injury or destruction of another person's property, which do not constitute expression of opinion or vote.

Two particular points should be noted in this connection: on the one hand, the exception in respect of libel (Members may be prosecuted for libel if leave is granted by the Parliament, in which case, the Court of Appeals is competent to hear the case) and, on the other hand, the rule excluding testimony by Members on information given to them or supplied by them in the course of the discharge of their duties.

2.2.2. Immunity (Article 62 of the Constitution)

No Member of the Parliament may be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by the Parliament. This prohibition only covers criminal prosecution and does not apply when Members of the Parliament are caught in the act of committing a felony. The Constitution employs the technical term 'felony' (*κακούργημα*), under Articles 18 and 52 of the Penal Code, felonies incur prison sentences of at least five years²⁰².

Under the Code of Criminal Procedure, even in cases where authorisation is necessary for a prosecution to take place, this does not prevent investigations being carried out even before authorisation is given.

¹⁹⁹ The English translation is available at: [Standing Orders of the Hellenic Parliament \(Section of Parliamentary Business\)](#).

²⁰⁰ Article 43A of the Standing Orders.

²⁰¹ Or even disciplinary, according to the prevailing view.

²⁰² The "flagrant" (= "caught in the act") is in the Greek text an adjective to "felony", so the remark about the distinction is only about felonies as opposed to the wider concept of offences, not about the "flagrant" nature.

However such investigative actions are not allowed against the person whose prosecution is subject to authorization (Article 56²⁰³).

2.3. National authority entitled to request the immunity of a Greek Member of the European Parliament to be waived

According to an official letter from the Permanent Representation of the Hellenic Republic to the EU to the President of the European Parliament,²⁰⁴ the competent authority to request waiver of the immunity of Members of the European Parliament is the competent public prosecutor.

In more detail, the proceedings to request the waiver are initiated, on a case-by-case basis (i.e. prosecution, continuation of penal proceedings or execution of court decision/judgement), by the prosecutor of the Court of First Instance or Court of Appeal. The request of the aforementioned prosecutor and the relevant case file is submitted to the General Prosecutor of the Supreme Court of Greece, who is competent to transmit the request to the European Parliament. The highest in rank prosecutor of the country or (normally) his/her deputy, Vice Prosecutor General of the Supreme Court of Greece, acts in the same way as in cases of requests for waiver of immunity of the elected members of the Greek Parliament. The General Prosecutor's Office of the Supreme Court of Greece is the competent authority for communicating cases of waiver of immunity for Members of the European Parliament.²⁰⁵

§ § §

²⁰³ As amended by Law 4620/2019.

²⁰⁴ Letter dated 29 October 2020.

²⁰⁵ Email received on 15 October 2020 from the General Prosecutor's Office of the Supreme Court of Greece.

SPAIN

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Spanish government

Constitution

The composition of the government in Spain is established by Article 98, first paragraph of the Constitution which reads as follows: "The Government consists of the President, Vice-Presidents, when applicable, Ministers and other members as may be created by law"²⁰⁶.

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following law: "*Ley 50/1997, de 27 de noviembre, del Gobierno*" (Act on Government, Law No 50/1997), in particular Articles 1, 2, 3 and 4.

1.1.2. Denomination of the members of the Spanish government

Pursuant to the provisions mentioned in paragraph 1.1., the members of the government in Spain are the following:

- *Presidente/a (President),*
- *Vicepresidente/a; Vicepresidentes/as (Vice-president/s),*
- *Ministro/a (Minister); Ministros/Ministras (Ministers).*

1.1.3. Date of the beginning of the term of office

Under the terms of Articles 99 and 100 of the Constitution, the date of the beginning of the term of office of the members of the government shall be considered the date they are appointed by the King of Spain.

²⁰⁶ "El Gobierno se compone del Presidente, de los Vicepresidentes, en su caso, de los Ministros y de los demás miembros que establezca la ley". For an English translation, please see [The Spanish Constitution](#).

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Spanish Parliament

Constitution

The composition of the Parliament in Spain is established by Article 66, first paragraph of the Constitution which reads as follows: "*Cortes Generales* represent the Spanish people and consist of the Congress of Deputies, and the Senate"²⁰⁷.

The following Article 68 of the Constitution fixes the number of the Deputies which must be between three hundred minimum and four hundred maximum. Article 162 of the Organic Law on the General Electoral System 5/1985 (*Ley Orgánica del Régimen Electoral General*, LOREG²⁰⁸) specifies that the Congress of Deputies is composed of three hundred fifty members, distributed with imperfect proportionality among the 50 provinces and Ceuta and Melilla.

As far as the Senate is concerned, Article 69 of the Constitution establishes the number of directly-elected senators: "In each province, four Senators shall be elected by the voters thereof by universal, free, equal, direct and secret suffrage, under the terms established by an organic law"²⁰⁹. Pursuant to Article 69(4) and 69(5) of the Constitution: "The cities of Ceuta and Melilla shall each elect two Senators." In addition, the assemblies of the Autonomous Communities shall nominate one Senator and a further Senator for each million inhabitants in their respective territories²¹⁰. These Senators (*senadores por designación autonómica*) enjoy the same status as directly-elected senators, except as regards their term of office, which is linked to the mandate of the regional assemblies. The number of Senators is not fixed by law, as it depends on the fluctuations in population of the regions. At the moment (in the thirteenth term), there are 265 Senators.

The Senate and the Congress of Deputies usually act separately. The only cases in which they sit jointly in a common session (*Cortes Generales en sesión conjunta*) concern the adoption of decisions pertaining to the Crown (Article 74(1) of the Constitution).

Implementing provisions

More detailed provisions concerning the structure and the organisation of the Congress of Deputies and of the Senate are contained in their respective Rules of Procedure: *Reglamento del Congreso de los Diputados 10 de febrero de 1982*,²¹¹ *Reglamento del Senado de 3 de mayo de 1994*.²¹²

1.2.2. Denomination of the members of the Spanish Parliament

Pursuant to the provisions mentioned in paragraph 2.1, members of the Spanish Parliament are the following:

²⁰⁷ "Las Cortes Generales representan al pueblo español y están formadas por el Congreso de los diputados y el Senado."

²⁰⁸ See [Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General](#).
For an English translation, see [Representation of the People Institutional Act](#).

²⁰⁹ "En cada provincia se elegirán cuatro Senadores por sufragio universal, libre, igual, directo y secreto por los votantes de cada una de ellas, en los términos que señale una Ley orgánica."

²¹⁰ "Las poblaciones de Ceuta y Melilla elegirán cada una de ellas dos Senadores"; "Las Comunidades Autónomas designarán además un Senador y otro mas por cada millón de habitantes de su respectivo territorio."

²¹¹ For both the Spanish text and the English translation, see <https://www.congreso.es/en/normas/reglamento-del-congreso>.

²¹² Available at: <http://www.senado.es/legis5/publicaciones/pdf/senado/bocq/I0119.PDF>.

- *Diputado/a (Deputy); Diputados/as (Deputies),*
- *Senador/a (Senator); Senadores/as (Senators).*

1.2.3. Date of the beginning of the term of office

Congress of Deputies

Under the terms of Section 20(1) and (2) of the Rules of Procedure of the Congress of Deputies, Deputies officially begin their term of office and acquire the rights and prerogatives related with their status by complying with the following requirements:

- i) Lodging with the Office of the Secretary-General the credential issued by the relevant electoral authority.
- ii) Submitting a declaration of activities in compliance with the terms of the Representation of the People Institutional Act.
- iii) Taking the oath or pledge to observe the Constitution at the first plenary sitting of Congress which they attend.

According to Section 20(3) of the Rules of Procedure, the recognition of the condition of a Deputy shall have retroactive effects to the proclamation of the results as concerns the rights and prerogatives of the parliamentarian.

Senate

Under the terms of Section 12 of the Rules of Procedure of the Senate, in order to completely fulfil the requirements necessary for their condition and therefore acquire any economic rights and be able to exercise their constitutional functions, Senators must lodge their credential and take oath or pledge to observe the Constitution.

1.3. National authorities competent to notify to the European Parliament of newly elected Members of the European Parliament and cases of incompatibility

According to an official letter sent to the President of the European Parliament by the Permanent Representation of Spain to the European Union²¹³, the Central Electoral Board (*Junta Electoral Central*) is the competent authority to notify Members of the European Parliament elected in Spain. In accordance with Articles 108, 220 and 224(2) of Organic Law 5/1985 of 19 June 1985, it is the competent Electoral Board which declares the officials who have been elected and forwards the relevant credentials, once the candidate has complied with constitutional requirements. The originals of the credentials are transmitted immediately and electronically to the European Parliament.

In accordance with Articles 6 and 9 of Organic Law 5/1985 of 19 June 1985 on the General Electoral Board, the *Junta Electoral Central*, as the Permanent Electoral Administration, is also responsible for notifying grounds of incompatibility of Members of the European Parliament, as confirmed by the above letter.

²¹³ Letter dated 30 September 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Spain the parliamentary immunities are granted to the members of the national Parliament by Article 71 of the Constitution, which reads as follows:

Article 71

Members of Congress and Senators shall enjoy freedom of speech for opinions expressed in the exercise of their functions. During their term of office, Members of Congress and Senators shall likewise enjoy freedom from arrest and may be arrested only in the event of *flagrante delicto*. They may be neither indicted nor tried without prior authorization of their respective House.²¹⁴

2.1.2. Implementing provisions

The implementing rules of Article 71 of the Constitution are contained in the Rules of Procedure of the Congress of Deputies and the Rules of Procedure of the Senate: *Reglamento del Congreso de los Diputados de 10 de febrero de 1982*; *Reglamento del Senado de 3 de mayo de 1994*.

2.2. Scope and content of national parliamentary immunities

The national system of immunity represents the classical model which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 71.1 of the Constitution)

Pursuant to Article 71, first paragraph of the Constitution, members of Parliament may not be required to give account of any opinions expressed in the exercise of their functions. Deputies and Senators are therefore exempted from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed when carrying out their parliamentary activities. This exemption continues to apply after the end of their term of office, according to Sections 10 and 21 of, respectively, the Rules of Procedure of the Congress of Deputies and the Rules of Procedure of the Senate.

²¹⁴ "Los Diputados y Senadores gozarán de inviolabilidad por las opiniones manifestadas en el ejercicio de sus funciones". "Durante el periodo de su mandato los Diputados y Senadores gozaran asimismo de inmunidad y solo podrán ser detenidos en caso de flagrante delito."

2.2.2. Immunity (Article 71.2 of the Constitution)

Pursuant to Article 71, second paragraph of the Constitution, the authorisation of the Chamber to which the member belongs is needed in order to subject the member to judicial measures, except if he/she is caught in the act of committing the crime (*in flagrante delicto*). Thus, both Deputies and Senators may only be indicted or subjected to trial with the authorization of their Chamber. According to Section 11 of the Rules of Procedure of the Congress of Deputies, "During the period of their mandate, Members shall also enjoy immunity and may only be arrested in cases of *flagrante delicto*. They may not be indicted or prosecuted without previous leave of Congress."²¹⁵ According to Section 22(1) of the Rules of Procedure of the Senate: "During the period of their mandate, the Senators shall enjoy parliamentary immunity and may only be detained or arrested in cases of *flagrante delicto*. The detention or arrest shall be immediately communicated to the Presidency of the Senate. Senators may not be charged or tried without the previous authorization of the Senate, required through the corresponding request. Such authorization shall also be necessary in the proceedings brought against persons who become Senators while being tried or prosecuted."²¹⁶

2.3. National authority entitled to request the immunity of a Spanish member of the European Parliament to be waived

According to the above mentioned an official letter sent to the President of the European Parliament by the Permanent Representation of Spain to the European Union²¹⁷, in accordance with Article 71 of the Spanish Constitution and Article 57 of the Organic Law on the Judiciary, the Criminal Chamber of the Supreme Court is the body with jurisdiction to investigate and prosecute cases brought against Members of Parliament and Senators. There are no specific rules on the waiver of the immunity of Members of the European Parliament or any provision for the handling of any such request. However, in the light of the practice followed in Spain with regard to Members of Parliament and Senators, and in the light of recent precedents, it is for the President of the Criminal Chamber of the Supreme Court to forward such requests, via the President of the Supreme Court.

§ § §

²¹⁵ "Durante el período de su mandato, los Diputados gozarán asimismo de inmunidad y sólo podrán ser detenidos en caso de flagrante delito. No podrán ser inculcados ni procesados sin la previa autorización del Congreso."

²¹⁶ "Durante el período de su mandato, los Senadores gozarán de inmunidad y no podrán ser retenidos ni detenidos salvo en caso de flagrante delito. La retención o detención será comunicada inmediatamente a la Presidencia del Senado.

Los Senadores no podrán ser inculcados ni procesados sin la previa autorización del Senado, solicitada a través del correspondiente suplicatorio. Esta autorización será también necesaria en los procedimientos que estuvieren instruyéndose contra personas que, hallándose procesadas o inculpadas, accedan al cargo de Senador."

²¹⁷ Letter dated 30 September 2020.

FRANCE

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the French government

Constitution

Pursuant to the provisions of Article 8 of the French Constitution, the President of the French Republic appoints the Prime Minister and the members of the French government, on the recommendation of the Prime Minister.²¹⁸

Implementing provisions

The composition of the French Government is set out in a Decree adopted by the President of the Republic.²¹⁹

1.1.2. Denomination of the members of the French government

According to the decree of 21 June 2017 and its subsequent amendments, the French government is composed of:

- *Premier Ministre (Prime Minister),*
- *Ministre d'Etat (Minister of State),*
- *Ministre (Minister); Ministres (Ministers),*
- *Ministre délégué/e (Delegated Minister); Ministres délégués (Delegated Ministers); Secrétaires d'Etat (Secretaries of State).*

1.1.3. Date of the beginning of the term of office

The date of the beginning of the term of office of the members of the government shall be considered the date indicated in the decree, or by default, the day following the day of publication of the decree establishing their appointment by the President of the French Republic.²²⁰

²¹⁸ See [Texte intégral de la Constitution du 4 octobre 1958 en vigueur](#); for an English translation, see [Constitution of October 4, 1958](#).

²¹⁹ For the text of the relevant decree, adopted on 21 June 2017, see [Décret du 21 juin 2017 relatif à la composition du Gouvernement](#).

²²⁰ Article 1 of the French Civil Code states that legislative texts come into force the day following their publication in the Official Journal.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the French Parliament

Constitution

The composition of the French Parliament is established by Article 24 of the Constitution. This article reads as follows: "[...] It shall comprise the National Assembly and the Senate. Members of the National Assembly, whose number must not exceed five hundred and seventy-seven, shall be elected by direct suffrage. The Senate, whose members must not exceed three hundred and forty-eight, shall be elected by indirect suffrage. The Senate shall ensure the representation of the territorial communities of the Republic. [...]"²²¹

Implementing provisions

Article 25 of the French Constitution provides: "An Institutional Act shall determine the term for which each House is elected, the number of its members, their allowances, the conditions of eligibility and the terms of disqualification and of incompatibility with membership.

It shall likewise determine the manner of election of those persons called upon to replace Members of the National Assembly or Senators whose seats have become vacant, until the general or partial renewal by election of the House in which they sat, or have been temporarily replaced on account of having accepted a position in Government."²²²

As regards the National Assembly, Articles LO 119 to LO 122 of the French electoral code provide the details related to deputies, who are elected for five years.

With regard to the Senate, Articles LO 274 to LO 278 of the French electoral code provide the details related to senators, who are elected for six years; half of this chamber is renewed every three years.

More detailed provisions concerning the composition and the organisation of the National Assembly and of the Senate are contained in their respective Rules of Procedure²²³.

1.2.2. Denomination of the members of the French Parliament

Pursuant to the provisions mentioned in paragraph 2.1, the French Parliament is divided in two chambers, i.e. "*l'Assemblée nationale*" (the National Assembly) and "*le Sénat*" (the Senate).

²²¹ "[...] Il comprend l'Assemblée nationale et le Sénat. Les députés à l'Assemblée nationale, dont le nombre ne peut excéder cinq cent soixante-dix-sept, sont élus au suffrage direct. Le Sénat, dont le nombre de membres ne peut excéder trois cent quarante-huit, est élu au suffrage indirect. Il assure la représentation des collectivités territoriales de la République. [...]"

²²² "Une loi organique fixe la durée des pouvoirs de chaque assemblée, le nombre de ses membres, leur indemnité, les conditions d'éligibilité, le régime des inéligibilités et des incompatibilités.

Elle fixe également les conditions dans lesquelles sont élues les personnes appelées à assurer, en cas de vacance du siège, le remplacement des députés ou des sénateurs jusqu'au renouvellement général ou partiel de l'assemblée à laquelle ils appartiennent ou leur remplacement temporaire en cas d'acceptation par eux de fonctions gouvernementales."

²²³ For the Rules of Procedure of both the National assembly and the Senate, see [Règlement de l'assemblée nationale](#) and [Règlement du Sénat et Instruction générale du Bureau](#). For English versions, see [Constitution of October 4, 1958](#) and [Standing Orders of the Senate](#).

The lists of current Members of the Assemblies are available, respectively, at: <http://www.assemblee-nationale.fr/dyn/vos-deputes>, and at: <http://www.senat.fr/senateurs/senat1.html>.

Members of the National Assembly are:

- *député/ députée (Deputy) ; députés (Deputies).*

Members of the Senate are:

- *sénateur/ sénatrice (Senator); sénateurs (Senators).*

1.2.3. Date of the beginning of the term of office

Assemblée nationale

Article LO 121 of the electoral Code reads as follows: "*Les pouvoirs de l'Assemblée nationale expirent le troisième mardi de juin de la cinquième année qui suit son élection.*"²²⁴ There is no provision indicating the beginning of the term of office but one can suppose, by analogy with the provisions applicable to the senators below, that it begins the day the term of office of their predecessors expires.

Sénat

Article LO 277 of the French electoral code reads as follows: "Dans chaque série, le mandat des sénateurs commence à l'ouverture de la session ordinaire qui suit leur élection, date à laquelle expire le mandat des sénateurs antérieurement en fonctions".²²⁵

1.3. National authorities competent to notify to the European Parliament of newly elected Members of the European Parliament and cases of incompatibility

According to an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of France to the European Union²²⁶, in France, the national authority competent to communicate the names of newly elected Members of the European Parliament is the Office of Elections and Political Studies of the Ministry of Internal Affairs (*le Bureau des élections et des études politiques de la Ministère de l'Intérieur*). The notification is signed by the Minister of European and Foreign Affairs (*Ministre chargé de l'Europe et des Affaires étrangères*), after which the Permanent Representation communicates it to the President of the European Parliament. The letter also states that any notifications from the European Parliament concerning the mandates of its French Members should be addressed to the Permanent Representation of the Republic of France to the European Union; it will then take care of their transmission to the competent ministries and/or services.

²²⁴ "The powers of the National Assembly expire on the third Tuesday of June of the fifth year after its election."

²²⁵ "In every series, the mandate of the senators begins with the opening of the ordinary session following their election. On the same date the mandate of previously elected senators expires."

²²⁶ Letter dated 8 October 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national Parliamentary immunities

2.1.1. Constitution

In France the parliamentary immunities are granted to the members of the national Parliament by Article 26 of the Constitution, as amended by Constitutional Law of 4 August 1995, No 95-880.

Article 26

No Member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his official duties.

No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorization of the Bureau of the House of which he is a member. Such authorization shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or when a conviction has become final.

The detention, subjecting to custodial or semi-custodial measures or prosecution of a Member of Parliament shall be suspended for the duration of the session if the House of which he is a member so requires.

The House concerned shall meet as of right for additional sittings in order to permit the application of the foregoing paragraph should circumstances so require.²²⁷

2.1.2. Implementing provisions

The implementing provisions are contained in the "*Ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires*" (Article 9 *bis*)²²⁸; the Rules of Procedure of the National Assembly (Article 80); the Rules of Procedure of the Senate (Article 105); the "*Instruction générale du Bureau de l'Assemblée Nationale*" (Article 16);²²⁹ and the "*Instruction générale du Bureau du Sénat*" (Article III *bis*).²³⁰

²²⁷ "Aucun membre du Parlement ne peut être poursuivi, recherché, arrêté, détenu ou jugé à l'occasion des opinions ou votes émis par lui dans l'exercice de ses fonctions. Aucun membre du Parlement ne peut faire l'objet, en matière criminelle ou correctionnelle, d'une arrestation ou de toute autre mesure privative ou restrictive de liberté qu'avec l'autorisation du Bureau de l'assemblée dont il fait partie. Cette autorisation n'est pas requise en cas de crime ou délit flagrant ou de condamnation définitive. La détention, les mesures privatives ou restrictives de liberté ou la poursuite d'un membre du Parlement sont suspendues pour la durée de la session si l'assemblée dont il fait partie le requiert. L'assemblée intéressée est réunie de plein droit pour des séances supplémentaires pour permettre, le cas échéant, l'application de l'alinéa ci-dessus."

²²⁸ Article created by Law n°96-62 of 29 January 1996. The Order is available at: [Ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires](http://www.legifrance.gouv.fr/eli/decree/1958/11/17/58-1100/decree_journee_1958_11_17).

²²⁹ Available at: <http://www.assemblee-nationale.fr/connaissance/instruction.asp>.

²³⁰ Available at: <http://www.senat.fr/reglement/reglement68.html#toc307>.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to the members of the French Parliament represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest and taking into custody ("immunity").

2.2.1. Non-liability principle (Article 26 (1) of the Constitution)

Pursuant to the first paragraph of Article 26 of the Constitution, members of Parliament may not be required to give account of any opinion expressed or vote cast in the exercise of their functions. Deputies and Senators are therefore exempted from any civil, criminal, or disciplinary liability which could stem from an opinion expressed or vote cast when carrying out their parliamentary activities. This exemption continues to apply after the end of their term of office.

2.2.2. Immunity (Article 26 (2) and (3) of the Constitution)

Members of Parliament may be arrested or otherwise deprived of their freedom, or face restrictions thereof, only with the permission of the Bureau of their Assembly. There are limitations to this immunity: the authorisation of the Bureau is not needed in the case of flagrant crime or in the case of a final conviction by a court of law. This exemption only applies during the Member's term of office.²³¹

Moreover, under the third paragraph of Article 26, the Assembly may request the suspension of detention, of custodial or semi-custodial measures or of proceedings against one of its Members.

2.3. National authority entitled to request the immunity of a French member of the European Parliament to be waived

According to the above mentioned official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of France to the European Union²³², only the judicial authority is competent to request for the waiver of immunity: the requests are initiated by the general prosecutor of the competent Court of Appeal and validated and signed by the Minister of Justice (*Ministre de la Justice*) who then transmits them to the Minister of European and Foreign Affairs (*Ministre chargé de l'Europe et des Affaires étrangères*) to be addressed to the President of the European Parliament. The Permanent Representation communicates the requests to the President of the European Parliament.

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²³¹ For an analysis of the French provisions on non-liability and immunity, also see: [Fiche de synthèse n°16 : Le statut du député](#). Until 1995, authorization was also required in order to open investigations against a Member of Parliament.

²³² Letter dated 8 October 2020.

CROATIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Croatian government

Constitution

According to Article 108 of the Croatian Constitution, "The Government of the Republic of Croatia shall consist of a Prime Minister, one or more Deputy Prime Ministers, and Ministers."²³³

Implementing provisions

The provisions of the Constitution are implemented by the Croatian Government Act.²³⁴ Article 2 of the Act provides as follows:

"The Government shall consist of the Prime Minister, one or more Deputy Prime Ministers and Ministers (hereinafter: Members of the Government).

Insofar as there are several Deputy Prime Ministers, the Prime Minister may designate a first Deputy Prime Minister."

1.1.2. Denomination of the members of the Croatian government

Members of the Croatian government are the following:

- *predsjednik / predsjednica Vlade (Prime Minister),*
- *potpredsjednik / potpredsjednica Vlade (Deputy Prime Minister), potpredsjednici / potpredsjednice Vlade (Deputy Prime Ministers),*
- *prvi potpredsjednik / prva potpredsjednica Vlade (First Deputy Prime Minister),*
- *ministar / ministrica (Minister); ministri / ministrice (Ministers).*

1.1.3 Date of the beginning of the term of office

Under the terms of Article 98 of the Constitution, the President of the Croatian Republic entrusts the mandate to form the Government to a person who, based on the distribution of seats in the Croatian Parliament and completed consultations, enjoys the confidence of a majority of all Members of Parliament. In accordance with Article 109 of the Constitution, "Members of the Government shall be

²³³ The consolidated text of the Constitution of the Republic of Croatia (as published in Croatia's Official Gazette, *Narodne novine*, no. 56/90, 135/97, 113/00, 28/01, 76/10 and 05/14) is available at <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske>

For an English translation, see [The Constitution of the Republic of Croatia](#).

²³⁴ As published in Croatia's Official Gazette, *Narodne novine*, no. 150/2011, 119/14, 93/16, 116/18. The Act is available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_150_3084.html.

proposed by the person to whom the President of the Republic has entrusted the mandate to form a Government. Immediately upon forming the Government, or 30 days after accepting the mandate at the latest, the Prime Minister-Designate shall present the Government and its policies to the Croatian Parliament and seek a vote of confidence. The Government shall assume office when a vote of confidence is passed by a majority of all Members of the Croatian Parliament. The Prime Minister and the members of the Government shall swear a solemn oath before the Croatian Parliament. The text of the oath shall be specified by law. Pursuant to the decision of the Croatian Parliament on confidence in the Government of the Republic of Croatia, the President of the Republic shall adopt a decision on the appointment of the Prime Minister, which decision shall be co-signed by the Speaker of the Croatian Parliament, while the Prime Minister shall adopt a decision on the appointment of the members of the Government, which decision shall be co-signed by the Speaker of the Croatian Parliament." Moreover, Article 4(1) of the Croatian Government Act provides that "The Prime Minister and Members of the Government shall assume office when they pass a vote of confidence by a majority of all Members of the Croatian Parliament."

Pursuant to the aforementioned provisions, the date when the Prime Minister and Members of the Government pass the vote of confidence by a majority of all Members of the Croatian Parliament is the date of beginning of the term of office.

1.2. Member of a national Parliament

1.2.1. *Legal provisions on the composition of the Croatian Parliament*

Constitution

The composition of the Croatian Parliament is established by Article 71 of the Constitution, which provides that "The Croatian Parliament shall have no fewer than 100 and no more than 160 Members elected on the basis of direct, universal and equal suffrage by secret ballot." In accordance with Article 72, Members are elected for a term of four years.

Implementing provisions

More detailed provisions concerning the composition and the organisation of the Parliament are contained in the Act on Election of Representatives to the Croatian Parliament,²³⁵ which governs for instance incompatibilities, and in the Standing Orders of the Croatian Parliament, adopted in June 2013 and amended in 2016, 2017 and 2018.²³⁶

²³⁵ An English version can be found on the following site: <http://www.sabor.hr/Default.aspx?art=2447>.

²³⁶ An English version can be found on the following site: <http://www.sabor.hr/fqs.axd?id=26416>.

1.2.2. Denomination of the members of the Croatian Parliament

Members of the Parliament are the following:

- *predsjednik / predsjednica Hrvatskoga sabora (Speaker of the Croatian Parliament),*
- *potpredsjednik / potpredsjednica Hrvatskoga sabora (Deputy Speaker of the Croatian Parliament),*
potpredsjednici / potpredsjednice Hrvatskoga sabora (Deputy Speakers of the Croatian Parliament),
- *predsjednik / predsjednica radnog tijela Hrvatskoga sabora (Chairman/Chairwoman of a working body of the Croatian Parliament),*
- *potpredsjednik / potpredsjednica radnog tijela Hrvatskoga sabora (Deputy Chairman/Chairwoman of a working body of the Croatian Parliament),*
- *član/članica radnog tijela Hrvatskoga sabora (Member of a working body of the Croatian Parliament), članovi / članice radnog tijela Hrvatskoga sabora (Members of a working body of the Croatian Parliament),*
- *predsjednik / predsjednica Kluba zastupnika u Hrvatskom saboru (Chairperson of a party Deputy Club in the Croatian Parliament),*
- *potpredsjednik / potpredsjednica Kluba zastupnika u Hrvatskom saboru (Deputy Chairperson of a party Deputy Club in the Croatian Parliament),*
- *član / članica Kluba zastupnika u Hrvatskom saboru (Member of a party Deputy Club in the Croatian Parliament); članovi / članice Kluba zastupnika u Hrvatskom saboru (Members of a party Deputy Club in the Croatian Parliament),*
- *zastupnik / zastupnica u Hrvatskom saboru (Member of the Croatian Parliament); zastupnici / zastupnice u Hrvatskom saboru (Members of the Croatian Parliament).*

1.2.3. Date of the beginning of the term of office

Under the second and third paragraphs of Article 73 of the Constitution, "The first session of the Croatian Parliament shall be held not later than 20 days after the completion of elections. The Croatian Parliament shall be constituted by the election of its Speaker at its first session attended by a majority of its Members."

In accordance with Article 4 of the Standing Orders of the Croatian Parliament, the Parliament is summoned to its first, constituent session by the President of the Republic. Under Article 6 of the Standing Orders of the Croatian Parliament, at the constituent session, the Credentials and Privileges Commission shall submit a report to Parliament on the parliamentary elections, including the names of elected Members of Parliament, on resignations tendered by Members of Parliament, on the names of the Members of Parliament who are engaged in duties that do not comply with parliamentary duties, so their terms as Members of Parliament are suspended, on the names of Members of Parliament whose terms have been suspended at their own request, and on the substitute Members of Parliament who shall begin performing parliamentary duties instead of suspended Members. After Parliament accepts the report of the Credentials and Privileges Commission by adopting a conclusion, Members of Parliament or substitute Members of Parliaments swear an oath before the chair of Parliament (Article 7 of the Standing Orders). Members of Parliament who were not present at the constitutive session of Parliament, or at the session in which Parliament decided on the commencement of their post, shall swear the oath at the next session (Article 8 of the Standing Orders).

According to Article 9 of the Standing Orders, "Members of Parliament shall begin performing their duties as of the date of the constituent session of Parliament, and until the end of their term of office, they shall have all rights and obligations of Members of Parliament as stipulated by the Constitution,

laws and these Standing Orders. The substitute Members of Parliament shall begin performing their duties as of the date when Parliament establishes, by a decision, the legal prerequisites for the application of the institute of substitution." The date of the beginning of the term of office of the Members of the Parliament is thus the date of the constituent session of Parliament, or, in case of substitute Members of Parliament, the date when Parliament establishes the legal prerequisites for the application of the institute of substitution.

1.3. National authorities competent to notify to the European Parliament of newly elected Members of the European Parliament and cases of incompatibility

The Speaker of the Croatian Parliament is responsible for the notification of: (i) cases of incompatibility of Members of the European Parliament under national law and EU law; and (ii) the Members of the European Parliament elected in Croatia who are entitled to fill a vacancy. The Speaker of the Croatian Parliament also notifies the EP of the results of the European elections in Croatia and gives the names of the elected representatives;²³⁷ Under the terms of Article 12(2) of the Act on the Election of Members to the European Parliament from the Republic of Croatia,²³⁸ "The Speaker of the Croatian Parliament shall be obliged to notify the President of the European Parliament on the cessation of the term of office of a Member of the European Parliament and shall be obliged to forward information on his/her substitute. The substitute Member shall commence performance of duties after the Croatian Parliament ascertains the onset of the legal conditions for application of the institute of replacement".

²³⁷ Information received by email on 15 June 2020 from the Permanent Representation of the Croatia to the EU.

²³⁸ An English version of the said Act from 2010 can be found on the site: <http://www.sabor.hr/Default.aspx?sec=3243>. The Act on Amendments to the Act on the Election of Members to the European Parliament from the Republic of Croatia (Official Gazette *Narodne novine*, no. 23/2013) is available (only in the Croatian language) at: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_23_382.html, and the Act on Amendments to the Act on the Election of Members to the European Parliament from the Republic of Croatia (Official Gazette *Narodne novine*, no. 143/2013) is available (also only in the Croatian language) at: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_143_3071.html.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Croatia, parliamentary immunities are granted to the members of the Parliament by Article 75.

Article 75

Members of the Croatian Parliament shall enjoy immunity.

No Member of Parliament shall be held criminally liable, detained or sentenced for an opinion expressed or a vote cast in the Croatian Parliament.

No Member of Parliament shall be detained nor shall any criminal proceeding be instigated against him/her without approval by the Croatian Parliament.

A Member of Parliament may be detained without approval from the Croatian Parliament only if he/she has been caught in the perpetration of a criminal offence carrying a sentence of imprisonment exceeding five years. In such a case, the Speaker of the Croatian Parliament shall be notified thereof.

If the Croatian Parliament is not in session, approval for the detention of a Member of Parliament or the continuation of criminal prosecution against him/her shall be given and the decision on his/her right to immunity shall be made by the Credentials and Privileges Commission, subject to its subsequent confirmation by the Croatian Parliament."

2.1.2. Implementing provisions

The implementing rules concerning immunities are found in the Standing Orders of the Croatian Parliament, in particular in Articles 23 to 28.

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 75(2) of the Constitution)

Pursuant to the second paragraph of Article 75 of the Constitution, a Member of Parliament cannot be held criminally liable, detained or sentenced for an opinion expressed or a vote cast in the Croatian Parliament. This non-liability protects the members of Parliament from criminal liability only for acts perpetrated as a member inside the Croatian Parliament. Insofar as a Member of Parliament perpetrates a criminal act outside of the Parliament, he or she shall bear the same criminal liability as any other citizen. Besides these constitutional provisions, no special rules have been foreseen covering the question of the extent and area within which protection is secured (*ratione loci*).

The non-liability principle is absolute and continues to cover Members of Parliament even after the expiration of their mandate.

2.2.2. Immunity (Article 75 (3), (4) and (5) of the Constitution)

Members of the Croatian Parliament enjoy inviolability (procedural immunity) pursuant to Article 75, paragraphs 3, 4 and 5 of the Constitution of the Republic of Croatia: without the approval of the Parliament, they may not be detained, and criminal proceedings against them may not be instigated without approval by the Croatian Parliament. Nevertheless, if a Member of Parliament is caught in committing a criminal offence (*in flagrante delicto*) for which the prescribed penalty is imprisonment exceeding five years, he/she may be detained without the previous approval of the Parliament. In such a case, the Speaker of the Croatian Parliament shall be notified thereof. Moreover, in accordance with Article 27 of the Standing Orders of the Croatian Parliament, a parliamentary deputy who is called in for questioning by the authorities has the right to refuse to appear for such questioning.

In accordance with the Standing Orders of the Croatian Parliament, when the conditions for pre-trial detention (remand) of a Member of Parliament or for filing criminal charges against a Member of Parliament are fulfilled, the authorised state body, or the injured party as plaintiff, or a private plaintiff shall be obliged to seek Parliament's approval. The private plaintiff shall submit, along with the request, proof of having brought an action before a competent court. The request for approval for pre-trial detention (remand) or for filing criminal charges against a Member of Parliament is submitted to the Speaker of Parliament by the authorised state body, or the injured party as plaintiff, or the private plaintiff for its referral to the Credentials and Privileges Commission. In line with Article 24 of the Standing Orders of the Croatian Parliament, the Credentials and Privileges Commission is obliged, within three days of its date of delivery, to deliberate on the request for approval for pre-trial detention (remand) or for filing criminal charges against a Member of Parliament, as well as on the report on the pre-trial detention (remand) of a Member of Parliament caught in the act of committing a criminal offence punishable by imprisonment of more than five years and to submit a report thereon to Parliament at the next scheduled session. When Parliament is not in session, approval for the deprivation of freedom due to pre-trial detention (remand) or for the continuation of criminal proceedings is granted by the Credentials and Privileges Commission and this body shall additionally decide on the application of legal immunity for a Member of Parliament, with the subsequent confirmation of Parliament at the next scheduled session. (Article 27 of the Standing Orders).

If authorization is granted, it only applies to the criminal act for which it was requested (Article 28 of the Standing Orders). Parliament shall inform the court having jurisdiction, the public prosecutor or the plaintiff of its decision pertaining to approval for pre-trial detention (remand) or for filing criminal charges against a Member of Parliament (Article 26).

In its interpretation of Article 17(1) of the Criminal Procedure Act,²³⁹ which stipulated that criminal proceedings begin upon confirmation of an indictment²⁴⁰, the Credentials and Privileges Commission assumed that "decision-making on the immunity of a Member of Parliament is not possible prior to a

²³⁹ Published in *Narodne novine*, no. 152/2008, 76/2009, 80/2011, 121/2011 – consolidated text, 91/2012 – Decision of Constitutional Court of the Republic of Croatia, number: U-I-448/2009 of 19 July 2012, 143/2012, 56/2013.

²⁴⁰ The Act on Amendments to the Criminal Procedure Act (Official Gazette *Narodne novine*, no. 145/2013) in Article 17 paragraph 1 item 1 has been amended so as to read as follows: "1) by final decision on conducting an investigation", after item 1, a new item 2 has been added which reads: "by confirmation of indictment in the case no investigation has been conducted" *afaut*, and previous items 2 and 3 have become items 3 and 4.

decision made by the Public Prosecution on submission of an indictment to the court.” Consequently, it held that the Public Prosecution of the Republic of Croatia “may issue an order on conduct of an investigation and other investigative action without revocation of a Member of Parliament’s immunity”.²⁴¹

Inviolability protects Deputies for the duration of their term of office: according to Article 23 of the Standing Orders, the parliamentary deputy shall have legal immunity as at the constituent session of Parliament until the end of his/her term of office. If the Croatian Parliament does not grant the necessary approval for the prosecution or pre-trial detention (remand) of a Member of Parliament, the statute of limitations is suspended until the end of the Member's term of office.

2.3. National authority entitled to request the immunity of a Croatian member of the European Parliament to be waived

As regards the competent authorities able to request the waiver of immunity of a Member of the European Parliament, according to the communication received from the Permanent Representative of Croatia to the European Union²⁴², on the basis of the legal provisions in force in the Republic of Croatia (Article 76 of the Constitution of the Republic of Croatia and Article 23 of the Standing Orders of the Croatian Parliament), such a request can be filed by a municipal or county court, the Prosecutor's Office, a municipal or county public prosecutor, USKOK (the Croatian State Prosecutor's Office for the Suppression of Organised Crime and Corruption) or a private plaintiff (private plaintiffs must submit evidence substantiating the action to the competent court).

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²⁴¹ See the Report of the Credentials and Privileges Commission, available at: <http://www.sabor.hr/Default.aspx?art=29528>.

²⁴² Email received on 15 June 2020.

ITALY

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Italian government

Constitution

The composition of the Italian government is established by the first paragraph of Article 92 of the Constitution, which reads as follows: "The government of the Republic is made up of the President of the Council and the ministers who together form the Council of Ministers."²⁴³

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: "*Legge 23 agosto 1988, n. 400 - Disciplina dell'attività di Governo e ordinamento della Presidenza del Consiglio dei Ministri*" (Law No 400/1988 on the activity of the government and on the organisation of the Presidency of the Council of Ministers²⁴⁴), in particular Articles 1, 8, 9 and 10.

1.1.2. Denomination of the members of the Italian government

Pursuant to the provisions mentioned in paragraph 1.1., members of the Italian government are the following:

- *Presidente del Consiglio dei ministri (President of the Council of Ministers),*
- *Ministro/a (Minister²⁴⁵); Ministri (Ministers),*
- *Sottosegretario/a di Stato (Undersecretary of State); Sottosegretari di Stato (Undersecretaries of State),*
- *Viceministro/a (Deputy-Minister); Viceministri (Deputy-Ministers).*
- *Vicepresidente del Consiglio dei Ministri (Deputy-President of the Council of Ministers); Vicepresidenti del Consiglio dei Ministri (Deputy-Presidents of the Council of Ministers) if the President of the Council of Ministers proposes his/her/their appointment.*

Members of the government are appointed by a Decree of the President of the Republic.

²⁴³ "Il Governo della Repubblica è composto del Presidente del Consiglio e dei Ministri, che costituiscono insieme il Consiglio dei Ministri". The text of the Constitution is available at: [Costituzione della Repubblica](#). For an English translation, see [Constitution of the Italian Republic](#).

²⁴⁴ See [Legge 23 agosto 1988, n.400 - Disciplina dell'attività di Governo e Ministri](#). The internal rules of the Council of Ministers are enshrined in a specific regulation adopted by decree of the President of the Council of Ministers.

²⁴⁵ In the Italian government, ministers may be with or without a portfolio.

1.1.3. *Date of the beginning of the term of office*

Under the terms of Article 93 of the Constitution²⁴⁶ and of Articles 1 and 10 of Law No 400/1988, the date of the beginning of the term of office of the members of the government shall be considered the date they are sworn in by the President of the Republic.

1.2. Member of a national parliament

1.2.1. *Legal provisions on the composition of the Italian Parliament*

Constitution

The composition of the Italian Parliament is established by the first paragraph of Article 55 of the Constitution, which reads as follows: "Parliament consists of the Chamber of Deputies and the Senate of the Republic."²⁴⁷

The following Articles 56-59 of the Constitution fix the number of the Deputies and of the elected Senators, which respectively amounts to six hundred thirty and three hundred fifteen.²⁴⁸ Whereas all members of the Chamber of Deputies are elected, the Senate also includes non-elected Members. In particular, former Presidents of the Republic are Senators by right and for life unless they renounce the office (Art. 59 of the Constitution). The same article provides that the President of the Republic may appoint five citizens who have contributed to the honour of the country through their outstanding achievements in social, scientific, artistic and literary fields as Senators for life.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the Chamber of Deputies and of the Senate are contained in their respective Rules of Procedure²⁴⁹.

1.2.2. *Denomination of the members of the Italian Parliament*

Pursuant to the provisions mentioned in paragraph 2.1., members of the Italian Parliament are the following:

- *Deputato/a (Deputy); Deputati/e (Deputies),*
- *Senatore/Senatrice (Senator); Senatori/Senatrici (Senators).*

²⁴⁶ Article 93 of the Italian Constitution reads as follows: "Il Presidente del Consiglio dei Ministri e i Ministri, prima di assumere le funzioni, prestano giuramento nelle mani del Presidente della Repubblica" (before taking office, the President of the Council of Ministers and the Ministers shall be sworn in by the President of the Republic).

²⁴⁷ "Il Parlamento si compone della Camera dei deputati e del Senato della Repubblica."

²⁴⁸ A proposal for a constitutional law modifying Articles 56, 57 and 59 of the Constitution concerning the reduction of the number of members of parliament has been granted definitive approval by the Chamber of deputies on October 8, 2019. Text in the OJ available [here](#); text as approved by the Chamber of deputies available [here](#). According to the proposal, the adjusted number of Deputies and elected Senators, would respectively amount to 400 and 200. The proposal should undergo on March 29, 2020 a popular referendum according to Article 138 of the Constitution.

²⁴⁹ For the English translations, see [Chamber of Deputies - Rules of Procedure](#) and [Rules of the Senate](#).

1.2.3. *Date of the beginning of the term of office*

Chamber of Deputies

Under the terms of Article 1 of the Rules of Procedure of the Chamber, Deputies officially begin their term of office from the date of their proclamation. Proclamation is carried out by the chairman of the "*ufficio centrale circoscrizionale*" (electoral district central office) as a result of the counting of votes and the distribution of the seats; in the case of Deputies who take over from Deputies who have been elected in more than one electoral district, proclamation takes place at the opening of the first sitting of the Chamber following the elections.²⁵⁰ Once the Deputies have been proclaimed elected, the newly formed *Giunta delle elezioni* (Committee for the elections) proceeds to verify their credentials and the results of the elections; this procedure can take up to 18 months.²⁵¹

Senate

Under the terms of Article 1 of the Rules of Procedure of the Senate, Senators officially begin their term of office from the date of their proclamation if they have been elected or from the date of the communication of their appointment if they have been appointed. The proclamation is carried out by the chairman of the "*ufficio elettorale regionale*" (regional electoral office) following the counting of votes and the distribution of the seats²⁵². Once the Senators have been proclaimed elected, the newly formed *Giunta delle elezioni e delle immunità parlamentari* (Committee for the elections and for parliamentary immunities) proceeds to verify their credentials and the results of the elections; this procedure can take up to 18 months.²⁵³

²⁵⁰ See Articles 2 and 3 of the Rules of Procedure of the Chamber of Deputies and Article 84 of the Decree of the President of the Republic No 361, of 30 March 1957, as modified by Law No 270/2005 and Law No 121/2006.

See also [Camera dei Deputati, Manuale elettorale](#), page 35.

²⁵¹ See Article 17 of the Rules of Procedure of the Chamber.

²⁵² See Articles 2 and 3 of the Rules of Procedure of the Senate and Article 17 of Legislative Decree No 533, of 20 December 1993, as modified in particular by Law No 270/2005. Also see *Manuale elettorale*, op. cit., p. 41.

²⁵³ See Article 19 of the Rules of Procedure of the Senate and Article 20 of [Regolamento per la verifica dei poteri](#).

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Pursuant to Article 46 of Law No 18, of 24 January 1979,²⁵⁴ on the election of the Italian members at the European Parliament (as amended), the Italian authority competent to communicate cases of incompatibility to the European Parliament is the "*ufficio elettorale nazionale*" (national electoral office) established within the "*Corte di Cassazione*" (Court of Cassation). In case of any disputes concerning the alleged existence of cases of incompatibility, the communication by the national electoral office is based on an irrevocable judgment of the national judicial authority.²⁵⁵ This has also been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Italy to the European Union²⁵⁶. Regarding the rules on incompatibility, the official letter highlights that a distinction must be made between Articles 5 and 5a of Law No 18 of 24 January 1979, which set out the cases governed by Article 7 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage (EU post, national Member of national Parliament or Government), and those governed by Article 6 of the aforementioned law (president of regional council; regional assessor, regional councillor, provincial president, mayor of a municipality with a population of over 15 000). In the latter cases, it is specified that the elected Members of Parliament must, within 30 days of notification, inform the National Electoral Office which function they intend to select. Failing this, the National Electoral Office is required to declare their election void and replace them with the top reserve candidates on the same lists for the constituencies in question. In the cases referred to in Articles 5 and 5a, in the absence of a corresponding procedure, the Electoral Office must confine itself to informing elected candidates of the existence of any grounds for incompatibility and, if they fail to resolve the issue of their own accord, inform the European Parliament so that the seats in question can be declared vacant.

In addition, the letter states that under Article 46 of Law No 79 of 24 January 1979, the National Electoral Office is responsible for notifying substitutions ordered by the national judicial authority on the basis of its final rulings on disputes regarding the incompatibility of elected representatives.

The National Electoral Office is also in charge of informing the European Parliament of the names of Members elected in the five national constituencies, the receipt of the declared preferences of candidates elected to more than one constituency and filling seats vacated during the electoral term.

²⁵⁴ Available at: <http://www.parlamento.it/parlam/leggi/790181.htm>. Article 46 provides that "L'Ufficio elettorale nazionale comunica alla segreteria del Parlamento europeo le surrogazioni disposte in base alle sentenze che abbiano deciso irrevocabilmente le controversie sulla incompatibilità ed ineleggibilità degli eletti. L'Ufficio predetto, preso atto delle sentenze che abbiano deciso irrevocabilmente le contestazioni sulle operazioni elettorali, corregge il risultato delle elezioni e sostituisce ai candidati illegittimamente proclamati coloro che hanno diritto di esserlo, dandone comunicazione agli interessati ed alla segreteria del Parlamento europeo." (The national electoral office informs the secretariat of the European Parliament of any replacement decided by a final judgment on the incompatibility and ineligibility of elected Members. The same office, taking notice of final judgments deciding on contested elections, corrects the results of the elections and replaces the candidates irregularly proclaimed to have been elected with the candidates who have the right to be proclaimed elected, notifying the persons concerned and the secretariat of the European Parliament).

²⁵⁵ The competent judicial authorities are established by Articles 42 to 45 of [Legge 24 gennaio 1979, n. 18 - Elezione dei membri del Parlamento europeo spettanti all'Italia](#). In case of alleged breaches of the electoral procedural rules, the competent judicial authority of first instance is the "*tribunale amministrativo regionale del Lazio*" (administrative tribunal of the region of Lazio), whereas the judicial authority of last instance is the "*Consiglio di Stato*" (Council of State). In case of disputes on the conditions of eligibility and on alleged incompatibilities, the competent judicial authority of first instance is the "*Corte di appello*" (Court of appeal), whereas the judicial authority of last instance is the "*Corte di Cassazione*" (Court of Cassation).

²⁵⁶ Letter dated 30 June 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Italy the parliamentary immunities are granted to the members of the national Parliament by Article 68 of the Constitution which reads as follows:

Article 68

Members of Parliament may not be held accountable for any opinions expressed or votes cast in the performance of their functions.

Without the authorization of his House, no member of Parliament may be subjected to a personal or home search, nor may he be arrested or otherwise deprived of personal freedom, or held in detention, except to enforce a final court judgment, or if caught in the act of committing a crime for which arrest is mandatory.

Such an authorization shall also be required in order to monitor a Member of Parliament's conversations or communications, or to seize such member's mail.²⁵⁷

2.1.2. Implementing provisions

The implementing rules of Article 68 of the Constitution are contained in Law No 140 of 20 June 2003.²⁵⁸

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest and taking into custody ("inviolability").

²⁵⁷ "I membri del Parlamento non possono essere chiamati a rispondere delle opinioni espresse e dei voti dati nell'esercizio delle loro funzioni. Senza autorizzazione della Camera alla quale appartiene, nessun membro del Parlamento può essere sottoposto a perquisizione personale o domiciliare, né può essere arrestato o altrimenti privato della libertà personale, o mantenuto in detenzione, salvo che in esecuzione di una sentenza irrevocabile di condanna, ovvero se sia colto nell'atto di commettere un delitto per il quale è previsto l'arresto obbligatorio in flagranza. Analoga autorizzazione è richiesta per sottoporre i membri del Parlamento ad intercettazioni, in qualsiasi forma, di conversazioni o comunicazioni e a sequestro di corrispondenza."

²⁵⁸ See [Legge 20 giugno 2003, n. 140 - Disposizioni per l'attuazione dell'articolo 68 della Costituzione nonché in materia di processi penali nei confronti delle alte cariche dello Stato](#).

2.2.1. *Non-liability principle (Article 68, first paragraph, of the Constitution)*

Pursuant to Article 68, first paragraph, of the Constitution, members of Parliament bear no liability for any opinions expressed or votes cast in the exercise of their functions. Deputies and Senators are therefore exempted from any civil, criminal, administrative or disciplinary liability that could stem from an opinion expressed or vote cast when carrying out their parliamentary activities.²⁵⁹ This exemption continues to apply after the end of their term of office.

Article 3 of Law No 140/2003 contains the following list of activities falling within the scope of the non-liability principle:

- *tabling legislative proposals, amendments, agendas, motions and resolutions, parliamentary oral or written questions;*
- *interventions in the sittings of the Chamber of Deputies or of the Senate and in the other parliamentary bodies of either Chamber;*
- *any vote regardless of its form;*
- *any other parliamentary act and any other activity of inquiry, divulgation, political criticism and denunciation linked to the exercise of the parliamentary mandate, taking place inside or outside the Parliament.*

2.2.2. *Immunity (Article 68, second and third paragraphs, of the Constitution)*

Pursuant to Article 68, second and third paragraphs, of the Constitution, the authorisation of the Chamber to which the person belongs is needed in order to subject the member to the following measures:

- *personal or home search,*
- *arrest, deprivation of personal freedom, or detention, except in the case of enforcement of a final conviction or unless the Member is caught in the act of committing a crime for which arrest in flagrante delicto is mandatory,*
- *monitoring, by any means, of conversations or communications,*
- *mail seizure.*

Following an amendment to the Constitution approved in 1993,²⁶⁰ no previous authorisation of the competent Chamber is necessary in order to subject a member of the Parliament to criminal proceedings.

²⁵⁹ In its decisions No 10 and 11 of 2000, the Constitutional Court adopted a restrictive interpretation with regard to non-liability for the opinions expressed outside the parliamentary premises, by requiring the existence of a "*nesso funzionale*" (functional link) between those opinions and the exercise of the parliamentary functions. More precisely, in order to be covered by the immunity, a declaration made by a Member outside the parliamentary premises has to be itself an expression of the parliamentary activity. In particular, declarations that reproduce the content of opinions previously expressed in the course of parliamentary activities are covered by the immunity, if the contentious expressions take place within a reasonable time from such parliamentary acts. The same approach (requiring a functional link with the exercise of the mandate) has been followed by the Constitutional Court in its decision No 509/2002 as far as the opinions expressed inside the parliamentary premises are concerned, and confirmed even after the entry into force of Law No 140/2003 (see Constitutional Court, Judgment No 120/2004).

²⁶⁰ Constitutional Law No 3, of 29 October 1993. See also Italian Code of Criminal Procedure, Articles 344, 345, 346 on authorisation to proceed.

2.3. National authority entitled to request the immunity of an Italian member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the Italian members of the European Parliament. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

2.3.1. Non-liability principle (Article 68, first paragraph, of the Constitution)

As far as the non-liability principle established in Article 68(1) of the Constitution is concerned, this form of immunity may not be waived and continues to apply even after the end of the mandate as a Member of Parliament.

Law No 140/2003 sets out the procedure to be followed in order to determine whether an opinion expressed by a Member of Parliament is covered by Article 68. In particular, article 3(4) provides that, when the issue of the applicability of Article 68(1) of the Constitution arises in the course of criminal or civil proceedings, the judge,²⁶¹ if he/she believes that the immunity claim made by the defendant must be rejected, refers the matter to the Chamber to which the member in question belongs: the Chamber shall rule on the applicability of the non-liability principle. If the question arises in the framework of disciplinary proceedings, the disciplinary authority refers the matter to the competent Chamber. If a judge refers the case to the competent Chamber, he/she must also suspend the proceedings until the Chamber reaches its decision, but in any case for no longer than 90 days from the date when the Chamber receives the request. However, the competent Chamber may extend the deadline for an additional 30 days (Article 3(5)).²⁶²

Besides, any Member of Parliament who is subjected to judicial proceedings for facts that he or she believes to be covered by the non-liability principle is also empowered to request a decision of the competent Chamber (Article 3(7) of Law No 140/2003). In this case, the Chamber may request the judge to suspend the proceedings (the terms are the same as indicated above).

2.3.2. Immunity (Article 68, second and third paragraphs, of the Constitution)

With regard to the measures listed in Article 68, second and third paragraphs, of the Constitution, Article 4(2) of Law No 140/2003 provides that the authorisation to subject a member to those measures shall be requested to the Chamber to which the member belongs by the judicial authority that ordered the adoption of the measures. More specifically, since these judicial orders are usually adopted during the preliminary investigations of criminal proceedings, the judicial authority requiring the authorisation is typically the "*giudice per le indagini preliminari*" (preliminary investigation judge) or the

²⁶¹ Prosecutors do not have the power to transmit such requests, but they may only transmit the file to the competent judge: Article 3(6).

²⁶² According to Law No 140/2003, the decision of the competent Chamber that a fact is covered by the non-liability principle should lead to the dismissal of the case; however, the competent judge may always refer the case to the Constitutional Court (in what is called a "conflict of allocation of powers", pursuant to Article 134 of the Constitution). The final decision as to whether a statement is covered by the non-liability principle is then to be taken by the Constitutional Court, which, as mentioned above, has adopted a restrictive interpretation (requesting the existence of a "functional link" between the statement and the office of Member of Parliament). The national procedure for the enforcement of immunities has also been the object of rulings on the part of the European Court of Human Rights: see for instance the decision in *Onorato v. Italy*, 24 May 2011.

"pubblico ministero" (prosecutor). Additionally, Article 29 of Law n. 69/2005, concerning the European Arrest Warrant, also foresees that, if the person concerned benefits from immunity, the judicial authority may request its waiver to the competent foreign or international authority.

This has been confirmed in the above mentioned official letter²⁶³ which states that requests for authorisation to proceed on the matter are sent to the European Parliament directly by the relevant Italian judicial authority, as is the case with requests forwarded to the Italian Parliament under Article 68 of the Italian Constitution. According to the letter, a similar procedure is also provided for in Article 29(3) of Law No 69 of 22 April 2005 on the European arrest warrant.

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²⁶³ Letter dated 30 June 2020.

CYPRUS

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Cypriot government

Constitution

The composition of the Cypriot government is established, indirectly, by Articles 1, 36 and 54 of the Constitution²⁶⁴, which read as follows:

Article 1

The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided.

Article 36

The President of the Republic is the Head of the State and takes precedence over all persons in the Republic. The Vice-President of the Republic is the Vice-Head of the State and takes precedence over all persons in the Republic next after the President of the Republic. [...]

Article 54

Subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice-President of the Republic, acting either separately or conjointly, the Council of Ministers shall exercise executive power in all other matters other than those which, under the express provisions of this Constitution, are within the competence of a Communal Chamber, including the following: [...]

Implementing provisions

There are no further implementing provisions other than the Constitution itself.

1.1.2. Denomination of the members of the Cypriot government

Pursuant to the provisions mentioned in paragraph 1.1., members of the Cyprus government are the following:

- Πρόεδρος της Δημοκρατίας (President of the Republic),
- Αντιπρόεδρος της Δημοκρατίας (Vice-President of the Republic),

²⁶⁴ An English translation of the text of the Constitution of Cyprus is available at: [Cyprus's Constitution of 1960 with Amendments through 2013 - Subsequently amended.](#)

- Υπουργικό Συμβούλιο (*Council of Ministers*)²⁶⁵,

According to the Cypriot Constitution, the Vice-President of the Republic is a member of the Turkish Cypriot community. However, due to the abnormal situation prevailing in Cyprus following the withdrawal of the Turkish Cypriots from the government and the Parliament in 1963-64 and the *de facto* partition of the island in 1974, the position of Vice-President is vacant. This has been justified under the "*doctrine of necessity*", according to which the application of constitutional provisions related to the bi-communal character of the state are suspended for as long as the non-participation of the Turkish Cypriots renders the normal bi-communal functioning of the state impossible.²⁶⁶

1.1.3. *Date of the beginning of the term of office*

Article 43 of the Constitution provides that "The President and the Vice-President of the Republic shall hold office for a period of five years commencing on the date of their investiture and shall continue to hold such office until the next elected President and Vice-President of the Republic are invested." Thus, the date of the beginning of the term of office of the President and Vice-President of the Republic is the date of their investiture; the office ends when the newly elected President and Vice-President are invested.

Under Article 46 of the Constitution the Ministers are designated by the President and the Vice-President of the Republic who shall appoint them by an instrument signed by them both. Articles 48 and 49 of the Constitution state that the President and the Vice – President may designate and terminate the appointment of Greek and Turkish Ministers respectively with no limit set as to the time of such designation and termination.²⁶⁷

1.2. *Member of a national parliament*

1.2.1. *Legal provisions on the composition of the Cypriot Parliament*

Constitution

According to Article 61 of the Constitution "The legislative power of the Republic shall be exercised by the House of Representatives in all matters except those expressly reserved to the Communal Chambers under this Constitution". Article 65 provides that "the term of office of the House of Representatives shall be for a period of five years."

The composition of the Cypriot Parliament is established by Article 62 of the Constitution, which states that the number of representatives shall be fifty. This number can be modified by a resolution of the House of Representatives, if carried by a majority comprising two-thirds of the Representatives elected

²⁶⁵ While the Constitution only mentions the Ministers, in practice the Government Spokesman and three deputy Ministers (Deputy Minister to the President, of Tourism and of Shipping) are generally considered as part of the executive. However, case law has clarified that the latter are not part of the Council of Ministers.

²⁶⁶ For further analysis see the decision issued by the Supreme Court in *Attorney General of the Republic v. Mustafa Ibrahim* (1964), CLR, at p. 195.

²⁶⁷ According to Article 59(3) of the Constitution, The Ministers shall hold office in the case of the Greek Ministers until their appointment is terminated by the President of the Republic and in the case of the Turkish Ministers until their appointment is terminated by the Vice-President of the Republic.

by the Greek Community and two-thirds of the Representatives elected by the Turkish Community. Out of the number of Representatives referred to above, seventy per cent shall be elected by the Greek Community and thirty per cent by the Turkish Community separately from amongst their members respectively, and in the case of a contested election, by universal suffrage and by direct and secret ballot held on the same day.²⁶⁸

In 1985,²⁶⁹ the number of representatives was increased to eighty due to the increasing responsibilities of the House of Representatives. In practice, only 56 of those seats are occupied, the remaining 24 being kept free for the representatives elected by the Turkish Cypriot community in case of reunification of the island.²⁷⁰ This decision was taken invoking the "*doctrine of necessity*", since the Constitution requires separate majorities of Greek Cypriots and Turkish Cypriots to amend the provisions on the number of representatives.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the House of Representatives are contained in the Rules of Procedure.

1.2.2. Denomination of the members of the House of Representatives

Pursuant to the provisions mentioned in paragraph 2.1., members of the Cypriot Parliament are the following:

- *Βουλευτές (Representatives).*

1.2.3. Date of the beginning of the term of office

According to Article 5 of the Rules of Procedure of the House of Representatives: "The Representative presiding over the sitting referred to hereinbefore [that is, the first sitting of the opening ordinary session of the term of office of the House] shall declare the commencement of such sitting and shall invite the elected Representatives to make, before assuming duties as such in the House of Representatives, the affirmation provided in Article 69 of the Constitution. A Representative absent from the first sitting of the House or a Representative elected during the period of the term of office of the House, before assuming duties as such in the House, shall make the affirmation provided in Article 69 of the Constitution."

On the basis of this provision, the term of office of a Member of Parliament commences once he is solemnly declared as Member of Parliament by the President of the House during the sitting following the affirmation referred to in Article 69 of the Constitution.²⁷¹

²⁶⁸ The Cyprus Constitution (Articles 86-111) also provides for two Communal Chambers, elected respectively by each of the two communities by separate ballot. These provisions have become void and not applicable since the inter-communal strife of 1963 which led to the withdrawal of all Turkish Cypriots from the government and the Parliament, and the *de facto* division of the island since 1974.

²⁶⁹ Decision 2060/1985 of the House of Representatives, taken in accordance to article 62(1) of the Constitution.

²⁷⁰ A full list of the current Members of the House of Representatives is available at: <http://www.parliament.cy/easyconsole.cfm/id/186>.

²⁷¹ Article 69 of the Constitution provides that "Representative before assuming duties as such in the House of Representatives and at a public meeting thereof shall make the following affirmation:- 'I do solemnly affirm faith to, and respect for, the Constitution and the laws made thereunder, the preservation of the independence and the territorial integrity, of the Republic of Cyprus'."

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

The Central Election Service of the Ministry of the Interior is the competent body that handles all the election procedures. The General Registrar and the Election Service examine the applications of candidates and approve their eligibility to run in the elections.

The national incompatibilities with the office of MEP are set out in the Law on Election of Members of the European Parliament of 2004 (*O Perit is Eklogis ton Melon tou Europaikou Koinovouliou*) and in Article 70 of the Cypriot Constitution, in combination with Article 71(6) of the Public Service Laws of 1990 – 2011 (*Oi Peri Demosias Ypiresias Nomoi*).

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

The parliamentary immunities are granted to the members of the national Parliament by virtue of Article 83 of the Constitution which reads as follows:

Article 83

1. Representatives shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives.
2. A Representative cannot, without the leave of the Supreme Court, be prosecuted, arrested or imprisoned so long as he continues to be a Representative. Such leave is not required in the case of an offence punishable with imprisonment for five years or more in case the offender is taken in the act. In such a case the Supreme Court being notified forthwith by the competent authority decides whether it should grant or refuse leave for the continuation of the prosecution or detention so long as he continues to be a Representative.
3. If the Supreme Court refuses to grant leave for the prosecution of a Representative, the period during which the Representative cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question.
4. If the Supreme Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court, the enforcement of such sentence shall be postponed until he ceases to be a Representative.

2.1.2. Implementing provisions

There are no additional provisions dealing with parliamentary immunity.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of Parliament represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 83(1) of the Constitution)

Pursuant to Article 83(1) of the Constitution, Members of Parliament shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives. Therefore, the non-liability is limited to votes and statements performed in the House itself.

2.2.2. Immunity (Article 83(2)-(4) of the Constitution)

Pursuant to Article 83(2)-(4) of the Constitution, the authorisation of the Supreme Court (not of the House of Representatives) is required in order to subject the member to prosecution, arrest or imprisonment. The competent authority for requesting such authorization is the Attorney General of the Republic (*Γενικός Εισαγγελέας της Δημοκρατίας*).

Leave by the Supreme Court is not necessary in cases of offences punishable with imprisonment for five years or more in case the offender is caught in the act (*in flagrante delicto*). In such a case the Supreme Court is competent to authorize the continuation of the arrest or to order its discontinuation. This immunity ceases once the function of Member of Parliament is terminated.

2.3. National authority entitled to request the immunity of a Cypriot member of the European Parliament to be waived

The competent authority for requesting the waiver of the immunity of a member of the European Parliament is the Attorney-General of the Republic (*Γενικός Εισαγγελέας της Δημοκρατίας*), in accordance with its powers under Article 113 of the Constitution. This has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Cyprus to the European Union.²⁷²

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²⁷² Letter dated 30 April 2013. Subject to further updates, if any.

LATVIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Latvian government

Constitution

The composition of the government in Latvia is established by Article 55 of the Constitution (*Satversme*) which reads as follows: "The Cabinet shall be composed of the Prime Minister and the Ministers chosen by the Prime Minister"²⁷³ and by Article 56 which provides "The Cabinet shall be formed by the person who has been invited by the President to do so."²⁷⁴

Implementing provisions

The above-mentioned provisions of the Constitution are implemented and further specified by the Cabinet Structure Law *Ministru kabineta iekārtas likums*²⁷⁵ adopted on 15 May 2008, in force from 1 July 2008 (LV, 28.05.2008, nr. 82).

1.1.2. Denomination of the members of the Latvian government

Pursuant to the provisions mentioned in paragraph 1.1., members of the government in Latvia are the following:

- *Ministru prezidents (Prime Minister),*
- *Ministrs (Minister); Ministri (Ministers),*
- *Ministru prezidenta biedrs (Deputy Prime Minister); Ministru prezidenta biedri (Deputy Prime Ministers),*
- *īpašu uzdevumu ministrs (minister for special assignments); īpašu uzdevumu ministri (ministers for special assignments).*²⁷⁶

1.1.3. Date of the beginning of the term of office

Pursuant to Article 59 of the Constitution "[i]n order to fulfil their duties, the Prime Minister and other Ministers must have the confidence of the *Saeima* [Parliament] and they shall be accountable to the *Saeima* for their actions". Article 17 of the Law on the Structure of Cabinet further clarifies that the term

²⁷³ "Ministru kabinets sastāv no ministru prezidenta un viņa aicinātiem ministriem". For an English version, see [The Constitution of Republic of Latvia](#).

²⁷⁴ "Ministru kabineta sastāda persona, kuru uz to aicina Valsts Prezidents".

²⁷⁵ For an English version, see [Cabinet Structure Law](#).

²⁷⁶ According to Article 5(2) of the Law on the Structure of Cabinet, ministers for special assignments may be members of the government.

of office of the government or an individual minister starts at the moment when the *Saeima* (Parliament) has expressed its confidence in the government or an individual minister.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Latvian Parliament

Constitution

Article 5 of the Constitution determines the composition of Latvian Parliament (*Saeima*): "The *Saeima* shall be composed of one hundred representatives of the people."²⁷⁷

Articles 6 and 7 of the Constitution provide that the Saeima shall be elected in general, equal and direct elections, and by secret ballot based on proportional representation, and that Latvia is divided into separate electoral districts and the number of members of the Saeima to be elected from each district shall be proportional to the number of electors in each district.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the Parliament are contained in its Rules of Procedure (*Kārtības rullis*).²⁷⁸

1.2.2. Denomination of the members of the Latvian Parliament

Pursuant to the provisions mentioned in paragraph 2.1, a member of the Latvian Parliament is called:

- *Saeimas deputāts* (member of the Parliament); *Saeimas deputāti* (members of the Parliament).

1.2.3. Date of the beginning of the term of office

Pursuant to Article 12 of the Constitution, the newly elected *Saeima* holds its first sitting on the first Tuesday in November, when the mandate of the previous *Saeima* expires.

Article 18 provides that a person elected to the *Saeima* acquires the mandate of a member of the *Saeima* by giving a solemn promise, the text of which is provided in the same article.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

According to an official letter sent to the President of the European Parliament by the Permanent Representation of Latvia²⁷⁹, pursuant to EU and national legislation, the mandate of a Member of the European Parliament is not compatible with the office of the President, member of the *Saeima*, member of the Cabinet or member of a Latvian town or regional council. At the same time, national laws and regulations provide that the above-mentioned national offices are automatically lost if a person is

²⁷⁷ "Saeima sastāv no simts tautas priekšstāvjiem."

²⁷⁸ For an unofficial translation into English, see [Rules of Procedure of the Saeima](#).

²⁷⁹ Letter dated 3 November 2020.

elected to be a Member of the European Parliament, and therefore there can be no instances of a dual office which is in conflict with European Union or national laws and regulations. Consequently, there is no competent body in Latvia to which such a case should be notified.

According to the above-mentioned official letter, the competent body to provide information concerning Members of the European Parliament elected in Latvia is the Central Election Commission.

²⁸⁰

²⁸⁰ Letter dated 3 November 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Latvia, the parliamentary immunities are granted to the members of the *Saeima* by Articles 28 - 31 of the Constitution²⁸¹.

Article 28

Members of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. Court proceedings may be brought against members of the *Saeima* if they, albeit in the course of performing parliamentary duties, disseminate:

- 1) defamatory statements which they know to be false, or
- 2) defamatory statements about private or family life

Article 29

Members of the *Saeima* shall not be arrested, nor shall their premises be searched, nor shall their personal liberty be restricted in any way without the consent of the *Saeima*. Members of the *Saeima* may be arrested if apprehended in the act of committing a crime. The Presidium shall be notified within twenty-four hours of the arrest of any member of the *Saeima*; the Presidium shall raise the matter at the next sitting of the *Saeima* for decision as to whether the member shall continue to be held in detention or be released. When the *Saeima* is not in session, pending the opening of a session, the Presidium shall decide whether the member of the *Saeima* shall remain in detention.

Article 30

Without the consent of the *Saeima*, criminal prosecution may not be commenced against its member.

Article 31

Members of the *Saeima* have the right to refuse to give evidence:

- 1) concerning persons who have entrusted to them, as representatives of the people, certain facts or information;
- 2) concerning persons to whom they, as representatives of the people, have entrusted certain facts or information; or
- 3) concerning such facts or information itself.²⁸²

²⁸¹ See, in English, [The Constitution of Republic of Latvia](#).

²⁸² "28. Saeimas locekli ne par balsošanu, ne par amatu izpildot izteiktām domām nevar saukt pie atbildības ne tiesas, ne administratīvā, ne disciplinārā ceļā. Saeimas locekli var saukt pie tiesas atbildības, ja viņš, kaut arī amatu izpildot, izplata: 1) godu aizskarošas ziņas, zinādams, ka tās nepatiesas, vai 2) godu aizskarošas ziņas par privātu vai ģimenes dzīvi.

2.1.2. *Implementing provisions*

The rules implementing Articles 28-31 of the Constitution are found in Article 120(1) of the Criminal Procedure Law and in Rules 17 and 179 the Rules of Procedure of the *Saeima*.

2.2. *Scope and content of national parliamentary immunities*

The system of immunity applicable to members of the *Saeima* represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. *Non-liability principle (Article 28 of the Constitution)*

Article 28 of the Constitution provides that members of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. However, this article provides for an exception, namely, that court proceedings may be brought against members of the *Saeima* if they, in the course of performing parliamentary duties, disseminate defamatory statements which they know to be false, or defamatory statements about private or family life.

2.2.2. *Immunity (Articles 29 - 31 of the Constitution)*

Pursuant to Article 29 of the Constitution, arrest, search of premises and restriction of personal liberty cannot be performed against members of the *Saeima* without its consent. Moreover, according to Article 30 of the Constitution, the consent of the *Saeima* is also required in order to commence criminal prosecutions against its members. However, consent for arrest is not necessary if a member is apprehended in the act of committing a crime; in such a case, the Presidium²⁸³ must be notified within twenty-four hours of the arrest and the *Saeima* (or, if the *Saeima* is not in session, the Presidium itself) decides whether the member shall continue to be held in detention or be released.

29. Saeimas locekli nevar apcietināt, izdarīt pie viņa kratīšanas, ne citādi aprobežot viņa personas brīvību, ja tam nepiekrīt Saeima. Saeimas locekli var apcietināt, ja to notver pie paša nozieguma pastrādāšanas. Par katru Saeimas locekļa apcietināšanu divdesmit četru stundu laikā jāpaziņo Saeimas prezidijam, kurš to ceļ priekšā nākošā Saeimas sēdē izlemšanai par Saeimas locekļa paturēšanu apcietinājumā vai par viņa atsvabināšanu. Laikā starp sesijām, līdz sesijas atklāšanai, par Saeimas locekļa paturēšanu apcietinājumā lemj Saeimas prezidijs.

30. Pret Saeimas locekli nevar uzsākt kriminālvajāšanu bez Saeimas piekrišanas.

31. Saeimas loceklim ir tiesības atteikties no liecības došanas: 1) par personām, kuras viņam kā tautas priekšstāvim uzticējušas kādus faktus vai ziņas, 2) par personām, kurām viņš, izpildot savus tautas priekšstāvja pienākumus, uzticējis kādus faktus vai ziņas, 3) par pašiem šiem faktiem un ziņām."

²⁸³ According to Art. 16 of the constitution, the Presidium is elected by the *Saeima* and composed of a chairperson, two deputies and secretaries.

2.3. National authority entitled to request the immunity of a Latvian member of the European Parliament to be waived

In Latvia, the competent body that can request the lifting of the immunity of a Member of the European Parliament in Latvia is the General Prosecutor's office. This has been confirmed in the above mentioned official letter from the Permanent Representation of the Republic of Latvia to the European Union.²⁸⁴

In addition, Paragraphs 6 and 6 of Article 120 of the Criminal procedure law²⁸⁵ provide that "(6) (i) in order to hold a person who has immunity from criminal proceedings criminally liable, a prosecutor shall submit a proposal to the competent authority for the receipt of consent. (7) A proposal shall indicate the circumstances of the committing of a criminal offence, insofar as such circumstances have been ascertained in criminal proceedings.". Moreover, according to Article 179 of the Rules of procedure of the *Saeima*, the Mandate, Ethics and Submissions Committee shall examine requests to waive the immunity of a member of national Parliament submitted by the Prosecutor General's Office.

§ § §

²⁸⁴ Letter dated 3 November 2020.

²⁸⁵ An English version, including the amendments adopted until 4.3.2021, is available at: <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>.

LITHUANIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1 Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Lithuanian government

Constitution

The composition of the Lithuanian government is set in Article 91 of the Constitution, which reads as follows: "The Government of the Republic of Lithuania shall consist of the Prime Minister and Ministers".²⁸⁶

According to Article 92 of the Constitution "the Prime Minister shall, with the assent of the Seimas, be appointed and dismissed by the President of the Republic" and "the Ministers shall be appointed and dismissed by the President of the Republic upon the submission of the Prime Minister".

Implementing provisions

The above-mentioned provisions of the Constitution are implemented and further specified by the following act of secondary law: "1994 m. gegužės 19 d. Nr. I-464 Lietuvos Respublikos Vyriausybės įstatymas" (the Law on the Government No I-464 of 19 May 1994, as amended).

1.1.2. Denomination of the members of the Lithuanian government

Pursuant to the provisions mentioned in Article 91 of the Constitution, members of the Lithuanian government are the following:

- *Ministras Pirmininkas/Ministrė Pirmininkė (Prime Minister),*
- *Ministras/ Ministrė (Minister); Ministrai/Ministrės (Ministers).*

1.1.3. Date of the beginning of the term of office

According to Article 92(5) of the Constitution, "a new Government shall receive the powers to act after the Seimas gives assent to its programme by majority vote of the Members of the Seimas participating in the sitting."

Under the terms of Article 93 of the Constitution, upon taking the office, the member of the government shall make an oath at the Seimas to be faithful to the Republic of Lithuania, to observe the

²⁸⁶ "Lietuvos Respublikos Vyriausybę sudaro Ministras Pirmininkas ir ministrai." For an English translation of the Constitution, see [The Constitution of the Republic of Lithuania](#).

Constitution and laws.²⁸⁷ The Constitutional Court has interpreted this provision as meaning that without an oath a member of the government may not take the office supposing that he may not exercise any authority or prerogative of a member of the government established in the Constitution or the Laws.²⁸⁸

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Lithuanian Parliament

Constitution

Chapter V of the Lithuanian Constitution (Articles 55 to 76) sets all the basic principles related to the Seimas (Lithuanian Parliament). Article 55(1) of the Constitution provides that "the Seimas shall consist of representatives of the Nation—141 members of the Seimas who shall be elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot."

Implementing provisions

More detailed provisions concerning the structure and the organisation of the *Seimas* are provided in the Seimas statute²⁸⁹.

1.2.2. Denomination of the members of the Lithuanian Parliament

Pursuant to Article 55 of the Constitution, members of the Lithuanian Parliament are the following:

- *Seimo narys / Seimo narė (member of the Seimas); Seimo nariai / Seimo narės (members of the Seimas); or*
- *Tautos atstovas; Tautos atstovai (representative(s) of the Nation).*

1.2.3. Date of the beginning of the term of office

Under the provisions of Article 59 of the Constitution the term of office of Members of the *Seimas* shall begin from the day on which the newly-elected *Seimas* convenes for the first sitting. The term of office of the previously elected Members of the *Seimas* shall expire at the beginning of this sitting. Article 59 further provides that the elected Member of the *Seimas* shall acquire all the rights of a representative of the Nation only after taking at the *Seimas* an oath to be faithful to the Republic of Lithuania. The

²⁸⁷ Article 93 states that "When taking office, the Prime Minister and the Ministers shall, at the Seimas, take an oath to be faithful to the Republic of Lithuania, to observe the Constitution and laws. The text of the oath shall be established by the Law on the Government." Article 7 of the Law on the Government reads as follows: "When assuming office, the Prime Minister and ministers shall swear an oath. [...] The Prime Minister and ministers shall swear an oath at the *Seimas* sitting. The President of the Republic shall be invited to attend this sitting. The oath shall be administered by the *Seimas* Chairman or, in his absence, by the Deputy *Seimas* Chairman acting for the *Seimas* Chairman. [...] The set text of the oath shall not be amended and changed. Non-compliance with this provision, refusal to swear an oath or to sign a nominal oath sheet, or signing the sheet with a stipulation shall mean that the Prime Minister or a minister has not sworn the oath and may not hold his office".

²⁸⁸ The Decision of the Constitutional Court of 23 November 1999 in case No. 17/98, Title IV.

²⁸⁹ For an English version, see [Statute of the Seimas \(Parliament\) \(1994, amended 1999\)](#).

Member of the *Seimas* who either does not take the oath according to the procedure established by law, or who takes a conditional oath, shall lose the mandate of a Member of the *Seimas*.

The Constitutional Court has developed an extensive doctrine regarding these provisions.²⁹⁰

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Pursuant to Article 94 of the Law on Elections to the European Parliament²⁹¹ the competent authority to take a decision on the incompatibility of the functions and communicate it to the European Parliament is *Vyriausioji rinkimų komisija* (Central electoral commission). This has also been confirmed in an official letter from the Chair of the Central Electoral Commission of the Republic of Lithuania to the President of the European Parliament according to which the information on duties of a Member of the European Parliament that are incompatible with other duties and information on elected Members of the European Parliament entitled to fill a vacant seat shall be provided by the Central Electoral Commission²⁹². The law provides that, if a candidate elected to the European Parliament does not resign from a post incompatible with the function of member of the European Parliament within the set time limit,²⁹³ the Central electoral commission, within 5 working days from the moment it becomes aware of the incompatibility, shall acknowledge, by a reasoned decision, that the person has lost the mandate of Member of the European Parliament and shall inform thereof the European Parliament, as well as announce it in the internet and in the Official journal "*Valstybės žinios*".

Complaints concerning the loss of the mandate of member of the European Parliament shall be brought, within 10 days from the publication of the announcement on the Official Journal, before the Supreme Administrative Court, which shall take a final decision within three days.

²⁹⁰ See Decision of the Constitutional Court of 1 July 2004, case No. 04/04; Judgement of the Constitutional Court of 15 May 2009, joined cases No. 13/04-21/04-43/04; Conclusions of the Constitutional Court of 27 October 2010, joined cases No. 32/2010-33/2010, and Conclusions of the Constitutional Court of 3 June 2014 No KT20-11/2014, case No. 3/2014.

²⁹¹ Law No IX-1837 of 20 November 2003 (as amended).

²⁹² Letter dated 11 December 2020.

²⁹³ Such time limit, which is set for candidates holding incompatible offices and willing to resign from the office of Member of the European Parliament, is: no later than 15 days prior to the first sitting of a newly elected European Parliament; or not later than within 15 days from the date on which the Central Electoral Commission adopted a decision regarding the acknowledgement of the person's mandate, in case of candidates filling a vacant seat. See Article 94(2) of the Law on Elections to the European Parliament.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In the Republic of Lithuania, the parliamentary immunities are granted to the members of the national Parliament by Article 62 of the Constitution which reads as follows:

Article 62

The person of a Member of the *Seimas* shall be inviolable.

A Member of the *Seimas* may not be held criminally liable, arrested, nor may his freedom be otherwise restricted without the consent of the *Seimas*.

A Member of the *Seimas* may not be persecuted for his voting or his speeches at the *Seimas*. However, he may be held liable according to the general procedure for personal insult or slander.²⁹⁴

2.1.2. Implementing provisions

The implementing rules of Article 62 of the Constitution are contained in the *Seimas* statute.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to the members of the *Seimas* represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 62 (3) of the Constitution)

Pursuant to Article 62 of the Constitution and to Article 22, second paragraph, of the *Seimas* statute, a member of the *Seimas* may not be persecuted for his voting or speeches in the *Seimas*, i.e. at the sittings of the *Seimas*, *Seimas* committees, commissions and parliamentary groups. However, she or he may be held liable for personal insult or slander, in accordance with the general procedure.

This non-liability is permanent and continues to apply even after the end of the mandate of the Member of Parliament.

²⁹⁴ "Seimo nario asmuo neliečiamas. Seimo narys be Seimo sutikimo negali būti traukiamas baudžiamojon atsakomybėn, suimamas, negali būti kitaip suvaržoma jo laisvė. Seimo narys už balsavimus ar kalbas Seime negali būti persekiojamas. Tačiau už asmens įžeidimą ar šmeižtą jis gali būti traukiamas atsakomybėn bendraja tvarka."

2.2.2. Immunity (Article 62 (2) of the Constitution)

Pursuant to Article 62 of the Constitution and to Article 22, third paragraph, of the *Seimas* statute, criminal proceedings may not be instituted against a *Seimas* Member, she or he may not be arrested, and may not be subjected to any other restrictions of personal freedom without the consent of the *Seimas*, except in cases when she or he is caught in the act of committing a crime (*in flagrante delicto*). In such cases the Prosecutor General must immediately notify the *Seimas* thereof.

Article 23 of the *Seimas* statute sets in detail the procedure to follow for the revocation of member's immunity.

2.3. National authority entitled to request the immunity of a Lithuanian member of the European Parliament to be waived

Pursuant to the laws of the Republic of Lithuania, requests for the waiver of the immunity of a Member of the European Parliament are submitted by the Office of the Prosecutor General of the Republic of Lithuania (*Generalinė prokuratūra*). This practice has been confirmed in the above-mentioned letter from the Chair of the Central Electoral Commission of the Republic of Lithuania to the President of the European Parliament.²⁹⁵

§ § §

²⁹⁵ Letter dated 11 December 2020.

LUXEMBOURG

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Luxembourgish government

Constitution

The composition of the Luxembourgish government is established by Article 76, first paragraph of the Constitution,²⁹⁶ which reads as follows: "The Grand Duke regulates the organization of his Government, which shall consist of at least three members."²⁹⁷ Moreover, Article 77 of the Constitution reads as follows: "The Grand Duke appoints and dismisses the members of Government."²⁹⁸

Implementing provisions

The above-mentioned provisions of the Constitution are implemented and further specified by the following act of secondary law: *Arrêté royal grand-ducal du 9 juillet 1857 portant organisation du Gouvernement grand-ducal*.²⁹⁹

1.1.2. Denomination of the members of the Luxembourgish government³⁰⁰

Pursuant to the provisions mentioned in paragraph 1.1., members of the Luxembourgish government are the following:

- *Premier ministre*³⁰¹ (*Prime Minister*),
- *Vice-Premier ministre* (*Deputy Prime Minister*),
- *Ministre* (*Minister*); *Ministres* (*Ministers*),
- *Ministre délégué/e* (*Minister Delegate*),³⁰²
- *Secrétaire d'Etat* (*Secretary of State*); *Secrétaires d'Etat* (*Secretaries of State*).³⁰³

²⁹⁶ See (in French) [Constitution du Grand-Duché du Luxembourg](#).

²⁹⁷ "Le Grand-Duc règle l'organisation de son Gouvernement, lequel est composé de trois membres au moins".

²⁹⁸ "Le Grand-Duc nomme et révoque les membres du Gouvernement".

²⁹⁹ See [Arrêté royal grand-ducal du 9 juillet 1857 portant organisation du Gouvernement grand-ducal](#).

A detailed description of the composition of the Luxembourgish government is available on internet, at: <https://gouvernement.lu/fr/gouvernement.html>.

³⁰⁰ Denominations in German, English and Luxembourgish are available at the site mentioned above in footnote 299.

³⁰¹ Also qualified as "*ministre d'État*".

³⁰² This office is not foreseen by any of the legislative acts mentioned in paragraph 1.1., but the current Government includes Ministers Delegate.

³⁰³ After the 2009 elections, reference to the title of Secretary of State was abolished in Article 1 of the *Arrêté royal grand-ducal*, while Article 4 still refers to this function. Currently, however, the Government does not include any Secretary of State.

1.1.3. *Date of the beginning of the term of office*

The date of the beginning of the term of office of the members of the government shall be considered the date of the nomination of the ministers by the Grand Duke.

1.2. Member of a national parliament

1.2.1. *Legal provisions on the composition of the Luxembourgish Parliament*

Constitution

The composition of the Luxembourgish Parliament is established by Article 50 of the Constitution, which reads as follows: "The Chamber of Deputies represents the country. Deputies vote without referring to their constituents and may have in view only the general interests of the Grand Duchy."³⁰⁴ Article 51(3) of the Constitution establishes that: "The Chamber is made of 60 deputies. A law voted in accordance with the conditions set out in Article 114, para. 2, sets the number of deputies to be elected in each district."³⁰⁵

Implementing provisions

More detailed provisions concerning the composition and the organisation of the Chamber of Deputies is contained in its Rules of Procedure.³⁰⁶

1.2.2. *Denomination of the members of the Luxembourgish Parliament*

Pursuant to the provisions mentioned in paragraph 2.1., members of the Luxembourgish Parliament are the following:

- *Député/e (Deputy) ; Députés (Deputies)*

1.2.3. *Date of the beginning of the term of office*

According to Article 124 of the electoral Law of 18 February 2003³⁰⁷ the date of the beginning of the term of office of the Deputies shall be considered the date of the first meeting of the Chamber.³⁰⁸

³⁰⁴ "La Chambre des Députés représente le pays. Les députés votent sans en référer à leurs commettants et ne peuvent avoir en vue que les intérêts généraux du Grand-Duché."

³⁰⁵ "La Chambre se compose de 60 députés. Une loi votée dans les conditions de l'article 114, alinéa 2 fixe le nombre des députés à élire dans chacune des circonscriptions."

³⁰⁶ The most recent text of the Rules of Procedure of the Chamber of Deputies can be found on the following site: <https://legilux.public.lu/eli/etat/leg/ri/2021/05/20/a399/jo>

³⁰⁷ A consolidated text of the Electoral law is available at: [Loi électorale du 18 février 2003](#).

³⁰⁸ Article 124 of Electoral Law reads as follows: "Les députés nouvellement élus entrent en fonctions à la première réunion ordinaire ou extraordinaire de la Chambre."

Pursuant to Article 57 (2) and (3) of the Constitution: "On taking up office, deputies shall take the following oath: 'I swear to be faithful to the Grand Duke and to obey the Constitution and the laws of the State.' This oath is to be taken at a public sitting before the President of the Chamber."³⁰⁹

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

The electoral Law of 18 February 2003 also regulates the European elections in Luxembourg. According to Article 283 of this law, the President of the Chamber of Deputies (*Président de la Chambre des Députés*) shall send the President of the European Parliament the necessary documents for the verification of the credentials of representatives of the Grand-Duchy of Luxembourg.³¹⁰ This has also been confirmed in an official letter from the Permanent Representation of Luxembourg to the EU to the President of the European Parliament, according to which *Chambre des Députés* is the competent authority to communicate to the European Parliament information related to MEPs³¹¹.

³⁰⁹ Article 57 reads as follows: "(2) A leur entrée en fonctions, ils prêtent le serment qui suit: «Je jure fidélité au Grand-Duc, obéissance à la Constitution et aux lois de l'Etat.»

(3) Ce serment est prêté en séance publique, entre les mains du président de la Chambre."

³¹⁰ Article 283 of the Electoral Law reads as follows: "Le Parlement européen vérifie les pouvoirs des représentants et statue sur les contestations qui pourraient éventuellement être soulevées sur la base des dispositions de l'Acte portant élection des représentants au Parlement au suffrage universel direct.

Toutefois, les contestations qui sont relatives à des dispositions nationales auxquelles cet Acte renvoie sont vidées par la Chambre des députés.

Le Président de la Chambre des députés adresse au Président du Parlement européen les documents nécessaires à la vérification des pouvoirs des représentants du Grand-Duché de Luxembourg." See also [Modification du Règlement de la Chambre des Députés sur la vérification des pouvoirs relative au Parlement européen](#), Article 201.

³¹¹ Letter dated 1 July 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Luxembourg, the parliamentary immunities are granted to the members of the national Parliament by Articles 68 and 69 of the Constitution, as amended in 2006.

Article 68

No proceedings, neither criminal nor civil, may be brought against a deputy on account of opinions expressed or votes cast in the exercise of his functions.³¹²

Article 69

With the exception of the cases regulated by Article 68, deputies may be subjected to criminal pursuits, even in the course of a session.

However, the arrest of a deputy in the course of a session is subjected to the preliminary authorization of the Chamber, except in the case of flagrant offence.

The Chamber's authorization is not required to enforce a sentence rendered against a deputy, including cases of deprivation of freedom.³¹³

2.1.2. Implementing provisions

More detailed provisions concerning the procedure to be followed to decide upon requests concerning the immunity of Members of Parliaments are included in Articles 179 to 185 of the Rules of Procedure of the Chamber of Deputies.

2.2. Scope and content of national parliamentary immunities

The national system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest and taking into custody ("immunity").

³¹² "Aucune action, ni civile, ni pénale, ne peut être dirigée contre un député à l'occasion des opinions et votes émis par lui dans l'exercice de ses fonctions."

³¹³ "A l'exception des cas visés par l'article 68, les députés peuvent être poursuivis en matière pénale, même durant la session. Cependant, l'arrestation d'un député pendant la durée de la session est, sauf le cas de flagrant délit, soumise à l'autorisation préalable de la Chambre. L'autorisation de la Chambre n'est pas requise pour l'exécution des peines, même celles privatives de liberté, prononcées à l'encontre d'un député."

2.2.1. Non-liability principle (Article 68 of the Constitution)

Article 68 of the Constitution grants the members of the Chamber of Deputies of Luxembourg the classical non-liability for opinions expressed and votes cast in the exercise of their functions. Such non-liability covers both criminal and civil proceedings and is permanent.

2.2.2. Immunity (Article 69 of the Constitution)

According to Article 69 of the Constitution, immunity is restricted to the arrest or detention of Deputies while the Chamber is in session. The authorisation of the Chamber is not necessary if a Deputy is caught in the act of committing a serious offence, or if deprivation of liberty results from the enforcement of a judgment. This immunity only lasts until the Parliament is in session.

In accordance with the Rules of Procedure of the Chamber of Deputies, a special Parliamentary Committee is created to discuss each request to waive the immunity of a Member. The Committee, after having heard the Member concerned, proposes a draft resolution, which is then voted by the Plenary by secret ballot. If the Chamber refuses its authorization to a Member's arrest, no new request concerning the same facts may be transmitted in the course of the same session.

2.3. National authority entitled to request the immunity of a Luxembourgish member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the Luxembourgish members of the European Parliament. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

According to articles 91 and 94 of the Code of Criminal Procedure (*Code de procédure pénale*, before *Code d'instruction criminelle*), the national authority that is competent to adopt an order to appear or an arrest warrant (*mandat d'amener* or *mandat d'arrêt*) is the *juge d'instruction*. This has been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of the Grand Duchy of Luxembourg to the European Union, according to which the competent national authority is the *juge d'instruction*, but the request needs to be transmitted to the European Parliament via the *Procureur Général d'État*.³¹⁴

§ § §

³¹⁴ Letter dated 20 June 2013. Subject to further updates, if any.

HUNGARY

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Hungarian government

The Fundamental Law of Hungary

The composition of the Hungarian government is established by Article 16 (1), under the section of the Fundamental Law of Hungary³¹⁵ entitled "The State", which reads as follows: "The members of the Government shall be the Prime Minister and the Ministers".

Implementing provisions

More detailed provisions concerning the structure of the government and the statute of the members of the government are contained in the following instruments: "Act on the listing of the ministries of Hungary"³¹⁶, "Act CXXV of 2018 on "Governmental administration of 21 December 2018" and "Act on the central administrative bodies and the statute of members of the Government and state secretaries".³¹⁷

1.1.2. Denomination of the members of the Hungarian government

Pursuant to the provisions mentioned in paragraph 1.1., members of the Hungarian government are the following:

- *Miniszterelnök (Prime Minister);*
- *Miniszter (Minister), in plural: Miniszterek (Ministers).*

1.1.3. Date of the beginning of the term of office

Under the terms of Article 16(3) and (4) of the Fundamental Law of Hungary, the Prime Minister is elected by the National Assembly, at the proposal of the President of the Republic, by absolute majority voting (more than 50% of the total membership of the house).³¹⁸ In accordance with Article 16(4) of

³¹⁵ Act "Magyarország Alaptörvénye" of 25 April 2011. Unless otherwise specified, a Hungarian version of all the legal instruments referred to in this document is available at [National Legislative Library site](#). For an English version, see: [Consolidated version of the Fundamental Law of Hungary](#).

³¹⁶ Act "2018. évi V. törvény Magyarország minisztériumainak felsorolásáról valamint egyes kapcsolódó törvények módosításáról". No English version is available.

³¹⁷ "Act XLIII. of 2010 a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról." No English version is available.

³¹⁸ Article 16 provides as follows: "(3). The Prime Minister shall be elected by Parliament at the proposal of the President of the Republic.

the Fundamental Law of Hungary, "the Prime Minister shall take office immediately upon his or her election."³¹⁹

Under the terms of Article 16(7) of the Fundamental Law of Hungary, the ministers are appointed by the President of the Republic at the proposal of the Prime Minister. The same rule provides that "Ministers shall take office on the date designated in their deed of appointment or, in the absence thereof, immediately upon their appointment."³²⁰

1.2. Member of a national Parliament

1.2.1. Legal provisions on the composition of the Hungarian National Assembly

The Fundamental Law of Hungary

The Hungarian Parliament is the National Assembly, in Hungarian: "Országgyűlés". This is a single chamber assembly. General constitutional rules on the National Assembly can be found in the first Chapter of the section of the Fundamental Law of Hungary entitled "The State" (articles 1 to 7).

Implementing provisions

According to the Act on the election of members of the Hungarian National Assembly³²¹, the current number of members of the National Assembly is 199 (106 members are elected from individual constituencies, another 93 from national lists (party lists or national minority lists). Further basic rules are contained in the following instruments: "Act on the Hungarian National Assembly"³²² and "Act on the election procedure"³²³.

1.2.2. Denomination of the members of the Hungarian National Assembly

Members of the Hungarian National Assembly are the following:

- *országgyűlési képviselő (Member of the Parliament), in plural: országgyűlési képviselők (Members of the Parliament).*

1.2.3. Date of the beginning of the term of office

The term of office of the members of the National Assembly begins with their election, which means they are subject to immunity and receive their remuneration from the day of their election. However, an MP can only exercise his / her parliamentary rights (eg vote) once the mandate was verified and approved by resolution of the National Assembly and after the Member has taken an oath at the

(4) A simple majority of votes of all Members of Parliament shall be required to elect the Prime Minister. The Prime Minister shall take office immediately upon his or her election."

³¹⁹ "A miniszterelnök a megválasztásával hivatalba lép."

³²⁰ "A miniszter a kinevezésében megjelölt időpontban, ennek hiányában a kinevezésével hivatalba lép."

³²¹ For an English version, see [Act CCIII of 2011 On the Elections of Members of Parliament](#).

³²² Act XXXVI. of 2012 "Az Országgyűlésről" Articles 73 - 103. For an English version, see: [Act XXXVI of 2012 on the National Assembly](#).

³²³ Act XXXVI. of 2013 "A választási eljárásról". For an English version, see [Act XXXVI of 2013 on Electoral Procedure](#).

constitutive sitting. The mandate is approved on the condition that the Member has declared to accept the mandate and made a declaration on the absence of any conflict of interest. A financial declaration must be submitted within 30 days of the taking of oath, failing which his/her rights are suspended.

The investiture procedure is laid down in Article 10 (1) of the Parliamentary resolution on the Rules of Procedure of the National Assembly³²⁴.

1.3. Other functions incompatible with the mandate of a Member of the European Parliament

Article 8 (2) of the "Act on the legal status of Hungarian Members of the European Parliament"³²⁵ extends the scope of the rules relating to incompatibility defined in the Election Act of 1976, by setting a more detailed list of incompatible functions.

Accordingly, the office of a Member of the European Parliament is incompatible with that of:

- (a) a member of the government or parliament of another Member State of the European Union;
- b) the President of the Republic,
- c) a Member of the National Assembly or Nationality Advocate ("nemzetiségi szószóló"),
- (d) a Member of the Government, Secretary of State, Deputy Secretary of State,
- (e) a member of the Constitutional Court,
- f) the Ombudsman for Fundamental Rights or Deputy Ombudsman for Fundamental Rights,
- (g) the President, Vice-President and Auditor of the State Audit Office,
- h) the Governor, the Vice-President of the National Bank of Hungary, or a member of the Monetary Council,
- (i) a judge,
- (j) a prosecutor,
- (k) judicial staff, public servant, employee,
- l) a professional and contractual member of the Hungarian Defence Forces, professional member of the police and civilian national security services,
- m) the Chairman and Deputy Chairman of the National Authority for Data Protection and Freedom of Information.

1.4 National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Procedural rules relating to incompatibility are laid down in Article 9 of the Act on the statute of Hungarian members of the European Parliament: "(1) It is in the competence of the European Parliament to terminate the mandate of a Member of the European Parliament on the grounds of conflict of interest. (2) A Member of the European Parliament shall eliminate the cause that constitutes a conflict of interest within sixty days of the confirmation of his or her mandate or the emergence of the situation that causes the conflict of interest or of the day when he or she learns about that case of affairs. (3) After the time limit as defined at item (2) above expires, the Member of European Parliament concerned shall notify the President of the European Parliament about the conflict of interest without delay. (4) Anyone may notify in writing the President of the European Parliament that a Member of the

³²⁴ Resolution no. 10/2014. "Egyes házszabályi rendelkezésekről". For an English version, see [Resolution on certain provisions of the Rules of Procedure](#)

³²⁵ Act LVII. of 2004. "Az Európai Parlament magyarországi képviselőinek jogállásáról", English version not available.

European Parliament is in a situation of conflict of interest. Such notification shall exactly define the name of the Member of European Parliament concerned and the cause of the conflict of interest".

The Act does not designate any public authority to communicate cases of incompatibility. However, it has to be noted that, before the election lists are approved by the *Országos Választási Bizottság* (National Election Commission), each candidate must submit a declaration on conflicts of interest to the National Election Office, which verifies this declaration and informs the National Election Commission about the result. Both the National Election Commission and the National Election Office have thus information on cases of incompatibility (at the time of the elections).³²⁶ This has also been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Hungary to the European Union³²⁷, which states that the authority with competence to supply notification of Members of the European Parliament elected in Hungary and authorised to fill an associated post is National Election Commission, and also the National Election Office functions as liaison authority in matters related to the Members of the European Parliament elected in Hungary.

³²⁶ Act XXXVI. of 2013. "A választási eljárásról" (Art. 129 (1) b and Art.331).

³²⁷ Letter dated 21 July 2020.

2. National immunities as referred to by Article 9 a) of the Protocol on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. *The Fundamental Law of Hungary*

In Hungary the parliamentary immunities are granted to the members of the National Assembly in accordance with the Fundamental Law of Hungary, Section "The State", Article 4(2).

Article 4(2)

Members of the National Assembly shall be entitled to immunity and to remuneration ensuring their independence. A cardinal Act³²⁸ shall specify the public offices which may not be held by Members of the National Assembly, and may lay down other cases of incompatibility or conflict of interest.

2.1.2. *Implementing provisions*

Immunity rules applicable to Members of the National Assembly are defined in Chapter VII (Parliamentary Immunities), Title III (The Status of the Members of the National Assembly) of the "Act on the Hungarian National Assembly." The relevant provisions of this Act provide as follows:

Article 73

(1) During and after the term of his or her mandate, the Member shall not be held liable before courts or other authorities for the vote cast or the fact or opinion communicated by him or her in the course of exercising and in connection with his or her mandate.

(2) The immunity specified in paragraph (1) shall not apply to the liability of the Member under civil law and to the following criminal offences:

a) agitation against a community, violation of national symbol, public denial of the crimes of the national socialist and communist regimes, misuse of top secret and secret data, misuse of confidential data, misuse of restricted data as laid down in Act IV of 1978 on the Criminal Code in force until 30 June 2013,

b) incitement against a community, violation of national symbol, public denial of the crimes of the national socialist or communist regime, misuse of classified data as laid down in Act C of 2012 on the Criminal Code.

Article 74

(1) Criminal proceeding or – in the absence of voluntarily waiving immunity in the case concerned – infraction proceeding can only be instituted or conducted, and a coercive measure under criminal procedure can only be applied against the Member with the prior consent of the National Assembly.

³²⁸ Acts adopted by a 2/3 majority of Members present.

(2) The Member

a) may only be detained or another coercive measure under criminal proceedings may only be applied against him or her if he or she is caught in the act of committing a criminal offence,

b) may only be detained or another coercive measure under infraction proceedings may only be applied against him or her if he or she is caught in the act of committing an infraction, provided that the conditions required by an Act for imposing infraction detention are met.

(3) Until the submission of the indictment, the motion for the suspension of immunity shall be submitted to the Speaker by the Prosecutor General, while after the submission of the indictment, or in private accusation cases or substitute private accusation cases, it shall be submitted by the court. If the Member is caught in the act, the motion shall be submitted without delay.

(4) In an infraction case, the infraction authority shall inform the Member directly of the possibility of voluntarily waiving his or her immunity. In the case of the Member voluntarily waiving immunity within eight days, the infraction authority shall, at the time of final conclusion of the proceeding, notify, by way of the Prosecutor General, the Speaker of the waiver of immunity and the result of the proceeding. The Speaker shall send the notification to the committee on immunity, incompatibility, discipline and mandate control. The chair of the committee on immunity, incompatibility, discipline and mandate control shall present the notification at the subsequent meeting of the committee. If the Member does not waive immunity within eight days of the receipt of the request, the motion for the suspension of immunity shall be submitted to the Speaker by the Prosecutor General on the basis of the request made by the infraction authority. In the course of the proceeding, the Member may at any time – until the adoption of the resolution by the National Assembly – waive immunity before the proceeding authority.

Article 75

The immunity of the Member shall not apply to proceedings by public administration authorities under the Act on the general rules of the procedures and services of public administration authorities.

Article 76

The Member shall be obliged to inform the court or the authority acting in the procedure against the Member of his or her mandate. Should the immunity of the Member be violated despite of the Member performing his or her information obligation, the Member shall notify the Speaker thereof without delay.

Article 77

(1) The motion for the suspension of immunity or the notification of the violation of immunity shall be transferred by the Speaker without delay to the committee on immunity, incompatibility, discipline and mandate control for examination, and the Speaker shall announce it at the subsequent sitting day of the National Assembly and inform the affected Member of the transfer.

(2) In the course of the procedure of examining the suspension of immunity or the violation of immunity, all data requested by the committee on immunity, incompatibility, discipline and mandate control in connection with the suspension of immunity or the violation of immunity shall be provided without delay by the Member and by all state authorities at the disposal of the committee on immunity, incompatibility, discipline and mandate control. The data received or provided in the course of the procedure of examining the suspension of immunity or the violation of immunity shall be deleted on the thirtieth day following completion of the procedure on the suspension of immunity or the examination on the violation of immunity.

(3) The suspension of immunity shall be decided upon by the National Assembly.

(4) The decision taken on the suspension of immunity shall only apply to the case in relation of which the motion has been submitted.

(5) In the case started on the basis of the violation of immunity, the committee on immunity, incompatibility, discipline and mandate control shall submit, not later than thirty days after the date specified in paragraph (1), a proposal to the Speaker who shall take the necessary measures and inform the National Assembly thereof.

Article 78

The Member shall not waive immunity, save in infraction proceedings. This right of the Member shall be respected by everyone.

Article 79

(1) Immunity shall be enjoyed by the Member from the day of his or her election.

(2) The person verified as a candidate at the election of the Members shall enjoy the same immunity as Members, however the suspension of immunity shall be decided upon by the National Election Commission and the motion for the submission of immunity shall be submitted to the president of the National Election Commission

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the National Assembly represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 73 of the Act on the Hungarian National Assembly)

The principle of non-liability for the votes cast and opinions expressed by Members of the National Assembly is set out in Article 73 of the Act on the Hungarian National Assembly. In accordance with this provision, this non-liability covers all votes cast and opinions expressed in connection with the mandate of the Member and during its exercise. The non-liability principle continues to apply even after the end of the term of office, although it only covers votes and opinions expressed during the mandate.

The non-liability principle applies in front of any court or other authority. However, it does not extend to cover accountability under civil law, nor does it extend to procedures undertaken by a public administrative authority (Article 75). Additionally, exceptions apply in case of commission of the following crimes: incitement against the community, defamation of the national emblem, publicly denying the crimes of the national socialist and communist regimes, misuse of data which are strictly secret or are classified as secret, misuse of data classified as confidential, and misuse of data classified as restricted.

2.2.2. Immunity (Articles 74 to 79 of the Act on the Hungarian National Assembly)

The rules relating to the immunity of Members of the Hungarian National Assembly are set out in Articles 74 to 79 of the Act on the Hungarian National Assembly. In accordance with these provisions, the consent of the Parliament is required in order to subject a Member to criminal or coercive

proceedings, as well as to misdemeanour proceedings for which the immunity is not voluntarily waived by the Member. However, Members may be arrested or subjected to coercive procedures if they are caught in the act of committing a crime (*in flagrante delicto*) or a misdemeanour for which arrest is provided by law. Moreover, Members' immunities do not extend to procedures undertaken by a public administrative authority in accordance with the law on the general rules of public administrative procedures and services.

Requests for waiver of immunity may be submitted to the speaker of the Parliament by the chief prosecutor (before the submission of the indictment) or by the competent court (after the presentation of the indictment, or in the case of a civil or substitute civil action). The speaker subsequently forwards the motion for waiver of immunity to the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection. The Member concerned has the right to be heard before a decision as to the waiver of his/her immunity is taken. The decision to waive the immunity must be taken by a two-thirds majority of the Members present and it applies only to the specific case for which the motion was submitted.

In principle, Members do not have the power to voluntarily waive their immunity, which is a right that must be respected by everyone; however, immunities may be voluntarily waived in misdemeanour procedures.

2.3. National authority entitled to request the immunity of a Hungarian member of the European Parliament to be waived

Under the Act on the Hungarian National Assembly, a request for waiver is addressed to the Speaker of the Hungarian Parliament by either the Prosecutor General ("*legfőbb ügyész*") or the competent court (depending on the case).³²⁹ Article 12 (1) of the Hungarian Act LVII of 2004 on the Legal Status of Hungarian Members of the European Parliament provides for similar rules as regards requests for waiver concerning Members of the European Parliament.

According to Article 10(2) of Act LXXVII of 2004, the member of the European Parliament has the same immunity as the member of the Hungarian National Assembly. According to Article 74(3) of Act XXXVI of 2012, until the submission of the indictment, the motion for the suspension of immunity shall be submitted to the Speaker **by the Prosecutor General**, while after the submission of the indictment, or in private accusation cases or substitute private accusation cases, it shall be submitted **by the court**. If the Member is caught in the act, the motion shall be submitted without delay. In case of MEPs, the motion shall be submitted to the President of the European Parliament.

According to the above-mentioned letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Hungary to the European Union, the requests for a waiver of immunity are to be addressed to the European Parliament by the Prosecutor General ("*legfőbb ügyész*") and, in cases of private or substitute private prosecutions, the trial court may continue to provide information.³³⁰

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³²⁹ Act XXXVI. of 2012, Article 74 (3).

³³⁰ Letter dated 21 July 2021.

MALTA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Maltese government

Constitution

The composition of the Maltese government is established by Article 79 of Chapter VII of the Constitution of Malta Act, 1964.³³¹

Article 79

(1) There shall be a Cabinet for Malta which shall consist of the Prime Minister and such number of other Ministers as may be appointed in accordance with article 80 of this Constitution.

(2) The Cabinet shall have the general direction and control of the Government of Malta and shall be collectively responsible therefor to Parliament.

Moreover, Article 84 of the Maltese Constitution foresees the possibility for the President to appoint a member of the House of Representatives to be a temporary Minister, if a Minister other than the Prime Minister is unable, by reason of his illness or absence from Malta, to perform the functions of his office. According to Article 88(1) of the Constitution, "The President, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the House of Representatives to assist Ministers in the performance of their duties."

Implementing provisions

The above-mentioned provision of the Constitution is further specified by Act VII of 1975 (the Interpretation Act)³³² and by Act 1 of 2009 (the Public Administration Act).³³³

1.1.2. Denomination of the members of the Maltese government

Pursuant to the provisions mentioned in paragraph 1.1., members of the Maltese government are the following:

- *Prim Ministru* (Prime Minister),
- *Ministru* (Minister); *Ministri* (Ministers),

³³¹ The Malta Independence Order, 1964, as amended by Acts: XLI of 1965, XXXVII of 1966, IX of 1967, XXVI of 1970, XLVII of 1972, LVII, LVIII of 1974, XXXVIII of 1976, X of 1977, XXIX of 1979, IV of 1987, XXIII of 1989; Proclamations Nos. II and VI of 1990; Acts XIX of 1991, IX of 1994; Proclamations IV of 1995 and III of 1996; Acts: XI of 1996, XVI of 1997, III of 2000, XIII of 2001, V of 2003, and XIV and XXI of 2007. See [Constitution of Malta](#).

³³² As amended by Acts XLIX of 1981, XXXV of 1990, I of 2001, IX of 2003, XIII of 2007 and I and XIII of 2009. The Act can be found on the following site: <https://legislation.mt/>.

³³³ See [Public Administration Act](#), Government Gazette of Malta No. 18,374, 3rd February, 2009.

- *Ministru temporanju* (Temporary Minister),
- *Segretarju Parlamentari* (Parliamentary Secretary); *Segretarji Parlamentari* (Parliamentary Secretaries).

1.1.3. Date of the beginning of the term of office

According to Article 80 of the Constitution, the President appoints as Prime Minister the member of the House of Representatives who, in his judgment, is best able to command the support of a majority of the members of that House and, acting in accordance with the advice of the Prime Minister, he then appoints the other Ministers from among the members of the House of Representatives. Pursuant to Article 89 of the Constitution, "A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath of office set out in the Third and in the Second Schedule to this Constitution." The prime minister's mandate normally begins as soon as he is sworn in by the President.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Maltese Parliament

Constitution

The composition of the Maltese Parliament is established by the first paragraph of Article 51 of the Constitution, which reads as follows: "There shall be a Parliament of Malta which shall consist of the President and a House of Representatives (*Kamra tad-Deputati*)."³³⁴

The following Article 52 (1) states: "Subject to the provisions of this Chapter, the House of Representatives shall consist of such number of members, being an odd number and divisible by the number of electoral divisions, as Parliament shall from time to time by law determine. Such members shall be elected in the manner provided by or under any law for the time being in force in Malta in equal proportions from the electoral divisions referred to in Article 56 of this Constitution, each division returning such number of members, being not less than five and not more than seven as Parliament shall from time to time by law determine; and such members shall be known as 'Members of Parliament'."

Implementing provisions

More detailed provisions concerning the composition and the organisation of the House of Representatives are contained in Articles 53-56 of the Constitution and in the Standing Orders of the House.³³⁵

³³⁴ The House currently has 67 members (elected in the 2017 general election). The House is presided over by the Speaker of the House. The President of the Republic is elected for a five year term by the House.

³³⁵ Available at: <https://parlament.mt/en/menues/about-parliament/legislative-instruments/standing-orders-of-the-house>.

1.2.2. Denomination of the members of the Maltese Parliament

Pursuant to the provisions mentioned in paragraph 2.1., members of the Maltese Parliament are the following:

- *Deputat (Deputy); Deputati (Deputies), or*
- *Membru tal-Parlament (Member of Parliament)*³³⁶

1.2.3. Date of the beginning of the term of office

Article 75(3) of the Constitution states that the House of Representatives shall meet not later than two months after the publication of the official result of any general election by the Electoral Commission on a day appointed by the President.

Article 5 of the Standing Orders of the House states: "No Member of the House shall be permitted to take part in the proceedings of the House (other than proceedings necessary for the purposes of section 69 of the Constitution) until he has made before the House an oath or affirmation of allegiance in the form set out in the Third Schedule to the Constitution; provided that the election of the Speaker and Deputy Speaker may take place before the Members of the House have made such oath or affirmation."

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names of the elected MEPs entitled to take a vacant seat

The European Parliament Election Act³³⁷ does not provide for a specific formal system of communication to the European Parliament. According to an official letter to the President of the European Parliament from the Permanent Representation of Malta to the EU³³⁸, *Kamra tad Deputati* (the House of Representatives) is the competent authority to notify cases of incompatibility of Members of the European Parliament, in accordance with national law and with the law of the European Union, and is also the competent authority to notify Members of the European Parliament elected in Malta who are entitled to take up vacated seats.

³³⁶ It is common to use 'Membru Parlamentari'. The Constitution also refers to 'Membru tal-Kamra' / 'Membru tal-Kamra tad-Deputati' (according to the Constitution: 'Member of the House' / 'Member of the House of Representatives').

³³⁷ See [European Parliament Election Act](#).

³³⁸ Letter dated 29 July 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

Article 65 of the Constitution is the legal basis establishing the Powers and Procedure of Parliament including its privileges, immunities as well as the powers and obligations of the House of Representatives and the members thereof.

Article 65

(3) No civil or criminal proceedings may be instituted against any member of the House of Representatives for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

(4) For the duration of any session members of the House of Representatives shall enjoy freedom from arrest for any civil debt except a debt the contraction of which constitutes a criminal offence.

(5) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the House of Representatives while the House is sitting or through the Speaker, the Clerk or any officer of the House."

2.1.2. Implementing provisions

The implementing rules of Article 65 of the Constitution are found in the House of Representatives (Privileges and Powers) Ordinance.³³⁹ The Ordinance also protects the officers of the House, while in the execution of parliamentary business.

2.2 Scope and content of national parliamentary immunities in Malta

The national system of immunity consists in the freedom of speech of the Member of Parliament ("non-liability"), and a very limited protection against arrest or taking into custody, which only applies to arrest for civil debt ("immunity").

2.2.1. Non-liability principle (Article 65 (3) of the Constitution)

The Constitution of Malta establishes the freedom of speech of Members of the House (non-liability regime in civil or criminal proceedings) for statements - oral or written - made in the course of the activities of the member in the House of Representatives. This non-liability does not apply to

³³⁹ See [House of Representatives \(Privileges and Powers\) Ordinance \(Cap 113\)](#).

statements made by the Member outside the House. This non-liability may be waived by the Member concerned, while the House has no power to waive it.

In accordance with Article 11 of the House of Representatives (Privileges and Powers) Ordinance, if it appears to the Speaker that a person, whether a Member of the House or not, has committed any of the acts referred to in sub-article (4),³⁴⁰ he/she shall refer the matter to the Standing Committee on Privileges. The Committee, after making the necessary examinations and hearing the person concerned, reports to the House, recommending either to admonish the person concerned; or to order the executive police to bring the person concerned before the Court of Magistrates (Malta), which only has jurisdiction once such order is made by the Speaker.

2.2.2. Immunity (Article 65 (4) of the Constitution)

For the duration of the session members of the House of Representatives enjoy immunity from arrest for any civil debt "provided that this is not fraudulent or otherwise in contravention of the Criminal Code."³⁴¹ It should however be noted that arrest for civil debt has largely been abolished from the Maltese procedural law and in any event the privilege is not subject to waiver by the Maltese Parliament.

Members of Parliament do not enjoy immunity from civil or criminal proceedings nor immunity from criminal arrest.

2.3. National authority entitled to request the immunity of a Maltese member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity (privileges) of the Maltese members of the European Parliament.

According to the above-mentioned official letter from the Permanent Representation of Malta to the European Union,³⁴² the competent authority to request waiver of the immunity and to transmit such request is the *Avukat Ġenerali (Attorney General)*.

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³⁴⁰ Which provides for the following offences against the Act:

(a) contempt of the authority of the House in its presence; (b) insult or disrespect of a Member of the House, even if absent, in the presence of the House or any of its committees; (c) infringement of any order on the admission of strangers to the Chamber and their behavior therein; (d) assault upon, obstruction or insult of a Member on his way to or from the House or on account of his conduct in the House, or any endeavour to compel a Member to declare himself in favour of or against any matter pending or expected to be brought before the House; (e) sending any threatening letter to a Member respecting his conduct in the House; (f) any assault upon, interference with, or resistance to an officer of the House while performing, or on account of having performed his duty; (g) any disturbance in or near the House, while it is sitting, whereby the proceedings of the House are likely to be interrupted; (h) unduly influencing any witness in regard to evidence to be given before the House or any Committee; (i) presenting to the House or to any Committee false document, with intent to deceive; (j) publication of any defamatory libel on the Speaker or any Member touching anything done or said by him as a Member in the House or in a Committee; (k) willful or reckless publication of any false or perverted report of any debate or proceedings of the House or a Committee.

³⁴¹ Article 3(1) of the House of Representatives (Privileges and Powers) Ordinance provides that: "For the duration of the session members of the House shall enjoy freedom from arrest for civil debt provided this be not fraudulent or otherwise in contravention of the Criminal Code."

³⁴² Letter dated 29 July 2020.

THE NETHERLANDS

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Dutch government

Constitution

According to Article 42 of the Constitution of the Kingdom of the Netherlands³⁴³ (*Grondwet voor het Koninkrijk der Nederlanden*), the government is composed of the King (*de Koning*) and the Ministers. State Secretaries (*Staatssecretarissen*) may be appointed by Royal Decree, in accordance with Article 46 of the Constitution; they may replace Ministers.

Implementing provisions

There are no specific provisions on the composition of the Dutch government

1.1.2. Denomination of the members of the Dutch government

Pursuant to Articles 42-45 of the Constitution, members of the Dutch government are the following:

- *de Koning (the King)*,³⁴⁴
- *Minister-President (Prime Minister)*,
- *Minister (Minister)*.

1.1.3. Date of the beginning of the term of office

For the Prime Minister and the other Ministers, the date of the beginning of their term of office is the day of entry into force of the Royal Decree appointing them (as provided by Article 48 of the Constitution). The day they swear the oaths or make the affirmations and promises before the King in accordance with Article 49 of the Constitution³⁴⁵ may be a different one and is not considered to be the constitutive moment.

³⁴³ The text of the Constitution is available at: <http://wetten.overheid.nl/>. For the official English translation, see [The Constitution of the Kingdom of the Netherlands](#).

³⁴⁴ However, the King is not responsible for acts of government, in accordance with Article 42(2) of the Constitution, which provides that "The Ministers, and not the King, shall be responsible for acts of government." The King does not form part of the Cabinet (*Ministerraad*), a body established by Article 45 of the Constitution.

³⁴⁵ Which provides that "Upon accepting office Ministers and State Secretaries shall swear an oath or make an affirmation and promise in the presence of the King, in the manner prescribed by Act of Parliament, that they have not done anything which may legally debar them from holding office, and shall also swear or promise allegiance to the Constitution and that they will faithfully discharge their duties." This Article is further specified by Article 1, *Wet beëdiging ministers en leden Staten-Generaal* (Act on the Confirmation on Oath of Ministers and Members of the States General).

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Dutch Parliament

Constitution

Under Article 51 of the Constitution, the Dutch Parliament (the literal, official translation being States General: *Staten-Generaal*) is composed of the Lower House (or Second Chamber: *Tweede Kamer*) with 150 seats and the Upper House (or First Chamber: *Eerste Kamer*) with 75 seats. Both Chambers are elected on the basis of proportional representation, but the electoral procedures are different: the Members of the Lower House are directly elected by the Dutch electorate (defined in Article 54 of the Constitution), whereas the Members of the Upper House are elected by the Members of the Provincial Councils (*Provinciale Staten*) and the members of an electoral college elected in the Caribbean part of the Netherlands (Article 55 of the Constitution).

Implementing provisions

The Electoral Act³⁴⁶ (*Kieswet*) provides for detailed provisions on the elections, the mandate and its ending (Chapters C and Q), the allocation of seats and the determination of the result (Chapters P and U), possible procedures to contest the election result, verification of credentials and the beginning of membership (Chapter V).

1.2.2. Denomination of the members of the Dutch Parliament

Pursuant to the provisions of the Constitution, Members of the Dutch Parliament are referred to as:

- *leden van de Staten-Generaal (Members of Parliament), specified as:*
 - *leden van de Tweede Kamer (Members of the Lower House), or*
 - *leden van de Eerste Kamer (Members of the Upper House).*

1.2.3. Date of the beginning of the term of office

Under Article V 11 of the Electoral Act, membership of either House of Parliament begins "as soon as he has been notified of the decision on his admission."³⁴⁷ To that effect, the elected Member first has to accept his election/nomination in writing within a delay - normally ten days³⁴⁸ - from the notification of the result of the elections (Article V 2 Electoral Act) after which the House to which he has been elected will examine his credentials (Article 58 Constitution and Article V 4 Electoral Act). This scrutiny, conducted by a special House committee,³⁴⁹ concerns inter alia the conditions for eligibility (Article 56 of the Constitution) and the incompatibilities flowing from the Constitution (Article 57) and from implementing legislation, the Parliament and European Parliament Incompatibilities Act (*Wet*

³⁴⁶ Available at: <http://wetten.overheid.nl/>. For an unofficial English translation, see [Dutch Electoral Act](#).

³⁴⁷ Also see http://www.parlement.com/id/vh8lnhrgeylo/aanvang_kamerlidmaatschap.

³⁴⁸ When someone is appointed during the term of Parliament (for example when a Member has died or resigned), a term of 28 days is applied. See Article V 2 Electoral Act.

³⁴⁹ For the Lower House, the "Committee on the Examination of the Credentials", according to article 19 of its Rules of Procedure (*Reglement van Orde van de Tweede Kamer*). For an unofficial English translation, see [Rules of Procedure of the House of Representatives](#).

incompatibiliteiten Staten-Generaal en Europees Parlement) of 20 April 1994. The final decision on admission is taken by the House during a plenary session.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat.

Under Article Y 29(1) of the Electoral Act, Dutch Members of the European Parliament must notify the *Voorzitter van de Tweede Kamer der Staten-Generaal* (President of the Lower House of the House of Representatives) of any incompatibility with their membership pursuant to national legislation. The President of the Lower House may also, *ex officio*, consider that such incompatibility exists. In the latter case, he must warn the Member concerned, who subsequently has eight days to refer the matter to the judgment of the Lower House (Article Y 29(2) and (3) of the Electoral Act). Under Rule 3 of the Rules of Procedure of the Lower House, which also applies to Members of the European Parliament, the House will only decide after a special committee has examined the matter.

The *Tweede Kamer* (the Lower House) is the competent authority to inform the European Parliament of a final decision of incompatibility (Article Y 28 of the Electoral Act). This has also been confirmed in the official letter sent to the President of the European Parliament by the Permanent Representation of the Netherlands to the European Union. In addition, the *Tweede Kamer* communicates the names of the elected MEPs entitled to take a vacant seat.³⁵⁰

³⁵⁰ Letter dated 23 July 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

Articles 71 and 119 of the Constitution read as follows:

Article 71

Members of the States General, Ministers, State Secretaries, and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing.

Article 119

Present and former members of the States General, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Lower House.

2.1.2. Implementing provisions

There are no implementing provisions, but the Rules of Procedure of both Houses provide for measures of order against Members.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the National Parliament consists in the freedom of speech of the Member of Parliament ("non-liability"), but there is no protection against arrest, taking into custody and prosecution ("immunity"), although there is a special procedure for certain category of offences. It cannot be waived.

2.2.1. Non-liability principle (Article 71 of the Constitution)

The non-liability principle set out in Article 71 of the Constitution covers all procedures (civil, criminal, administrative and disciplinary) but is strictly limited to positions (oral and written) submitted to the States General, or its committees, during parliamentary sessions.

2.2.2. Immunity (Article 119 of the Constitution)

Members of the Dutch Parliament do not enjoy immunity except for their non-liability under Article 71 Constitution. However, for a narrow category of offences, namely offenses related to the performance of a Member of Parliament's functions ("*ambtsmisdriven*"), Article 119 of the Constitution provides for a special procedure. For such offenses, present and former Members of Parliament shall be tried by the Supreme Court; moreover, these proceedings may only be instituted by Royal Decree or by a resolution

of the Lower House. For criminal offences unrelated to the performance of a Member of Parliament's functions, normal procedures of criminal law apply.

2.3. National authority entitled to request the immunity of a Dutch member of the European Parliament to be waived

Members of the Dutch Parliament do not enjoy immunity, except for their non-liability under Article 71 of the Constitution. Thus, under Article 9(1)(b) of the Protocol on the Privileges and Immunities of the European Union, Dutch Members of the European Parliament do not enjoy any immunity while in the Netherlands. However, they enjoy the limited protection against proceedings relating to crimes connected to their mandate offered by Article 119.

According to the above mentioned official letter, the national competent authority to request a waiver of the immunity of Members of the European Parliament from other Member States is the *Minister van Justitie en Veiligheid* (Minister of Justice and Security), at the request of the *College van Procureurs-Generaal* (College of Prosecutors-General).³⁵¹

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³⁵¹ Letter dated 23 July 2020.

AUSTRIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Austrian government

Constitution

The composition of the Austrian government is regulated by Article 69 of the Constitution,³⁵² which reads as follows: "The Federal Chancellor, the Vice-Chancellor, and the other Federal Ministers are entrusted with the highest administrative business of the Federation in so far as this is not assigned to the Federal President. They constitute as a body the Federal Government under the chairmanship of the Federal Chancellor"³⁵³.

State Secretaries (*Staatssekretäre*), who may be attached to the Federal Ministers according to Article 78 of the Constitution, are not members of the Federal Government.

Implementing provisions

Detailed provisions on the organization of the Austrian government are established in Articles 69 to 78 of the Constitution and in the Federal law on the Federal Ministries.³⁵⁴

1.1.2. Denomination of the members of the Austrian government

According to the provisions mentioned in paragraph 1.1., members of the Austrian government are the following:

- *Bundeskanzler/ Bundeskanzlerin (Federal Chancellor),*
- *Vizekanzler/Vizekanzlerin (Vice-Chancellor),*
- *Bundesminister/Bundesministerin (Federal Minister).*

³⁵² [Gesamte Rechtsvorschrift für Bundes-Verfassungsgesetz](#).

For an English translation, see [Austrian Law - Federal Constitutional Law](#).

³⁵³ "Mit den obersten Verwaltungsgeschäften des Bundes sind, soweit diese nicht dem Bundespräsidenten übertragen sind, der Bundeskanzler, der Vizekanzler und die übrigen Bundesminister betraut. Sie bilden in ihrer Gesamtheit die Bundesregierung unter dem Vorsitz des Bundeskanzlers."

³⁵⁴ *Bundesgesetz über die Zahl, den Wirkungsbereich und die Einrichtung der Bundesministerien (Bundesministeriengesetz 1986 – BMG)*, BGBl. Nr. 76/1986, available at: [Gesamte Rechtsvorschrift für Bundesministeriengesetz 1986](#).

1.1.3. *Date of the beginning of the term of office*

It follows from Article 72(1) and (2)³⁵⁵ of the Constitution that the term of office of the members of the Federal Government begins on the day they render an affirmation to the Federal President, after signature of the instrument of appointment by the Federal President and counter-signature by the newly appointed Federal Chancellor.

1.2. Member of a national parliament

1.2.1 *Legal provisions on the composition of the Austrian Parliament*

Constitution

Austria has a bi-cameral system. According to Article 24 of the Constitution the legislative power of the Federation is exercised by the National Council (*Nationalrat*) jointly with the Federal Council (*Bundesrat*).

The National Council is elected by the citizens in accordance with the principles of proportional representation on the basis of equal, direct, personal, free and secret suffrage for men and women who, on the day of election, have completed their sixteenth year of life.³⁵⁶

The Federal Council is composed in proportion to the number of nationals in each *Land*. At the moment, it has 61 members³⁵⁷. Its members and substitutes are elected by the Diets for the duration of their respective legislative periods in accordance with the principle of proportional representation.³⁵⁸

Implementing provisions

According to § 1(1) of the National Council electoral regulations,³⁵⁹ the National Council has 183 members.

Detailed provisions on organization and procedure of the National Council are established in Articles 24 to 33 of the Constitution and in the Federal law on the National Council's Standing Orders.³⁶⁰

³⁵⁵ "(1) Before their assumption of office the members of the Federal Government render an affirmation to the Federal President. [...] (2) The instruments of appointment for the Federal Chancellor, the Vice-Chancellor, and the other Federal Ministers are executed by the Federal President on the day of the affirmation and are countersigned by the newly appointed Federal Chancellor."

³⁵⁶ Article 26(1) of the Constitution provides that: "Der Nationalrat wird vom Bundesvolk auf Grund des gleichen, unmittelbaren, persönlichen, freien und geheimen Wahlrechtes der Männer und Frauen, die am Wahltag das 16. Lebensjahr vollendet haben, nach den Grundsätzen der Verhältniswahl gewählt."

³⁵⁷ According to Article 34(2) of the Constitution, the Land with the largest number of citizens delegates 12 members, every other Land as many as the ratio of its citizens compared to the first mentioned Land, but at least 3 members. The precise number of members to be delegated by each Land is laid down after every general census by the Federal President as stated in Article 34(3) of the Constitution.

³⁵⁸ Article 35(1) of the Constitution.

³⁵⁹ Bundesgesetz über die Wahl des Nationalrates (Nationalrats-Wahlordnung 1992 – NRWO), BGBl. Nr. 471/1992, available at: [Gesamte Rechtsvorschrift für Nationalrats-Wahlordnung 1992](#)

³⁶⁰ Bundesgesetz vom 4. Juli 1975 über die Geschäftsordnung des Nationalrates (Geschäftsordnungsgesetz 1975, GOG), BGBl. Nr. 410/1975, available at: [Bundesgesetz über die Geschäftsordnung des Nationalrates \(Geschäftsordnungsgesetz 1975\)](#). For an English version, see [Federal Law on the Rules of Procedure of the Austrian National Council](#).

Detailed provisions on the organization and procedure of the Federal Council are established in Articles 34 to 37 of the Constitution and in the Federal Council's Standing Orders.³⁶¹

1.2.2. Denomination of the members of the Austrian Parliament

According to the provisions mentioned in paragraph 2.1., members of the Austrian Parliament are the following:

- *Abgeordneter/Abgeordnete zum Nationalrat (member of the National Council)*
- *Bundesrat/Bundesrätin (member of the Federal Council).*³⁶²

1.2.3. Date of the beginning of the term of office

The members of the National Council acquire their legal status on the day of the first sitting of the newly elected National Council which has to be convened by the Federal President within 30 days after the election.³⁶³ If a new Member of Parliament follows another Member's mandate in the National Council due to the resignation of this Member, the mandate begins with the transmission of the ballot paper to the Secretarial Department of the National Council.

The members of the Federal Council acquire their legal status with their election by the Diet.³⁶⁴ If a member of the Federal Council resigns, the substitute member steps *in ex lege*.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Pursuant to Article 78(5) of the European Elections Rules, the President of the Austrian Parliament is responsible for notifying the President of the European Parliament of the Members of the European Parliament elected in Austria. However, no particular national procedure has been adopted for communicating cases of incompatibility to the European Parliament.³⁶⁵ According to an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of

³⁶¹ Kundmachung des Bundeskanzlers vom 5. Juli 1988 betreffend die Geschäftsordnung des Bundesrates, BGBl. Nr. 361/1988, available at:

[Gesamte Rechtsvorschrift für Geschäftsordnung des Bundesrates.](#)

For an English version, see [Rules of Procedure of the Austrian Federal Council.](#)

³⁶² § 1(1) of the Federal Council's Standing Orders provides: "Die Mitglieder des Bundesrates werden von den Landtagen für die Dauer der Landtagsgesetzgebungsperioden gewählt und führen als solche den Titel „Bundesrat“ bzw. „Bundesrätin“. Mitglieder des Bundesrates, die eine Funktion gemäß den Bestimmungen dieser Geschäftsordnung ausüben, führen die geschlechtsspezifische Bezeichnung dieser Funktion. Vom Zeitpunkt der Wahl durch den Landtag an hat jedes Mitglied Sitz und Stimme im Bundesrat."

³⁶³ Article 27(2) of the Constitution; in accordance with Article 57(6) of the Constitution, this is also the date on which the immunity of the previous members of the National Council ends. The reasons for an early end of the mandate are enumerated in § 2 GOG. In case of replacements, the legal status of the substitute starts with the appointment by the competent electoral authority. For further details see §§ 108 to 113 NRWO.

³⁶⁴ Article 35(1) and (3) of the Constitution; § 1(1) of the Federal Council's Standing Orders. The reasons for an early end of the mandate are enumerated in § 3 of the Federal Council's Standing Orders.

³⁶⁵ However, the national authority competent to communicate the names of newly elected Members of the European Parliament is the President of the National Council (*Präsident des Nationalrats*). Pursuant to Article 78(5) of the European Elections Rules, the President of the Austrian Parliament is responsible for notifying the President of the European Parliament of the Members of the European Parliament elected in Austria.

Austria to the European Union, the Parliamentary Directorate of the Austrian Parliament can be contacted in all related matters.³⁶⁶

³⁶⁶ Letter dated 30 June 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1 Constitution

Articles 57 and 58 of the Constitution read as follows:

Article 57

(1) The members of the National Council may never be made responsible for votes cast in the exercise of their function. They may be made responsible on the grounds of oral or written utterances made in the course of their function only by the National Council; this does not apply to prosecution by authorities because of defamation or an offence punishable under the Federal Act on the Information Rules of the National Council and the Federal Council.

(2) The members of the National Council may be arrested on the ground of a criminal offence – except in the case of apprehension in the act of committing a crime – only with the consent of the National Council. Searches of National Council members' houses likewise require the National Council's consent.

(3) Otherwise, members of the National Council may only be prosecuted without the consent of the National Council on the ground of a criminal offence if it is manifestly not connected with the political activity of the deputy in question. The authority must however obtain a decision by the National Council on the existence of such a connection if the deputy in question or a third of the members of the standing committee entrusted with these matters so demands. In the case of such a demand, any act of prosecution by the authority has immediately to be ceased or stopped.

(4) In all these cases the consent of the National Council shall be deemed given if it has not decided on such a request by the authority competent for prosecution within eight weeks; for the purpose of adopting a resolution in due time, the President shall put such a request to the vote on the day but one before expiry of this period of time at the latest. The time when the National Council is not in session is not included in this period of time.

(5) In the case of an apprehension in the act of committing a crime, the authority has to announce the arrest occurred to the President of the National Council immediately. If the National Council, or when it is not in session the standing committee entrusted with these matters, so demands, the arrest must be suspended or the legal process as a whole be dropped.

(6) The immunity of the deputies ends with the day of the meeting of the newly elected National Council, that of functionaries of the National Council whose term of office extends beyond this date with the end of their term of office.

(7) The detailed provisions are established by the Federal law on the National Council's Standing Orders.³⁶⁷

Article 58

The members of the Federal Council enjoy for the whole duration of their term of office the immunity of the members of the Diet which has delegated them.³⁶⁸

2.1.2. Implementing provisions

Specific provisions for the implementation of national parliamentary immunities are established by the Federal law on the National Council's Standing Orders (§ 10 and 80 GOG).

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the National Council represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 57(1) of the Constitution)

The members of the National Council may never be held accountable for votes cast in the exercise of their profession and only be held accountable by the National Council for oral or written statements made in this profession. Non-liability – in Austria commonly referred to as "professional immunity" (*berufliche Immunität*) – covers all votes cast and all oral and written statements made by members of the National Council during the proceedings of the plenary and the committee meetings, during

³⁶⁷ "(1) Die Mitglieder des Nationalrates dürfen wegen der in Ausübung ihres Berufes geschehenen Abstimmungen niemals, wegen der in diesem Beruf gemachten mündlichen oder schriftlichen Äußerungen nur vom Nationalrat verantwortlich gemacht werden.

(2) Die Mitglieder des Nationalrates dürfen wegen einer strafbaren Handlung – den Fall der Ergreifung auf frischer Tat bei Verübung eines Verbrechens ausgenommen – nur mit Zustimmung des Nationalrates verhaftet werden. Desgleichen bedürfen Hausdurchsuchungen bei Mitgliedern des Nationalrates der Zustimmung des Nationalrates.

(3) Ansonsten dürfen Mitglieder des Nationalrates ohne Zustimmung des Nationalrates wegen einer strafbaren Handlung nur dann behördlich verfolgt werden, wenn diese offensichtlich in keinem Zusammenhang mit der politischen Tätigkeit des betreffenden Abgeordneten steht. Die Behörde hat jedoch eine Entscheidung des Nationalrates über das Vorliegen eines solchen Zusammenhanges einzuholen, wenn dies der betreffende Abgeordnete oder ein Drittel der Mitglieder des mit diesen Angelegenheiten betrauten ständigen Ausschusses verlangt. Im Falle eines solchen Verlangens hat jede behördliche Verfolgungshandlung sofort zu unterbleiben oder ist eine solche abubrechen.

(4) Die Zustimmung des Nationalrates gilt in allen diesen Fällen als erteilt, wenn der Nationalrat über ein entsprechendes Ersuchen der zur Verfolgung berufenen Behörde nicht innerhalb von acht Wochen entschieden hat; zum Zweck der rechtzeitigen Beschlussfassung des Nationalrates hat der Präsident ein solches Ersuchen spätestens am vorletzten Tag dieser Frist zur Abstimmung zu stellen. Die tagungsfreie Zeit wird in diese Frist nicht eingerechnet.

(5) Im Falle der Ergreifung auf frischer Tat bei Verübung eines Verbrechens hat die Behörde dem Präsidenten des Nationalrates sogleich die geschehene Verhaftung bekanntzugeben. Wenn es der Nationalrat oder in der tagungsfreien Zeit der mit diesen Angelegenheiten betraute ständige Ausschuss verlangt, muss die Haft aufgehoben oder die Verfolgung überhaupt unterlassen werden.

(6) Die Immunität der Abgeordneten endet mit dem Tag des Zusammentrittes des neugewählten Nationalrates, bei Organen des Nationalrates, deren Funktion über diesen Zeitpunkt inausgeht, mit dem Erlöschen dieser Funktion.

(7) Die näheren Bestimmungen trifft das Bundesgesetz über die Geschäftsordnung des Nationalrates."

³⁶⁸ "Die Mitglieder des Bundesrates genießen während der ganzen Dauer ihrer Funktion die Immunität von Mitgliedern des Landtages, der sie entsendet hat."

parliamentary inquiries and in written statements recorded in parliamentary documents. Oral statements of members of the National Council may only lead to a call to respect the topic (*Ruf zur Sache*, § 101 GOG) or to a call to respect the order (*Ruf zur Ordnung*, § 102 GOG).

Non-liability is a ground for exemption from prosecution which continues to apply after the end of the term of office of the members of the National Council. Since 2014, however, there are two exceptions: "professional immunity" does not apply to prosecution by authorities because of defamation (§ 297 Criminal Code)³⁶⁹ or an offence punishable under § 18 of the Federal Act on the Information Rules of the National Council and the Federal Council.³⁷⁰

2.2.2. Immunity (Article 57(2) and (3) of the Constitution)

Immunity – in Austria commonly referred to as "extra-professional immunity" (*außerberufliche Immunität*) – covers acts punishable by a court, acts governed by administrative criminal law and acts amenable to prosecution under disciplinary law provided that they have been committed in connection with the political activities of the member in question. It does not provide protection against civil legal action.

Immunity is only a temporary impediment to prosecution, and it ceases to apply with the end of the term of office.

A member of the National Council may only be arrested with the consent of the National Council (even if the offence is manifestly not connected with the political activity of the member). The only exception to this rule applies to apprehensions in the act of committing a crime (*in flagrante delicto*), but even then the National Council may request the release of the member who is detained. The National Council's consent is likewise required for searches of National Council members' houses.

Otherwise, members of the National Council may be prosecuted without the latter's consent on the ground of a criminal offence only if it is manifestly not connected with the political activity of the member in question. Whether this is the case or not has to be assessed by the authority competent for prosecution. If the authority finds that the offence might be linked to the member's political activity it has to obtain the National Council's consent before starting or proceeding with prosecution. Furthermore, the authority must obtain a decision by the National Council on the existence of such a connection if the member in question or a third of the members belonging to the standing committee of the National Council entrusted with these matters (*Immunitätsausschuss*) so demands. If the National

³⁶⁹ § 297 StGB (1) Wer einen anderen dadurch der Gefahr einer behördlichen Verfolgung aussetzt, daß er ihn einer von Amts wegen zu verfolgenden mit Strafe bedrohten Handlung oder der Verletzung einer Amts- oder Standespflicht falsch verdächtigt, ist, wenn er weiß (§ 5 Abs. 3), daß die Verdächtigung falsch ist, mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 720 Tagessätzen, wenn die fälschlich angelastete Handlung aber mit einer ein Jahr übersteigenden Freiheitsstrafe bedroht ist, mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

(2) Nach Abs. 1 ist nicht zu bestrafen, wer freiwillig die Gefahr einer behördlichen Verfolgung beseitigt, bevor eine Behörde etwas zur Verfolgung des Verdächtigten unternommen hat.

³⁷⁰ § 18 InfGO (1) Wer entgegen den Bestimmungen dieses Bundesgesetzes eine ihm aufgrund dieses Bundesgesetzes zugänglich gewordene, nicht allgemein zugängliche klassifizierte Information der Stufe 3 oder 4 offenbart oder verwertet, deren Offenbarung oder Verwertung geeignet ist, die öffentliche Sicherheit, die Strafrechtspflege, die umfassende Landesverteidigung, die auswärtigen Beziehungen oder ein berechtigtes privates Interesse zu verletzen, ist vom Gericht mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.

(2) Medieninhaber, Herausgeber, Medienmitarbeiter und Arbeitnehmer eines Medienunternehmens oder Mediendienstes sind nicht als Beteiligte im Sinne von § 12 Strafrechtsgesetzbuch, BGBl. Nr. 60/1974, zu behandeln, soweit sich ihre Handlung auf die Entgegennahme, Auswertung oder Veröffentlichung der Information beschränkt.

An English Version is available at: [Federal Act on the Information Rules of the National Council and the Federal Council \(Information Rules Act\)](#).

Council finds that there is no connection with the member's political activity the authority may proceed with prosecution; if, on the opposite, the National Council finds that there is such a connection it has to decide at the same time whether prosecution may proceed or not.

In all these cases the consent of the National Council shall be deemed given if it has not decided on a request by the authority within eight weeks. The time when the National Council is not in session is not included in this period of time.

2.3. National authority entitled to request the immunity of an Austrian member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the Austrian members of the European Parliament. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

In the case of national MPs, the authority empowered to request waiver of the parliamentary immunity is the authority competent to prosecute the member, i.e.: in the case of criminal proceedings, the competent court or prosecutor's office, in the case of administrative proceedings the competent authority and in the case of disciplinary proceedings the competent disciplinary board.

According to an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Austria to the European Union, requests for waiver of the immunity will be forwarded by the Federal Ministry of Justice (*Bundesministerium für Justiz*).³⁷¹

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³⁷¹ Email received on 21 April and letter received on 8 May 2013. The information has been reconfirmed by the National Parliament Representative of Austria in Brussels via email on 21 April 2021.

POLAND

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Polish government

Constitution

The composition of the government in Poland is established by the first paragraph of Article 147 of the Constitution³⁷² which reads as follows: "The Council of Ministers shall be composed of the President of the Council of Ministers (Prime Minister) and ministers."³⁷³ Additionally, the second paragraph of the said article states that "Vice-presidents of the Council of Ministers (Deputy Prime Ministers) may also be appointed within the Council of Ministers"³⁷⁴, while the fourth adds that "The presidents of committees specified in statutes may also be appointed to membership in the Council of Ministers."³⁷⁵

Implementing provisions

The above-mentioned provisions of the Constitution are implemented by the Act of 8 August 1996 on the Council of Ministers (*Ustawa z dnia 8 sierpnia 1996 r. o Radzie Ministrów*), as well as the Council's Rules of Procedure (*Uchwała Nr 190 Rady Ministrów z dnia 29 października 2013 r. Regulamin pracy Rady Ministrów*).

1.1.2. Denomination of the members of the Polish government

Pursuant to the provisions mentioned in paragraph 1.1., members of the government in Poland are the following:

- *Prezes Rady Ministrów (President of the Council of Ministers),*
- *Wiceprezes Rady Ministrów (Vice-president of the Council of Ministers),*
- *Minister (Minister),*
- *Przewodniczący określonego w ustawie komitetu (The President of Committee (specified in statute); in practice statutes do not specify any such committee).*

³⁷² The original version, as well as English, French and German translations, are available at: <http://www.sejm.gov.pl/prawo/konst/konst.htm>.

³⁷³ "Rada Ministrów składa się z Prezesa Rady Ministrów i ministrów."

³⁷⁴ „W skład Rady Ministrów mogą być powoływani wiceprezesi Rady Ministrów”.

³⁷⁵ "W skład Rady Ministrów mogą być ponadto powoływani przewodniczący określonych w ustawach komitetów."

Contrary to some other EU Member States, the Secretaries and Undersecretaries of State (*Sekretarz i Podsekretarz Stanu*) are not official members of the Council of Ministers;³⁷⁶ however, their position is incompatible with the mandate of Member of European Parliament under national law.³⁷⁷

1.1.3. Date of the beginning of the term of office

Under the terms of Article 154, paragraph one, second sentence, of the Constitution ("The President of the Republic shall, within 14 days of the first sitting of the *Sejm* or acceptance of the resignation of the previous Council of Ministers, appoint a Prime Minister together with other members of a Council of Ministers and accept the oaths of office of members of such newly appointed Council of Ministers"),³⁷⁸ the date of the beginning of the term of office of the members of the Polish government shall be considered the date they are sworn in by the President of the Republic.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Polish Parliament

Constitution

The composition of the Parliament in Poland is established by the first paragraph of Article 95(1) of the Constitution which reads as follows: "Legislative power in the Republic of Poland shall be exercised by the *Sejm* (Chamber of Deputies) and the *Senat* (Senate)." ³⁷⁹

The following Articles 96 and 97 of the Constitution set the number of the Deputies and Senators at, respectively, four hundred sixty and one hundred.

Implementing provisions

The Election Code of 5 January 2011 (*Kodeks wyborczy, Dz. U. z dnia 31 stycznia 2011 r.* ³⁸⁰) regulates the principles and methods of nominating candidates, the conduct of elections, conditions to ensure their validity, as well as the principles of conducting and financing election campaigning.

³⁷⁶ According to Article 37(1) of the Act of 8 August 1996 on the Council of Ministers: "The Minister exercises his tasks with the help of a Secretary and Undersecretaries of State as well as his political cabinet." (*Minister wykonuje swoje zadania przy pomocy sekretarza i podsekretarzy stanu oraz gabinetu politycznego ministra*).

³⁷⁷ See Article 334(2) of the Election Code, which states that "A Member of the European Parliament may not be simultaneously, in the Republic of Poland, a member of the Council of Ministers nor a Secretary of the State and shall not occupy any post nor fulfill functions which, in accordance with the provisions of the Constitution of the Republic of Poland, may not be simultaneously performed with the mandate of a deputy to the *Sejm* or a senator." (*Poseł do Parlamentu Europejskiego nie może być jednocześnie w Rzeczypospolitej Polskiej członkiem Rady Ministrów ani sekretarzem stanu oraz zajmować stanowiska lub pełnić funkcji, których, stosownie do przepisów Konstytucji Rzeczypospolitej Polskiej albo ustaw, nie można łączyć ze sprawowaniem mandatu posła na Sejm albo senatora*).

³⁷⁸ The so-called "basic procedure" of forming the Council of Ministers, which - in case of failure - can be followed by two "backup" procedures.

"Prezydent Rzeczypospolitej powołuje Prezesa Rady Ministrów wraz z pozostałymi członkami Rady Ministrów w ciągu 14 dni od dnia pierwszego posiedzenia Sejmu lub przyjęcia dymisji poprzedniej Rady Ministrów i odbiera przysięgę od członków nowo powołanej Rady Ministrów."

³⁷⁹ "Władzę ustawodawczą w Rzeczypospolitej Polskiej sprawują Sejm i Senat."

³⁸⁰ Available (Polish only) at:

<https://wybory.gov.pl/sejmsenat2019/en/kodeks/550> and https://pkw.gov.pl/309_Kodeks_wyborczy.

The Act of 9 May 1996 on the exercise of the mandate of Deputy or Senator (*Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu Posła i Senatora*) specifies the conditions appropriate to the effective discharge of their duties by the Deputies and Senators, as well as for defense of their rights resulting from the performance of their mandate.

More detailed provisions concerning the structure and the organisation of the *Sejm* and of the *Senat* are contained in their respective rules of procedure (*Regulaminy*).

1.2.2. Denomination of the members of the Polish Parliament

Pursuant to the provisions mentioned in paragraph 2.1., members of the Polish Parliament are the following:

- *Posel na Sejm (Deputy)/ poslowie (Deputies)*,
- *Senator (Senator)/ senatorowie (Senators)*.

1.2.3. Date of the beginning of the term of office

Under the terms of Article 98(1), second sentence, of the Polish Constitution: "The term of office of the *Sejm* and *Senat* shall begin on the day on which the *Sejm* assembles for its first sitting and shall continue until the day preceding the assembly of the *Sejm* of the succeeding term of office."³⁸¹

The Deputies and Senators are covered by parliamentary immunity starting from the day of announcement of the results of the elections.

Article 104(2) of the Constitution provides for an obligation for all Deputies and (jointly with Article 108) Senators to take an oath in the presence of the *Sejm* or *Senat* - this is the moment of the commencement of the performance of the mandate (i.e. exercise of parliamentary duties and obligations). According to Article 104(3) "A refusal to take the oath shall be deemed to be a renunciation of the mandate".³⁸²

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

According to an official letter sent to the President of the European Parliament by the Representation of the Republic of Poland to the EU³⁸³, Polish law does not provide for a procedure for notifying the European Parliament of incompatibility with a particular office, but it does regulate the consequences of this incompatibility. If a breach of the principle of incompatibility is identified, the President of the European Parliament shall be informed of the MEP's loss of mandate. The Speaker of the *Sejm* remains the competent authority in this respect. According to Article 366(4) of the Election Code of 5 January 2011 the *Marszałek Sejmu* (Speaker of the *Sejm*) is the national authority responsible for notifying immediately to the President of the European Parliament the forfeiture of the seat of a Member of the European Parliament arising from the election (or later assignment) to the *Sejm* or the *Senat* of the

³⁸¹ "Kadencje Sejmu i Senatu rozpoczynają się z dniem zebrania się Sejmu na pierwsze posiedzenie i trwają do dnia poprzedzającego dzień zebrania się Sejmu następnej kadencji."

³⁸² "Odmowa złożenia ślubowania oznacza zrzeczenie się mandatu."

³⁸³ Letter dated 14 September 2020.

Republic of Poland, or from his/her appointment as a Member of the government.³⁸⁴ The letter also states that the Speaker of the Sejm is also the competent authority for notifications containing the names of elected Members who are entitled to take the vacant seat if a vacancy is established.

Pursuant to Article 364(3) of the Election Code, a Member of the European Parliament, who during his term in office was elected to the *Sejm* or *Senat*, shall forfeit his or her mandate to the European Parliament on the day of the elections (in practice: the day of the publication of the results of elections).³⁸⁵

Pursuant to Article 364(4), if a Member of the European Parliament received the mandate of a Deputy or Senator on the basis of substitution (due to a vacancy), he or she shall forfeit the mandate to the European Parliament on the day of the decision of the Speaker of the Sejm on assigning the national mandate.³⁸⁶

It should also be noted that pursuant to Article 364(2) of the Election Code, the seat of a Member of the European Parliament who, on the day of elections, was holding an office or exercising a function incompatible with MEP's mandate (minister, secretary of state, etc.), shall become vacant if this Member fails to submit to the Speaker of the Sejm, within fourteen days following the announcement of the results of the elections to the European Parliament, a declaration on his or her resignation from that office or function.³⁸⁷

³⁸⁴ "O utracie mandatu posła do Parlamentu Europejskiego Marszałek Sejmu niezwłocznie zawiadamia Przewodniczącego Parlamentu Europejskiego, z zastrzeżeniem art. 367."

³⁸⁵ "Utrata mandatu posła do Parlamentu Europejskiego, w przypadku, o którym mowa w § 1 pkt 2a i 3, następuje z dniem powołania lub wybrania."

³⁸⁶ "Jeżeli poseł do Parlamentu Europejskiego uzyskał mandat posła na Sejm na podstawie art. 251, traci mandat posła do Parlamentu Europejskiego z dniem wydania przez Marszałka Sejmu postanowienia o obsadzeniu mandatu posła na Sejm."

³⁸⁷ "Utrata mandatu posła do Parlamentu Europejskiego, w przypadku, o którym mowa w § 1 pkt 2, następuje, jeżeli nie złoży on Marszałkowi Sejmu, w terminie 14 dni od dnia ogłoszenia przez Państwową Komisję Wyborczą wyników wyborów do Parlamentu Europejskiego, oświadczenia o złożeniu rezygnacji z zajmowanego stanowiska lub pełnionej funkcji."

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

The parliamentary immunities are granted to the Members of the Polish Parliament (*Sejm* and Senate) by Articles 105 and 108 of the Constitution which read as follows:

Article 105

1. *A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.*
2. *From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.*
3. *Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.*
4. *A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paragraphs 2 and 3 shall not apply.*
5. *A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.*
6. *Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute.*³⁸⁸

Article 108

The provisions of Articles 103-107 shall apply, as appropriate, to Senators.

³⁸⁸ 1. Poseł nie może być pociągnięty do odpowiedzialności za swoją działalność wchodzącą w zakres sprawowania mandatu poselskiego ani w czasie jego trwania, ani po jego wygaśnięciu. Za taką działalność poseł odpowiada wyłącznie przed Sejmem, a w przypadku naruszenia praw osób trzecich może być pociągnięty do odpowiedzialności sądowej tylko za zgodą Sejmu. 2. Od dnia ogłoszenia wyników wyborów do dnia wygaśnięcia mandatu poseł nie może być pociągnięty bez zgody Sejmu do odpowiedzialności karnej. 3. Postępowanie karne wszczęte wobec osoby przed dniem wyboru jej na posła ulega na żądanie Sejmu zawieszeniu do czasu wygaśnięcia mandatu. W takim przypadku ulega również zawieszeniu na ten czas bieg przedawnienia w postępowaniu karnym. 4. Poseł może wyrazić zgodę na pociągnięcie go do odpowiedzialności karnej. W takim przypadku nie stosuje się przepisów ust. 2 i 3. 5. Poseł nie może być zatrzymany lub aresztowany bez zgody Sejmu, z wyjątkiem ujęcia go na gorącym uczynku przestępstwa i jeżeli jego zatrzymanie jest niezbędne do zapewnienia prawidłowego toku postępowania. O zatrzymaniu niezwłocznie powiadamia się Marszałka Sejmu, który może nakazać natychmiastowe zwolnienie zatrzymanego. 6. Szczegółowe zasady pociągania posłów do odpowiedzialności karnej oraz tryb postępowania określa ustawa.

2.1.2. Implementing provisions

Detailed principles and procedures as provided for in Article 105(6) of the Constitution have been enacted in the Act of 9 May 1996 on the exercise of the mandate of Deputy or Senator (*Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu Posła i Senatora*).³⁸⁹ The internal procedures of *Sejm* and *Senat* in dealing with questions of immunity are contained in their respective rules of procedure (*Regulaminy*).

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the Polish Parliament represents the classical model of immunities which consist in the exclusion of liability, aimed at protecting the freedom of speech or voting of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 105 (1) of the Constitution)

Pursuant to Article 105(1) of the Constitution, Members of the Polish Parliament may not be held liable under civil or criminal law for activities carried out as a part of the parliamentary mandate; for such activities, they may only be held accountable in front of their Chamber³⁹⁰ or, if they infringed on the rights of a third party, with the consent of that Chamber. This immunity lasts for an unlimited period.

Article 6(2) of the Act on the exercise of the mandate of Deputy or Senator lists the following activities as falling within the scope of the non-liability principle: tabling proposals, speeches and votes during sessions of Parliament and other parliamentary meetings, as well as other activities inseparably connected with the performance of their duties.³⁹¹

Waiver of the non-liability principle is only possible in the event of an infringement of the rights of third parties (e.g. defamation and slander), in accordance with Article 6a of the abovementioned Act, which provides that "A deputy or senator who, in taking up actions within the performance of the mandate, violates the rights of third persons may be held accountable to law only with the consent of the *Sejm* or Senate."³⁹²

2.2.2. Immunity (Article 105 (2), (3), (4) and (5) of the Constitution)

Pursuant to Article 105, paragraphs 2, 3 and 4 of the Constitution, Deputies and Senators cannot be brought to criminal liability without their own consent or the consent of *Sejm* or *Senat*, unless the criminal proceedings were instituted before their election to Parliament. In this case, however, the

³⁸⁹ Available (Polish only) at: <http://www.sejm.gov.pl/prawo/mandat/kon6.htm>
<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19960730350>.

³⁹⁰ The scope of accountability before the *Sejm* is determined by its rules of procedure, for instance in the rules on the ethical responsibility of Deputies (with sanctions such as "reprimanding").

³⁹¹ "Działalność [...] obejmuje zgłaszanie wniosków, wystąpienia lub głosowania na posiedzeniach Sejmu, Senatu lub Zgromadzenia Narodowego oraz ich organów, na posiedzeniach klubów, kół i zespołów poselskich, senackich lub parlamentarnych, a także inną działalność związaną nieodłącznie ze sprawowaniem mandatu." The last expression ("other activities inseparably connected with the performance of their duties") is interpreted narrowly: it only includes activities which may be exclusively performed by a Deputy (such as e.g. representing the *Sejm* during proceedings before the Constitutional Tribunal).

³⁹² "Poseł lub senator, który, podejmując działania wchodzące w zakres sprawowania mandatu, narusza prawa osób trzecich, może być pociągnięty do odpowiedzialności sądowej tylko za zgodą Sejmu lub Senatu."

Parliament can request the suspension of such proceedings. This immunity lasts, in accordance with the Constitution, from the day of announcement of the results of the elections until the day of the expiry of the mandate of the Member of Parliament. In accordance with Article 105(3) of the Constitution and 7a of the Act on the exercise of the mandate of Deputy or Senator, the statute of limitation in criminal proceedings relating to activities covered by immunity is extended for the equivalent time.³⁹³

Pursuant to Article 105(5) of the Constitution, Members of Polish Parliament may not be detained nor arrested during their term of office without the consent of *Sejm* or *Senat*, with the exception of cases in which they are caught *in flagrante delicto* and where detention is essential for securing the proper course of proceedings. Even in such cases, however, the *Sejm* or the *Senat* (the Marshal of the Chamber) must be informed of the Member's detention and may always order his/her immediate release. In accordance with Article 10(2) of the Act on the exercise of the mandate of Deputy or Senator, the prohibition of detention or arrest affects all forms of deprivation or restraint of personal liberty of the Deputy or Senator by the enforcement authorities.³⁹⁴

2.3. National authority entitled to request the immunity of a Polish Member of the European Parliament to be waived

According to the established practice, the provisions governing the requests for waiver of the immunity of Members of the national Parliament apply, *mutatis mutandis*, with regard to the request for waiver of the immunity of the Polish Members of the European Parliament in the case of proceedings launched in the territory of Poland.

In the above mentioned letter sent from the Representation of the Republic of Poland to the EU, it has been confirmed that the Prosecutor General is the competent authority, pursuant to Rule 9(1) of the Rules of Procedure of the European Parliament, to forward to the President of the European Parliament a request to waive the immunity of a Member of the European Parliament. On the other hand, in cases where a private indictment has been filed and the Prosecutor's Office is not prosecuting the case *ex officio*, the court hearing the private indictment is competent.³⁹⁵

§ § §

³⁹³ "Przedawnienie w postępowaniu karnym czynu objętego immunitetem nie biegnie w okresie korzystania z immunitetu."

³⁹⁴ "Zakaz zatrzymania [...] obejmuje wszelkie formy pozbawienia lub ograniczenia wolności osobistej posła lub senatora przez organy stosujące przymus."

³⁹⁵ Letter dated 14 September 2020.

PORTUGAL

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Electoral Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Portuguese government

Constitution

The composition of the government in Portugal is established by Article 183(1) of the Constitution,³⁹⁶ which reads as follows: "The Government comprises the Prime Minister, the Ministers and the Secretaries and Under Secretaries of State." Besides, paragraph 2 of the same article states that "The Government may include one or more Deputy Prime Ministers".³⁹⁷

1.1.2. Denomination of the members of the Portuguese government

Pursuant to the provisions mentioned in paragraph 1.1.1., Members of the government of Portugal are the following:

- *Primeiro/a Ministro/a (Prime Minister),*
- *Vice-Primeiro Ministro/s (Deputy-Prime Minister); Vice-Primeiros Ministros (Deputy-Prime Ministers), if any,*
- *Ministro/a (Minister); Ministros/Ministras (Ministers),*
- *Secretário/a de Estado (Secretary of State); Secretários/Secretárias de Estado (Secretaries of State),*
- *Subsecretário/a de Estado (Under Secretary of State); Subsecretários/Subsecretárias de Estado (Under Secretaries of State).*

1.1.3. Date of the beginning of the term of office

Under the terms of Article 186 of the Constitution, the date of the beginning of the term of office of the members of the government shall be considered the date of their installation by the President of the Republic.³⁹⁸

³⁹⁶ The Portuguese Constitution is available at: [Constituição da República Portuguesa](https://www.parlamento.pt/sites/EN). An English version can be found on the following site: <https://www.parlamento.pt/sites/EN>.

³⁹⁷ "Artigo 183.º Composição. 1. O Governo é constituído pelo Primeiro Ministro, pelos Ministros e pelos Secretários e Subsecretários de Estado. 2. O Governo pode incluir um ou mais Vice-Primeiros-Ministros."

³⁹⁸ "Artigo 186.º Início e cessação de funções. 1. As funções do Primeiro-Ministro iniciam-se com a sua posse e cessam com a sua exoneração pelo Presidente da República. 2. As funções dos restantes membros do Governo iniciam-se com a sua posse e cessam com a sua exoneração ou com a exoneração do Primeiro-Ministro. 3. As funções dos Secretários e Subsecretários de Estado cessam ainda com a exoneração do respectivo Ministro. 4. Em caso de demissão do Governo, o Primeiro-Ministro do Governo cessante é exonerado na data da nomeação e posse do novo Primeiro-Ministro. 5. Antes da apreciação do seu programa pela Assembleia da República, ou após a sua demissão, o Governo limitar-se-á à prática dos actos estritamente necessários para assegurar a gestão dos negócios públicos. "

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Portuguese Parliament

Constitution

The composition of the Portuguese Parliament - the *Assembleia da República* (Assembly of the Republic) - is established in Article 148 of the Constitution which reads as follows: "The Assembly of the Republic shall have a minimum of one hundred and eighty and a maximum of two hundred and thirty Members, as laid down by electoral law."³⁹⁹

Implementing provisions

Article 13(1) of Law 14/79 of 16 May 1976 defining the Electoral Regime for the Assembly of the Republic (*Lei Eleitoral para a Assembleia da República*) specifies that the Assembly of the Republic is composed of 230 Members: "The total number of Members of the Assembly of the Republic is two hundred and thirty".⁴⁰⁰

1.2.2. Denomination of the Members of the Portuguese Parliament

Pursuant to the provisions mentioned in point 1.2.1, Members of the Portuguese Parliament are named

- *Deputado* (Member of Parliament); *Deputados* (Members of Parliament).

1.2.3. Date of the beginning of the term of office

Under the terms of Article 153(1) of the Constitution⁴⁰¹ and Article 2(1) of the Statute of Members of the Assembly of the Republic (*Estatuto dos Deputados*)⁴⁰², Deputies officially begin their term of office on the date of the first sitting of the Parliament which takes place after the elections.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

According to an official letter sent to the President of the European Parliament by the Permanent Representation of Portugal to the European Union⁴⁰³, *Tribunal Constitucional* (Constitutional Court) is the competent authority to communicate any cases of incompatibility of Portuguese MEPs, whereas

³⁹⁹ "Artigo 148.º Composição. A Assembleia da República tem o mínimo de cento e oitenta e o máximo de duzentos e trinta Deputados, nos termos da lei eleitoral."

⁴⁰⁰ "O número total de deputados é de 230". The Assembly of the Republic Electoral Law is available in English at: <http://www.en.parlamento.pt/Legislation/LeiEleitoralARen.pdf>.

⁴⁰¹ "Article 153 (Beginning and end of term of office)

1. Without prejudice to the suspension or termination of any individual mandate, terms of office of Members of the Assembly of the Republic begin with the first sitting of the Assembly following elections and end with the first sitting following the subsequent elections."

⁴⁰² See Article 2 of Law 7/93 of 1 March 1993, whose text is identical to Article 153(1) of the Constitution mentioned before. An English version of this Law is available at: <https://www.parlamento.pt/sites/EN>.

⁴⁰³ Letter dated 27 November 2020.

the names of newly elected MEPs are communicated by the President of the National Electoral Commission (*Presidente da Comissão Nacional de Eleições*).

In practice, in the few cases experienced until now this communication has been transmitted to the European Parliament by the Permanent Representation of Portugal to the European Union.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Portugal, the parliamentary immunities are granted to Members of the Assembly of the Republic by Article 157 of the Constitution, which reads as follows:

"Article 157 (Immunities)

1. Members of the Assembly of the Republic are not civilly or criminally liable for or subject to disciplinary proceedings in relation to their votes or the opinions they express in the exercise of their functions.
2. Members of the Assembly of the Republic may not appear as makers of declarations or accused persons without the Assembly's authorisation. In the latter case, the Assembly shall obligatorily decide in favour of authorisation when there are strong indications of the commission of a wilful crime punishable by imprisonment for a maximum term of more than three years.
3. No Member of the Assembly of the Republic may be detained, arrested or imprisoned without the Assembly's authorisation, save for a wilful crime punishable by the type of prison term referred to by the previous paragraph and *in flagrante delicto*.
4. In the event that criminal proceedings are brought against any Member of the Assembly of the Republic and he is definitively charged, the Assembly shall decide whether or not he must be suspended so that the proceedings can take their course. When the crime is of the type referred to in the previous paragraphs, the Assembly shall obligatorily decide to suspend the Member."⁴⁰⁴

2.1.2. Implementing provisions

The implementing rules of Article 157 of the Constitution are contained in articles 10 and 11 of the Statute of Members of the Assembly of the Republic.

⁴⁰⁴ "Artigo 157.º Imunidades

1. Os Deputados não respondem civil, criminal ou disciplinarmente pelos votos e opiniões que emitirem no exercício das suas funções.
2. Os Deputados não podem ser ouvidos como declarantes nem como arguidos sem autorização da Assembleia, sendo obrigatória a decisão de autorização, no segundo caso, quando houver fortes indícios de prática de crime doloso a que corresponda pena de prisão cujo limite máximo seja superior a três anos.
3. Nenhum Deputado pode ser detido ou preso sem autorização da Assembleia, salvo por crime doloso a que corresponda a pena de prisão referida no número anterior e em flagrante delicto.
4. Movido procedimento criminal contra algum Deputado, e acusado este definitivamente, a Assembleia decidirá se o Deputado deve ou não ser suspenso para efeito de seguimento do processo, sendo obrigatória a decisão de suspensão quando se trate de crime do tipo referido nos números anteriores."

2.2. Scope and content of national parliamentary immunities

The system of immunities applicable to the members of the Portuguese Parliament represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 157.1 of the Constitution)

Pursuant to Article 157(1) of the Constitution, Members of Parliament may not be required to give account of any opinions expressed or votes cast in the performance of their duties. Deputies are therefore exempted from any civil, criminal, or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities, as expressly clarified by Article 10 of the Statute of Members. This exemption continues to apply after the end of their term of office.

2.2.2. Immunity (Article 157.2, 157.3 and 157.4 of the Constitution)

Pursuant to Article 157(2) of the Constitution, the authorisation of the Parliament is required in order for a Member to appear as maker of declarations or as accused persons. However, the same paragraph specifies that the authorisation must be obligatorily granted if there is strong evidence that a wilful crime has been committed, should this crime be punishable with imprisonment for a maximum term of more than three years.

According to paragraph 3, no Member may be detained, arrested or imprisoned without the Assembly's authorisation, except when found *in flagrante delicto* committing a wilful crime punishable with a maximum sentence of more than three years' imprisonment.

According to paragraph 4, if criminal proceedings are brought against a Member and he is definitively charged, the Assembly shall decide whether or not the Member shall be suspended. In the event that the charges concern a crime of the type mentioned above, suspension is obligatory. In any case, Parliament may limit the length of the Member's suspension to the time which, under the circumstances, it deems most fit to both the exercise of the Member's mandate and the furtherance of the criminal proceedings.⁴⁰⁵

The Statute of Members, in its Article 11, further specifies the procedure to be followed in the case of a request to waive the immunity of a Member. The request is transmitted by the competent judge to the President of the Assembly of the Republic and is then examined by the competent committee, which presents a draft report to the Plenary. The decision as to whether to waive the immunity is taken by the Plenary, after hearing the Member concerned. The statute of limitation in criminal proceedings is suspended until a decision on the request is taken and, if the authorization is refused, until the Member continues to enjoy the immunity.⁴⁰⁶

⁴⁰⁵ Article 11(3)(b) of the Statute of Members provides that: "A Assembleia pode limitar a suspensão do Deputado ao tempo que considerar mais adequado, segundo as circunstâncias, ao exercício do mandato e ao andamento do processo criminal."

⁴⁰⁶ Article 11, paragraphs 5, 6 and 7, of the Statute of Members provides as follows:
"5 O pedido de autorização a que se referem os números anteriores é apresentado pelo juiz competente em documento dirigido ao Presidente da Assembleia da República e não caduca com o fim da legislatura, se o Deputado for eleito para novo mandato.

6 As decisões a que se refere o presente artigo são tomadas pelo Plenário, precedendo audição do Deputado e parecer da comissão competente.

2.3. National authority entitled to request the immunity of a Portuguese Member of the European Parliament to be waived

With regard to the authority competent to transmit to the European Parliament a request to waive the immunity of a Portuguese Member, the same rule that applies to the Members of the Assembly of the Republic should be followed, as expressly provided by Article 1 of Law 14/87 defining the Electoral Regime for Elections to the European Parliament.⁴⁰⁷ Consequently, it is up to the competent judge in the procedure to submit such request to the President of the Assembly of the Republic, in accordance with Article 11(5) of the Statute of Members.⁴⁰⁸

In the above-mentioned letter,⁴⁰⁹ the Permanent Representation confirmed this interpretation, adding that a request to waive immunity may be transmitted to the European Parliament via the Permanent Representation.

§ § §

7 O prazo de prescrição do procedimento criminal suspende-se a partir da entrada, na Assembleia da República, do pedido de autorização formulado pelo juiz competente, nos termos e para os efeitos decorrentes da alínea a) do n.º 1 do artigo 120.º do Código Penal, mantendo-se a suspensão daquele prazo caso a Assembleia delibere pelo não levantamento da imunidade e enquanto ao visado assistir tal prerrogativa."

⁴⁰⁷ Article 1 of Law 14/87 provides that the election of the Members of the European Parliament elected in Portugal is governed by this law, by the applicable Community rules and, in questions not covered by them or in which the said rules refer back to the national legislations, by the rules that govern the election of Members of the Assembly of the Republic, after the necessary adaptations. See [Lei Eleitoral para o Parlamento Europeu](#).

⁴⁰⁸ This rule provides that "The competent judge shall submit the authorisation request referred to by the previous paragraphs in the form of a document addressed to the President of the Assembly of the Republic, and the said request shall not lapse at the end of the legislature if the Member in question is elected to a new term of office."

⁴⁰⁹ Letter dated 27 November 2020.

ROMANIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Romanian government

Constitution

The composition of the government in Romania is established by paragraph 3 of Article 102 of the Constitution which states: "The government consists of the Prime Minister, Ministers, and other members as established by an organic law".⁴¹⁰

Legislative provisions

The above-mentioned provision of the Constitution is further specified by the following legislative act: "*Legea nr. 90 din 26 martie 2001 privind organizarea si functionarea Guvernului Romaniei si a ministerelor*" (Law No 90 of 26 March 2001 on the organization and functioning of the Romanian government and ministries⁴¹¹), as subsequently amended, in particular Articles 3 and 22 (1).

1.1.2. Denomination of the members of the Romanian government

Pursuant to the provisions mentioned in paragraph 1.1., members of the government in Romania are the following:

- *Prim-ministru (Prime Minister),*
- *Ministru (Minister),*
- *Alti membri (Other members):*⁴¹²
 - *a) Viceprim-ministri (Deputy Prime Ministers),*
 - *b) Ministri de Stat (Ministers of State),*
 - *c) Ministri delegati cu insarcinari speciale pe langa primul ministru (delegate ministers with special assignments to the Prime Minister).*

⁴¹⁰ "Guvernul este alcătuit din prim-ministru, miniștri și alți membri stabiliți prin lege organică". The text of the Constitution of Romania is available at: [Constitutia României](#). For an English translation, see [Constitution of Romania](#). The website of the Romanian government, including the full list of the Members of the Government, is the following: <http://www.gov.ro/>.

⁴¹¹ For an updated version of this law, in Romanian, see [Legea nr. 90 din 26 martie 2001](#).

⁴¹² Article 3, paragraph 2 of Law No 90 of 26 March 2001, as amended, states: "The Government may also be made of deputy prime ministers, Ministers of State, as well as delegate ministers with special assignments to the Prime Minister, registered on the list that the Government presents to the Parliament for the vote of confidence" (*Din Guvern pot face parte: viceprim-ministri, miniștri de stat, precum și miniștri-delegați cu însărcinări speciale pe lângă primul-ministru, prevăzuți în lista Guvernului prezentată Parlamentului pentru acordarea votului de încredere*).

Additionally, the *Secretarul General al Guvernului* (The Secretary General of the Government⁴¹³), who is part of the administrative apparatus of the Government (in accordance with Article 20 of Law 90/2001), may have the rank of minister.

1.1.3. Date of the beginning of the term of office

Under the terms of Article 104, paragraph 2 of the Constitution⁴¹⁴ the date of the beginning of the term of office of the members of the Government is considered the date the members take an oath before the President of Romania.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Romanian Parliament

Constitution

The composition of the Parliament in Romania is established by paragraph 2 of Article 61 of the Constitution which reads as follows: "The Parliament consists of the Chamber of Deputies and the Senate."⁴¹⁵

Article 62, paragraphs 1 and 3, of the Constitution establishes that the Chamber of Deputies and the Senate are elected by universal, equal, direct, secret and free suffrage, in accordance with the electoral law. The number of Deputies and Senators is established by the electoral law, in proportion to the population of Romania.⁴¹⁶

Legislative provisions and rules of procedure

The provisions of the Constitution are further specified by a legislative act: "Legea nr. 35 din 13 martie 2008 pentru alegerea Camerei Deputaţilor şi a Senatului şi pentru modificarea şi completarea Legii nr. 67/2004 pentru alegerea autorităţilor administraţiei publice locale, a Legii administraţiei publice locale nr. 215/2001 şi a Legii nr. 393/2004 privind Statutul aleşilor locali (Law No 35 of 13 March 2008 for the Election of the Chamber of Deputies and the Senate and for amending and supplementing Law nr 67/2004 for the election of local public authorities, Law of local public administration nr 215/2001, and Law nr 393/2004 on the Statute of local representatives), as subsequently amended."⁴¹⁷ Under the terms

⁴¹³ Article 22, paragraph 1 of the Law No 90 of 23 March 2001 states: "The Government has a General Secretariat, led by the Secretary General of the Government, who may have the rank of minister, helped by one or several deputy secretaries general, who may have the rank of secretary of state, appointed by a decision of the Prime Minister" (*Guvernul are un Secretariat General condus de secretarul general al Guvernului, care poate avea rang de ministru, ajutat de unul sau mai mulţi secretari generali adjuncţi, care pot avea rang de secretar de stat, numiţi prin decizie a primului-ministru*).

⁴¹⁴ Article 104, paragraph 2 of the Constitution reads as follows: "The Prime Minister, the Ministers and other members of the Government shall individually take an oath before the President of Romania, as provided under Article 82. The Government as a whole and each of its members shall exercise the mandate from the date of taking the oath" (*Primul-ministru, miniştrii şi ceilalţi membri ai Guvernului vor depune individual, în faţa Preşedintelui României, jurământul de la articolul 82. Guvernul în întregul său şi fiecare membru în parte îşi exercită mandatul, începând de la data depunerii jurământului*).

⁴¹⁵ "Parlamentul este alcătuit din Camera Deputaţilor şi Senat."

⁴¹⁶ "Camera Deputaţilor şi Senatul sunt alese prin vot universal, egal, direct, secret şi liber exprimat, potrivit legii electorale. [...] Numărul deputaţilor şi al senatorilor se stabileşte prin legea electorală, în raport cu populaţia ţării."

⁴¹⁷ For an updated version of the law, see [Lege nr. 35 din 13 martie 2008](#).

of Article 5, paragraphs 2 and 3, of the above mentioned law, the number of Deputies is fixed to one Deputy for every 70 000 inhabitants, whilst the number of Senators is of one Senator for every 160 000 inhabitants.

The organization and functioning of the Chamber of Deputies and of the Senate are regulated by their own Rules of Procedure.⁴¹⁸

1.2.2. *Denomination of the members of the Romanian Parliament*

Pursuant to the provisions mentioned in paragraph 2.1., members of the Romanian Parliament are the following:

- *Deputați (Deputies),*
- *Senatori (Senators).*

1.2.3. *Date of the beginning of the term of office*

Under the terms of Article 63, paragraph 3 of the Romanian Constitution, the newly elected Parliament meets upon convening by the President of Romania, within twenty days from the elections. According to Article 70, paragraph 1 of the Constitution: "Deputies and Senators shall begin the exercise of their office on the day the Chamber whose members they are has lawfully met, on condition the election is validated and the oath is taken. The form of the oath shall be regulated by an organic law."⁴¹⁹

Chamber of Deputies

Under the terms of Article 1 of the Rules of Procedure of the Chamber of Deputies, the Chamber lawfully meets on the date and the time fixed by the President of Romania, in compliance with the provisions of the Constitution.

According to the Rules of Procedure of the Chamber of Deputies, for the validation of mandates of the newly elected Deputies the Chamber elects in its first sitting a Committee comprised of 30 Deputies, which reflects the political configuration of the Chamber of Deputies, as results from the establishment of the Parliamentary Groups. The Validation Committee elects a President, a Vice-President and a Secretary, who compose the Committee Bureau. The Validation Committee Bureau verifies the election files received from "*Biroul Electoral Central*" (Central Election Bureau). The Validation Committee draws up a report mentioning the Deputies for whom validation, invalidation, or, as the case may be, deferral of the validation of the mandate is being suggested, with a brief reasoning of the proposals for invalidation or deferral. The Chamber of Deputies rightfully convenes on the fifth day after the setting up of the Validation Committee, in order to debate the latter's report. The Chamber of Deputies is lawfully established after the validation of two thirds of the Deputies' mandates and after the Deputies in question have taken oath.⁴²⁰ Deputies who refuse to take oath are deemed invalidated. Refusal to take oath has to be ascertained by the Chairman.

⁴¹⁸ The Rules of Procedure of both the Chamber of Deputies and the Senate are available at: [Regulations of the Chamber of Deputies](#) and [Regulamentul Senatului din 24 octombrie 2005](#).

⁴¹⁹ "Deputații și senatorii intră în exercițiul mandatului la data întrunirii legale a Camerei din care fac parte, sub condiția validării alegerii și a depunerii jurământului. Jurământul se stabilește prin lege organică."

⁴²⁰ Article 11 of the Rules of Procedure of the Romanian Chamber of Deputies.

Senate

Under the terms of Article 3 of the Rules of Procedure of the Senate the newly elected Senate convenes, in compliance with Article 63(3) of the Romanian Constitution, upon notice of the President of Romania, within twenty days from the elections. The same procedure used for the validation of the mandate of Deputies is used for the validation of the mandate of the newly elected Senators. According to Article 14 of its Rules of Procedure, the Senate is legally established after the validation of three fourths of the mandates of the total number of Senators and after these ones have taken the oath.

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Pursuant to Law No 33 of 16 January 2007, on the elections for the European Parliament,⁴²¹ as subsequently amended, *Autoritatea Electorală Permanentă* (the Permanent Electoral Authority) is the Romanian authority in charge of delivering to the European Parliament the list of the names of the newly elected Romanian MEP's. It is also the competent authority that informs the European Parliament of cases of incompatibility, in accordance with Article 9(5) of the said law, as confirmed by the Permanent Representation of Romania to the European Union.⁴²²

⁴²¹ *Legea nr. 33 din 16 ianuarie 2007 privind organizarea și desfășurarea alegerilor pentru Parlamentul European*, updated version available at: [Lege nr. 33 din 16 ianuarie 2007](#).

⁴²² Email received on 5 August 2020.

2. National immunities as referred to by Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Romania, the parliamentary immunities are granted to the members of the national Parliament by Article 72 of the Constitution which reads as follows:

Article 72

(1) No Deputy or Senator shall be held judicially accountable for the votes cast or the political opinions expressed while exercising their office.

(2) The Deputies and Senators may be subject to criminal investigation, or criminally prosecuted for acts that are not connected with their votes or their political opinions expressed in the exercise of their office, but shall not be searched, detained or arrested without the consent of the Chamber they belong to, after being heard. The investigation and prosecution shall only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice shall have jurisdiction over this case.

(3) If caught in the act, Deputies or Senators may be detained and searched. The Minister of Justice shall inform without delay the president of the Chamber in question on the detainment and search. Should the notified Chamber find that there are no grounds for the detainment, it will order the annulment of the measure at once.⁴²³

2.1.2. Legislative provisions and rules of procedure

The provisions of Article 72 of the Constitution are further specified in Chapter 5 of Law No 96 of 21 April 2006 on the statute of Deputies and Senators.⁴²⁴ Detailed procedures on the parliamentary immunities are also contained in Articles 191 to 195 of the Rules of Procedure of the Chamber of Deputies and Articles 186 to 187 of the Rules of Procedure of the Senate.

⁴²³ "(1) Deputații și senatorii nu pot fi trași la răspundere juridică pentru voturile sau pentru opiniile politice exprimate în exercitarea mandatului. (2) Deputații și senatorii pot fi urmăriți și trimiși în judecată penală pentru fapte care nu au legătură cu voturile sau cu opiniile politice exprimate în exercitarea mandatului, dar nu pot fi percheziționați, reținuți sau arestați fără încuviințarea Camerei din care fac parte, după ascultarea lor. Urmărirea și trimiterea în judecată penală se pot face numai de către Parchetul de pe lângă Înalta Curte de Casație și Justiție. Competența de judecată aparține Înaltei Curți de Casație și Justiție. (3) În caz de infracțiune flagrantă, deputații sau senatorii pot fi reținuți și supuși percheziției. Ministrul justiției îl va informa neîntârziat pe președintele Camerei asupra reținerii și a percheziției. În cazul în care Camera sesizată constată că nu există temei pentru reținere, va dispune imediat revocarea acestei măsuri."

⁴²⁴ *Lege nr. 96 din 21 aprilie 2006 privind Statutul deputaților și al senatorilor*, as amended, completed and republished, available at: <http://legislatie.just.ro/Public/DetaliuDocument/71194>.

2.2. Scope and content of national parliamentary immunities

The national system of immunity represents the classical model of immunities which consist in the freedom of speech of the Member of Parliament ("non-liability"), and the protection against arrest and taking into custody ("immunity").

2.2.1. Non-liability principle (Article 72(1) of the Constitution)

Pursuant to Article 72(1) of the Constitution, members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their mandate.

This non-liability is permanent.

2.2.2. Immunity (Article 72(2) and (3) of the Constitution)

Pursuant to Article 72(2) and (3) of the Constitution, the authorisation of the Chamber to which the member belongs is needed in order to subject the member to the following measures:

- personal search, except in the case of a flagrant crime (*infractiune flagranta*);
- detention or preventive arrest, except in the case of a flagrant crime (*infractiune flagranta*).

Criminal proceedings may be initiated without prior authorisation of the Chamber. The investigation and prosecution of members of the Parliament may only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice has jurisdiction over the case.

Under the terms of Article 21 (3) of Law No 96 of 21 April 2006 on the Statute of Deputies and Senators this immunity applies only during their term of office.⁴²⁵

2.3. National authority entitled to request the immunity of a Romanian member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the Romanian members of the European Parliament. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

The waiving of the immunity of a member of the Romanian Parliament is regulated by Law 96/2006 on the Statute of Deputies and Senators and by the Rules of Procedure of the Chamber of Deputies and those of the Senate. Under these provisions⁴²⁶, *Ministrul Justiției* (the Minister of Justice) is entitled to submit to the President of the Chamber to which the member belongs a request for detaining, arrest

⁴²⁵ Article 21 (3) of Law No 96 of 21 April 2006 on the Statute of Deputies and Senators reads: "Imunitatea parlamentară începe odată cu validarea mandatului de deputat sau de senator și încetează la data încheierii mandatului, în cazurile și în condițiile prevăzute de Constituție și de prezenta lege.". In addition, according to Article 191 of the Rules of Procedure of the Chamber of Deputies, "Deputies shall enjoy parliamentary immunity from the date when the certificates attesting their election are issued, provided they are validated."

⁴²⁶ Rules of Procedure of the Chamber of Deputies, Article 193, paragraph 2. Rules of Procedure of the Senate, Article 186, paragraph 6.

or search. In the event of a flagrant crime, Deputies⁴²⁷ and Senators⁴²⁸ may be detained and subject to a search without the authorisation of the competent Chamber. The Minister of Justice shall be notified of the matter immediately. The Minister of Justice informs the President of the Chamber to which the member belongs of such detention or search, without delay. If the Chamber finds there are no grounds for detention, it can order immediate cancellation of such measure.

The competence of the Minister of Justice to request waiver of the immunity of Members of the European Parliament has been confirmed by the Permanent Representation of Romania to the European Union⁴²⁹ stating that as a general rule, the Prosecutor's Office attached to the High Court of Cassation and Justice may prosecute Members of the national Parliament or Members of the European Parliament, without any substantive or procedural impediment and as the sole body with the power to prosecute and indict.

Where the Prosecutor's Office attached to the High Court of Cassation and Justice considers it necessary to order one of the measures provided for by law (detainment, arrest or search), or where the prosecution concerns a Member of the European Parliament that is a former member of the Government with regard to acts committed in the exercise of his or her duties, it can be concluded from the interpretation of the relevant Romanian provisions that the application may be submitted to the European Parliament by the Minister of Justice, on a proposal from the Prosecutor's Office attached to the High Court of Cassation and Justice.

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⁴²⁷ Rules of Procedure of the Chamber of Deputies, Article 194, paragraph 1.

⁴²⁸ Rules of Procedure of the Senate, Article 186, paragraph 5.

⁴²⁹ Letter dated 28 June 2021.

SLOVENIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Slovene government

Constitution

The Slovenian government is formed in accordance with the constitutional provisions, in particular Article 110 of the Constitution of the Republic of Slovenia, which reads as follows: "The Government is composed of the president and ministers. Within the scope of their powers, the Government and individual ministers are independent and accountable to the National Assembly."⁴³⁰

Implementing provisions

The provisions of the Constitution are implemented by the rules laid down in the Government of the Republic of Slovenia Act,⁴³¹ and in particular its Article 10, which states that "(t)he Prime Minister and the Ministers may not simultaneously hold office in State bodies, courts, local authorities or other public office nor carry out other activities which, pursuant to the law, are not compatible with the office of a member of the Government."⁴³²

1.1.2. Denomination of the members of the Slovene government

Pursuant to Article 110 of the Constitution, members of the Slovene government are the following:

- *Predsednik vlade (Prime Minister or President of the Government),*
- *Minister (Minister).*

⁴³⁰ Article 110 of the Constitution: "Vlado sestavljajo predsednik in ministri. Vlada in posamezni ministri so v okviru svojih pristojnosti samostojni in odgovorni državnemu zboru." For an English translation, see [Constitution of the Republic of Slovenia](#).

⁴³¹ *Zakon o Vladi Republike Slovenije*, ZVRS-UPB1, official consolidated version, Uradni list RS, št. 24/2005 str. 2057, 11.3.2005, 109/2008, 55/2009 Odl.US: U-I-294/07-16, 8/201221/13, 65/14, 55/17. The Act in English is available at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

⁴³² Article 10 of the Government of the Republic of Slovenia Act "Predsednik vlade in ministri ne morejo hkrati opravljati funkcij v državnih organih, sodiščih, organih lokalnih skupnosti in drugih javnih funkcij, niti opravljati drugih dejavnosti, ki po zakonu niso združljive s funkcijo člana vlade."

1.1.3. *Date of the beginning of the term of office*

Under the terms of Article 111 of the Constitution, the Prime Minister is elected by the National Assembly by a majority vote of all deputies. Article 112 further provides that Ministers are appointed and dismissed by the National Assembly on the proposal of the Prime Minister.⁴³³

According to Article 11(3) of the Government of the Republic of Slovenia Act, "(i)t shall be deemed that the Government has assumed office when more than two thirds of the ministers have been appointed, not including the ministers without portfolio".⁴³⁴

Under Article 115 of the Constitution, "(t)he President of the Government and ministers cease to hold office when a new National Assembly convenes following elections; ministers also cease to hold office whenever the President of the Government ceases to hold office and whenever such ministers are dismissed or resign; ministers must, however, continue to perform their regular duties until the election of a new President of the Government or until the appointment of new ministers."⁴³⁵ Also, according to Article 11(4) of the Government of the Republic of Slovenia Act, "if within three months of the Government assuming office the National Assembly fails to appoint the ministers who have not yet been appointed, it shall establish that the Prime Minister and the ministers have ceased to hold office."⁴³⁶

1.2. Member of a national parliament

1.2.1. *Legal provisions on the composition of the Slovenian Parliament*

Constitution

The Slovenian Parliament is officially called the National Assembly. However, the legislative process in Slovenia also involves another body - the National Council, which under the Constitution has a limited role in the legislative procedure.⁴³⁷

The composition of the National Assembly is established by Article 80 of the Constitution, which reads as follows: "The National Assembly is composed of deputies of the citizens of Slovenia and comprises ninety deputies. Deputies are elected by universal, equal, direct, and secret voting. One deputy of the

⁴³³ Additionally, in accordance with Article 113 of the Constitution, "upon election and appointment respectively, the Prime Minister and ministers shall swear before the National Assembly the oath of office provided by Article 104."

⁴³⁴ Article 11(3) of the Government of the Republic of Slovenia Act: "Šteje se, da je vlada nastopila funkcijo, če je imenovanih več kot dve tretjini ministrov, pri čemer se ne štejejo ministri brez resorja."

⁴³⁵ Article 115 of the Constitution: "Funkcija predsednika vlade in ministrov preneha, ko se po volitvah sestane nov državni zbor, funkcija ministrov pa tudi z vsakim drugim prenehanjem funkcije predsednika vlade ter z razrešitvijo ali odstopom ministra, morajo pa opravljati tekoče posle do izvolitve novega predsednika vlade oziroma do imenovanja novih ministrov".

⁴³⁶ Article 11(4) of the Government of the Republic of Slovenia Act: "Če Državni zbor tudi v treh mesecih po nastopu funkcije vlade ne imenuje še neimenovanih ministrov, Državni zbor ugotovi, da je funkcija predsedniku vlade in ministrom prenehala."

⁴³⁷ The National Council is considered the "incomplete second chamber" since its competence in the legislative procedure is limited. It is the representative body for social, economic, professional, and local interests.

Italian and one deputy of the Hungarian national communities shall always be elected to the National Assembly. [...]."⁴³⁸

According to Article 43 of the Constitution, the right to vote shall be universal and equal. Every citizen who has attained the age of eighteen years has the right to vote and be elected. Pursuant to the first paragraph of Article 81 of the Constitution, the deputies are elected for a period of four years. Article 82 provides that deputies of the National Assembly are representatives of all the people and shall not be bound by any instructions, and that the law shall establish who may not be elected a deputy, and the incompatibility of the office of deputy with other offices and activities.

Implementing provisions

More detailed provisions concerning the composition and the organisation of the National Assembly are contained in the Rules of Procedure of the National Assembly⁴³⁹ and the Deputies Act.⁴⁴⁰ Important provisions are also laid down in the Election of Members of the European Parliament from the Republic of Slovenia Act,⁴⁴¹ Article 2 of which states that a Member of the European Parliament may not be a deputy in the National Assembly and may not perform any executive function in a local authority. Members of the European Parliament may also not perform the functions and activities that cannot be performed by a deputy in the National Assembly.

1.2.2. Denomination of the members of the Slovene Parliament

Pursuant to the provisions of the Constitution and the Rules of Procedure, members of the National Assembly are:

- *poslanec (deputy); poslanci (deputies).*

Some of the deputies perform special functions, such as that of President or Vice-President. Their denominations are the following:

- *Predsednik (President),*
- *Podpredsednik (Vice-President),*
- *Predsednik odbora (Chair of a Committee),*
- *Podpredsednik odbora (Deputy Chair of a Committee),*
- *Člani odborov (Members of Committees),*
- *Vodja poslanske skupine (Head of a Parliamentary/Deputy Group),*
- *Predsednik komisije (Chair of a commission),*
- *Podpredsednik komisije (Deputy Chair of a commission).*

⁴³⁸ Article 80 of the Constitution: "Državni zbor sestavljajo poslanci državljanov Slovenije in šteje 90 poslancev. Poslanci se volijo s splošnim, enakim, neposrednim in tajnim glasovanjem. V Državni zbor se vedno izvoli po en poslanec italijanske in madžarske narodne skupnosti. [...]"

⁴³⁹ *Poslovnik Državnega zbora - Uradno prečiščeno besedilo (PoDZ-1-UPB1)*, Uradni list RS št. 92/07str. 12284, 10. 10. 2007, **105/10**, **80/13** in **38/17**.

⁴⁴⁰ *Zakon o poslancih - Uradno prečiščeno besedilo (ZPos-UPB2)*, Uradni list RS 112/2005, str. 12020, 15. 12. 2005, 46/2006 - Skl. US, 33/2007 - Odl. US, 109/2008, 39/2011, 48/2012. Deputies Act in English available at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi> .

⁴⁴¹ *Zakon o volitvah poslancev iz Republike Slovenije v Evropski parlament - Uradno prečiščeno besedilo (ZVPEP-UPB1)*, Uradni list RS 40/04 str. 4685, 20. 04. 2004, 109/2009, 9/14 in 59/17. Election of Members of the European Parliament from the Republic of Slovenia Act available in English: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi> .

1.2.3. *Date of the beginning of the term of office*

Under the third paragraph of Article 81 of the Constitution, the first session of the new National Assembly shall be called by the President of the Republic no later than twenty days after the election. According to Article 9 of the Rules of Procedure, the National Assembly is constituted at the first session at which the mandates of more than half of the deputies are confirmed.⁴⁴² According to Article 6 of the Deputies Act, a candidate obtains his or her mandate on the day of the election, but begins to exercise it on the day of the confirmation of the mandate by the National Assembly.

1.3. Member of the National Council of the Republic of Slovenia

According to the Constitution, the National Council of the Republic of Slovenia is the representative body for social, economic, professional and local interests. It is composed of representatives of functional interests (social, economic, professional) and representatives of local interests (territorial interests).

It has 40 members:

- *4 representatives of employers,*
- *4 representatives of employees,*
- *4 representatives of farmers, crafts and trades, and independent professions,*
- *6 representatives of non-commercial fields,*
- *22 representatives of local interests.*

The term of office of members of the National Council is five years. National Council Act⁴⁴³ regulates the election to and organisation of the National Council. As it stems from Article 1, Members are elected at indirect elections held within interest organisations or local communities by electoral bodies (electors).

According to Article 2, every citizen of Slovenia who has reached the age of 18 has the right to vote and to be elected as a member of the National Council. National Council members are not elected on the basis of general suffrage but of special suffrage, which is determined by law for each interest group and requires membership in a specific interest group or local community.

The right to vote and to be elected for a member of the National Council is held by:

- *For representatives of employers, employees, farmers, crafts and trades, independent professions and non-commercial activities (functional interests), this right is held by people who perform or are employed in a relevant activity in Slovenia. Non-nationals who perform or are employed in a relevant activity in Slovenia elect members of the National Council from these interest groups under the same conditions as Slovenian citizens. However, they do not have a right to be elected to the National Council themselves;*
- *For representatives of local interests, this right is held by those with a permanent residence in the constituency. Member of the town council, who is a citizen of any other EU state has a right to vote, but cannot be elected to the National Council.*

⁴⁴² The procedure leading to confirmation of the mandates is set out in Article 13 of the Rules of Procedure.

⁴⁴³ Zakon o državnem svetu (ZDSve) - Uradno prečiščeno besedilo (ZDSve-UPB1), Uradni list RS, št. 100/05, str. 10474, 11.3.2005, 95/09 – odl. US, 21/13 – ZFDO-F in 81/18 – odl. US.

Under the principle of relative majority, the candidate with the most number of votes is elected. If two or more candidates receive the same number of votes, lots are drawn to decide who is elected.

Elections to the National Council are called by the President of the National Assembly. General elections are called not earlier than 135 days and not later than 75 days before the end of the five-year term of office. The period between the calling of elections and election day may not exceed 90 days or be shorter than 60 days. By-elections at which only individual members of the National Council are elected whose term of office is terminated before the end of the National Council's five-year mandate are held not later than 75 days after the termination of the member's term of office.

1.3.1. Election of representatives of functional interests

Common and specific provisions on election procedure are defined in Articles 11 - 42 of the National Council Act. The election of 18 members - representatives of functional interests - is carried out by electors sitting on electoral boards or by members of an interest organisation when election is taking place in only one organisation. Representatives of the electorate (electors) are elected by interest organisations in accordance with their own rules.

National Council candidates are chosen by interest organisations in accordance with their own rules and the members are elected in accordance with the rules on election procedure in the National Council Act:

- *four members - representatives of employers are elected by chambers of commerce and industry and employers' associations organized in the territory of the state,*
- *four members - representatives of employees are elected by representative trade Unions organized in the territory of the state,*
- *four members - representatives of farmers, crafts and trades and independent professions are elected as follows:*
 - *two representatives of farmers are elected by the professional farmers' organisation organized in the territory of the state,*
 - *one representative of crafts and trades is elected by the professional crafts and trade organisation organized in the territory of the state,*
 - *one representative of independent professions is elected by the professional organisation of other independent professions organised in the territory of the state;*
- *six members - representatives of non-commercial fields are elected in the following manner:*
 - *one representative of universities, colleges and junior colleges is elected by universities, colleges and junior colleges,*
 - *one representative of care and education is elected by professional organisations of the teaching staff,*
 - *one representative of research activities is elected by professional research organisations,*
 - *one representative of culture and sports is elected by professional organisations of cultural workers and workers in sports,*
 - *one representative of health care is elected by professional organisations of medical professionals and medical associates,*
 - *one representative of social care is elected by professional organisations of professionals in social care.*

1.3.2. Election of representatives of local interests

Local communities elect 22 members of the National Council to serve as representatives of local interests. No more than 22 constituency, which may cover one or more local communities, are formed and defined by law for the election of representatives of local interests. Slovenia is divided into 22 constituency. These are contiguous areas in terms of territory, history and interest.

An electoral body is formed for each constituency, comprising of:

- *members of the representative local community body, if the National Council members are elected in constituency covering a single local community;*
- *elected representatives of local communities if the National Council members are elected in constituency covering two or more local communities; representatives of local communities are elected by their representative bodies.*

Representative local community bodies (municipal councils) adopt rules applying to the election of their representatives to electoral bodies and the election of candidates to the National Council. Municipal councils elect electors and candidates for the National Council by secret ballot.

Under the National Council Act, every local community (municipality) may nominate one National Council candidate. Each municipality has one place in the electoral body regardless of number of inhabitants, plus one further place for every additional 5,000 inhabitants.

1.3.3. Implementing provisions

More detailed provisions concerning the composition and the organisation of the National Council are contained in its Rules of Procedure and the National Council Act. In accordance with Article 61 of the National Council Act, a Member of the National Council may not be a deputy in the National Assembly at the same time, nor may perform any function in state bodies.⁴⁴⁴

1.3.4. Denomination of the members of the National Council

Pursuant to the provisions of the Rules of Procedure, members of the National Council are:

- *državni svetnik (national councillor); državni svetniki (national councillors).*

Some of the national councillors perform special functions, such as that of President or Vice-President. Their denominations are the following:

- *Predsednik (President),*
- *Podpredsednik (Vice-President),*
- *Predsednik komisije (Chairman of Commission),*
- *Podpredsednik komisije (Vice Chairman of Commission),*
- *Člani komisij (Members of Commissions),*
- *Vodja interesne skupine (Head of Interest group),*
- *Člani interesnih skupin (Members of Interest groups).*

⁴⁴⁴ Article 61 of the National Council Act: "Član državnega sveta ne sme biti hkrati poslanec državnega zbora niti ne sme opravljati druge funkcije v državnih organih."

1.3.5. Date of the beginning of the term of office

Based on the Article 48 of National Council Act the first session of the National Council shall be called by the President of the National Assembly no later than twenty days after the elections. According to Article 5 of the Rules of the Procedure the National Council is constituted at the first session at which the mandates of more than half of the members are confirmed.

1.3.6. Immunity

The legal bases of parliamentary immunity are the Constitution of the Republic of Slovenia, the National Council Act and the Rules of the Procedure of the National Council⁴⁴⁵.

The Constitution of the Republic of Slovenia states in Article 100:

"Members of the National Council enjoy the same immunity as deputies.

Immunity is decided upon by the National Council."

The National Council Act states in Article 60:

"A member of the National Council shall enjoy immunity.

A member of the National Council shall not be criminally liable for any opinion expressed or vote cast at sessions of the National Council or its working bodies.

No member of the National Council may be detained nor, where such member claims immunity, may criminal proceedings be initiated against him/her without the permission of the National Council, except where such member has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed.

Following a proposal from the Mandates and Immunity Commission, the National Council shall take a decision on the request of the competent national body to obtain an authorization from the preceding paragraph no later than 30 days from the date of filing such request.

The National Council may also grant immunity to a member of the National Council who has not claimed such immunity or who has been apprehended committing such criminal offence as referred to in paragraph three of this Article.

Rules of Procedure of the National Council state in Articles 85–92:

"Where there are grounds to order the detention of a member of the National Council or where there are grounds to initiate criminal proceedings against a member of the National Council who claims immunity, the competent state authority sends the request for permission to detain or initiate criminal proceedings to the President of the National Council.

In the event a member of the National Council has been detained or criminal proceedings have been initiated against him because he has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed, the competent state authority immediately sends to the President of the National Council the notification of detention or of the initiation of criminal proceedings. The competent state authority sends the notification of the initiation of criminal

⁴⁴⁵ Poslovnik Državnega sveta (PoDS-1), Uradni list RS, št. 70/08, str. 9597, 11.7.2008, 73/09, 101/10, 6/14 in 26/15).

proceedings to the President of the National Council also when the member of the National Council has not claimed immunity.

The President of the National Council immediately sends the request or the notification to the Mandates and Immunity Commission.

In considering the request or the notification, the Mandates and Immunity Commission establishes whether the granting of immunity is indispensable for performing the office of a member of the National Council. As a general rule, it is deemed that the granting of immunity may be indispensable for performing the office of member of the National Council in the event the competent state authority intends to detain or has already detained the member of the National Council, but not where it intends to initiate or has already initiated criminal proceedings against such member of the National Council.

The Mandates and Immunity Commission may only exceptionally and for particularly justified reasons propose to the National Council that it subsequently grant immunity to a member of the National Council who has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed or to a member of the National Council against whom criminal proceedings have been initiated because he has not claimed immunity. The Commission must thereby also take into consideration the reasons for which the member of the National Council has not claimed immunity.

In considering the request or the notification, the Mandates and Immunity Commission does not evaluate the evidence and does not judge the state of facts regarding the alleged criminal offence or whether the member of the National Council is criminally liable.

The Mandates and Immunity Commission discusses the request or the notification at a closed session.

The Mandates and Immunity Commission examines the request or the notification and proposes that the National Council grant or not grant immunity to the member of the National Council.

The National Council decides to grant or not to grant immunity to the member of the National Council without debate.

On the proposal of the Mandates and Immunity Commission or an interest group, the National Council may decide that decision-making thereon be carried out at a closed session. At such closed session, a debate is possible.

In deciding whether to grant or not to grant immunity to the member of the National Council, the National Council takes into consideration the criteria referred to above.

In every case involving a member of the National who has been detained the Mandates and Immunity Commission decides immediately whether to grant immunity.

At its next session the National Council upholds, or revokes and alters the decision of the Mandates and Immunity Commission.

The National Council or, in the cases referred to above, the Mandates and Immunity Commission immediately communicates its decision to grant or not to grant immunity to the member of the National Council to the competent state authority.

When the National Council or the Mandates and Immunity Commission grants permission to detain or initiate criminal proceedings against a member of the National Council, the member of the National Council may be detained or criminal proceedings may be initiated against him only for the criminal offence for which permission has been granted."

1.4. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

The Law on the Election of Members of the European Parliament from the Republic of Slovenia (ZVPEP)⁴⁴⁶ provides, in Article 9, that "(i)n respect of the position of a Member, the acquisition and termination of a Member's mandate, the incompatibility of the office of Member with the holding of other office, parliamentary immunity, the material and other conditions for the work of a Member, the rights of a Member following the end of the term of office and the limitations and responsibilities connected with the office of Member, the provisions of European Union regulations shall apply; in respect of issues not regulated by European Union regulations, the provisions of the Deputies Act and the provisions of other laws applying to Deputies of the National Assembly shall apply *mutatis mutandis*." This has been confirmed in an official letter from the Permanent Representation of the Republic of Slovenia to the EU sent to the President of the European Parliament.⁴⁴⁷

In accordance with Article 23 of the ZVPEP, the election of Members to the European Parliament is confirmed by the National Assembly. Under the terms of Article 24 of the same law, *Predsednik* (the President of the National Assembly) notifies the President of the European Parliament of the results of the elections to the European Parliament. The President of the National Assembly is also responsible for notifying the President of the European Parliament when a Member ceases to hold office and of who is elected in place of a Member who ceases to hold office.

The incompatibility of the office of a member of parliament is laid down in the Deputies Act (ZPos)⁴⁴⁸ and the Integrity and Prevention of Corruption Act (ZIntPK)⁴⁴⁹. According to the above-mentioned official letter, taking into account the relevant provisions of the ZPos, at the same time as it confirms the election of a Member of the European Parliament, the National Assembly establishes that the elected Member ceases to hold any other incompatible office, where such office is within the 'competence' of the National Assembly (e.g. a Deputy of the National Assembly, a Minister or other officials elected or appointed by the National Assembly). The President of the European Parliament is notified of this by the President of the National Assembly, generally together with the decision confirming the election of the Member to the European Parliament.

The above-mentioned official letter⁴⁵⁰ also states that in other cases, the establishment of incompatibility of an office falls within the competence of other institutions (e.g. if an elected Member of the European Parliament holds the office of State Secretary, the incompatibility in question is established by the Government), or, in accordance with ZIntPK, it is also within the competence of the Commission for the Prevention of Corruption (e.g. where the office is incompatible with the exercise of a gainful activity or in the case of a ban on membership of and activities in persons governed by public or private law).

⁴⁴⁶ Official Gazette RS, No. 96/02 ff.

⁴⁴⁷ Letter dated 10 July 2020.

⁴⁴⁸ Official Gazette RS, no 48/92 ff.

⁴⁴⁹ Official Gazette RS, no 45/10 in ff.

⁴⁵⁰ Letter dated 10 July 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Slovenia the parliamentary immunities are granted to the members of the National Assembly by Article 83.

Article 83

Immunity of Deputies

"No deputy of the National Assembly shall be criminally liable for any opinion expressed or vote cast at sessions of the National Assembly or its working bodies.

No deputy may be detained nor, where such deputy claims immunity, may criminal proceedings be initiated against him without the permission of the National Assembly, except where such deputy has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed. The National Assembly may also grant immunity to a deputy who has not claimed such immunity or who has been apprehended committing such criminal offence as referred to in the preceding paragraph".

2.1.2. Implementing provisions

The implementing rules concerning immunities (procedure regarding immunity) are found in Articles 203 - 210 of the Rules of Procedure of the National Assembly. Article 203 of the Rules makes clear that a deputy enjoys immunity "from the time of the confirmation of his mandate until the expiry of his term."⁴⁵¹ Additionally, the Deputies Act contains provisions on immunity in Articles 21 and 22; in Article 22 states that the National Assembly decides on the application within 30 days from its receipt, following the recommendation of the Commission for Public Office and Elections⁴⁵².

2.2. Scope and content of national parliamentary immunities

The national system of immunity represents the classical model of immunities, which consists in the freedom of speech of the Member of the Parliament ("non-liability"), and the protection against arrest, taking into the custody and prosecution ("immunity").

⁴⁵¹ Article 203 of the Rules of Procedure: "A deputy enjoys immunity from the time of the confirmation of his election until the expiry of his term."

⁴⁵² From Article 22 of the Deputies Act: "The request of the competent state body for the permission referred to in the preceding paragraph shall be decided on by the National Assembly on the proposal of the commission for public office and elections no later than 30 days from the day of lodging the request (...)."

2.2.1. *Non-liability principle (Article 83 (1) of the Constitution)*

Pursuant to the first paragraph of Article 83 of the Constitution, repeated in Article 21 of the Deputies Act, a deputy cannot be made criminally liable because of the opinions expressed or votes cast in the National Assembly or its working bodies. In accordance with Articles 76 to 79 and in particular 77 of the Rules of Procedure, however, a deputy may be issued a warning if he speaks without having been given the floor by the chairperson, if he interrupts another speaker, if he speaks about an issue which is not on the agenda, or if he otherwise violates order at the session and the provisions of the Rules of Procedure; a deputy may be, after two warnings and continuous violations, withdrawn the floor or even expelled from the session or part of the session.

This non-liability is permanent: it does not end with the end of the mandate as Member of the Parliament.

2.2.2. *Immunity (Article 83 (2) of the Constitution)*

According to the second paragraph of Article 83 of the Constitution, the permission of the National Assembly is necessary in order to detain or initiate criminal proceedings against a deputy. Nevertheless, no such permission is required where a deputy is caught in the act of committing a crime for which the prescribed penalty is imprisonment of five years or more. In principle, the deputy concerned must claim immunity in order to be able to benefit from it. However, the National Assembly has the power to grant immunity even to a deputy who has not claimed it or who has been caught *in flagrante delicto* for which prescribed penalty is imprisonment of 5 years or more.

A deputy enjoys this immunity from the time of the confirmation of his election until the expiry of his term⁴⁵³.

2.3. *National authority entitled to request the immunity of a Slovenian member of the European Parliament to be waived*

With respect to the Members of the European Parliament, as mentioned above in point 1.4, Article 9 of the Act on the Election of Members of the European Parliament from the Republic of Slovenia provides that, concerning immunities, the provisions of EU regulations shall apply; regarding issues that are not regulated by EU regulations, the provisions of the Deputies Act and the provisions of other Acts applicable to deputies of the National Assembly shall apply, *mutatis mutandis*.

Article 22 of the Deputies Act provides that no deputy may be detained, nor where such deputy claims immunity may criminal proceedings be initiated against him or her without the permission of the National Assembly, except where such deputy has been apprehended committing a criminal offence for which a prison sentence of more than five years is prescribed. The request of the competent state body for the permission shall be decided on by the National Assembly on the proposal of the commission for public office and elections no later than 30 days from the day of lodging the request.

⁴⁵³ Article 203 of the Rules of Procedure: "A deputy enjoys immunity from the time of the confirmation of his election until the expiry of his term."

The procedure regarding the immunity of Members is regulated in more detail by section 10 of chapter IV of the Rules of Procedure of the National Assembly. Article 204⁴⁵⁴ of the Rules of Procedure of the National Assembly provides that, where there are grounds to order the detention of a deputy or to initiate criminal proceedings against a deputy who claims immunity, the "competent state authority" sends the request for permission to detain or initiate criminal proceedings to the President of the National Assembly. The case is considered by the competent parliamentary committee (the Commission for Public Office and Elections), which makes a proposal to the National Assembly. The latter decides to grant or not to grant immunity to the deputy without debate or explanation of the vote, taking into consideration the criteria set out in Article 205 of the Rules. The "competent state authority" in such cases is the *Državno tožilstvo* (Public Prosecutor's Office) or the competent court.

According to the Criminal Procedure Act, the authorisation to initiate criminal proceedings or to order detention may be requested by the public prosecutor, and in cases where the public prosecutor does not conduct criminal proceedings, the court (investigating magistrate). The competent national authority in the Republic of Slovenia is therefore the public prosecutor's office or the competent court in the Republic of Slovenia.

The competent national body for notifying the President of the National Assembly in matters relating to the immunity of Deputies of the National Assembly is the court or the State Prosecutor's Office. In light of the Article 9 of the ZVPEP quoted above, the same applies *mutatis mutandis* to Members of the European Parliament. This has been confirmed in the above-mentioned letter sent by the Permanent Representation of the Republic of Slovenia to the President of the European Parliament.⁴⁵⁵

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⁴⁵⁴ Article 204 of the Rules of Procedure: "Where there are grounds to order the detention of a deputy or where there are grounds to initiate criminal proceedings against a deputy who claims immunity, the competent state authority sends the request for permission to detain or initiate criminal proceedings to the President of the National Assembly. In the event a deputy has been detained or criminal proceedings have been initiated against him because he has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed, the competent state authority immediately sends to the President of the National Assembly the notification of detention or of the initiation of criminal proceedings. The competent state authority sends the notification of the initiation of criminal proceedings to the President of the National Assembly also when the deputy has not claimed immunity".

⁴⁵⁵ Letter dated 10 July 2020.

SLOVAKIA

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Slovak government

Constitution

The composition of the Slovak government is established by the first paragraph of Article 109 of the Constitution, which reads as follows: "The Government shall consist of the prime minister, deputy prime ministers, and ministers."⁴⁵⁶

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: *Zákon o organizácii činnosti vlády a organizácii ústrednej štátnej správy* (Law No 575/2001 on the activity of the government and on the organisation of the Ministries), in Sections 1, 2, 3, 4 and 5.

1.1.2. Denomination of the members of the Slovak government

Pursuant to the provisions mentioned in paragraph 1.1, members of the Slovak government are the following:

- *Predseda/Predseda vlád Slovenskej republiky (Prime Minister),*
- *Podpredseda/Podpredseda vlád Slovenskej republiky (Deputy Prime Minister); Podpredsedovia/Podpredsedníčky vlád Slovenskej republiky (Deputy Prime Ministers),*
- *Minister/Ministerka (Minister); Ministri/Ministerky (Ministers).*

1.1.3. Date of the beginning of the term of office

There is no specific rule clarifying the date when the term of office of the members of the Slovak Government begins. The setting up of the government is regulated by the Constitution. In particular, under Articles 110 and 111 of the Constitution, the prime minister is appointed and recalled by the president of the Slovak Republic; on a proposal of the prime minister, the president of the Republic also appoints and recalls other members of the Government and entrusts them with the management of ministries. Under the terms of Article 112, Members of the Government are sworn in by the president of the Slovak Republic. According to Article 113 of the Constitution, within 30 days after its

⁴⁵⁶ "Vláda sa skladá z predsedu, podpredsedov a ministrov". The text of the Constitution and its English translation are available at: <https://www.ustavnysud.sk/ustava-slovenskej-republiky>.

appointment, the Government is obliged to appear before the National Council of the Slovak Republic, to present its manifesto, and to ask for a vote of confidence.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Slovak Parliament

Constitution

The Slovak Parliament is denominated *Národná rada* (the National Council). According to Article 72 of the Constitution, the National Council of the Slovak Republic is the sole constituent and legislative body of the Slovak Republic. The composition of the National Council is laid down by the first paragraph of Article 73 of the Constitution, which reads as follows: "The National Council of the Slovak Republic has 150 deputies who are elected for a four-year period."⁴⁵⁷

Implementing provisions

More detailed provisions concerning the composition and the organisation of the Parliament are contained in Act No 350/1996 Coll. on the Rules of Procedure of the Slovak National Council, as amended.⁴⁵⁸

1.2.2. Denomination of the members of the Slovak Parliament

Pursuant to the provisions mentioned in paragraph 2.1., members of the Slovak parliament are the following:

- *Predseda/Predsedníčka Národnej rady Slovenskej republiky (Speaker of the National Council of the Slovak Republic),*
- *Podpredseda/Podpredsedníčka Národnej rady Slovenskej republiky (Deputy Speaker of the National Council of the Slovak Republic); Podpredsedovia/Podpredsedníčky Národnej rady Slovenskej republiky (Deputy Speakers of the National Council of the Slovak Republic),*
- *Predseda/Predsedníčka výboru Národnej rady Slovenskej republiky (Chairman/Chairwoman of Parliamentary Committees); Predsedovia/Predsedníčky výborov Národnej rady Slovenskej republiky (Chairmen/Chairwomen of Parliamentary Committees),*
- *Člen/Členka výboru (Member of Parliamentary Committee); Členovia výborov (Members of Parliamentary Committees),*
- *Poslanec/Poslankyňa (Member of Parliament); Poslanci/Poslankyne (Members of Parliament).*

1.2.3. Date of the beginning of the term of office

Under the terms of Article 5 of the Act on Rules of Procedure of the National Council of the Slovak Republic, "The member of parliament gains his rights and obligations on election. The Member of Parliament assumes his/her function and commences to exercise his/ her mandate on taking the oath".

⁴⁵⁷ Article 73 (1): "Národná rada Slovenskej republiky má 150 poslancov, ktorí sú volení na štyri roky."

⁴⁵⁸ The English translation of the Act on Rules of Procedure of the Slovak National Council is available at: <https://secure.ipex.eu/IPEXL-WEB/parliaments/institution/skrad.do>.
In Slovak: https://www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/zd_rokovaci-poriadok-20190821.pdf.

Article 75(2) of the Constitution further specifies: "Any refusal to take the oath or any reservation thereof shall result in the loss of the mandate."

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

No specific rules have been adopted with regard to the national authority competent to communicate cases of incompatibility to the European Parliament.

By means of Section 95(3) of Act no. 180/2014 Coll. on the on the conditions governing the exercise of the right to vote and amending certain acts, the Central Electoral Commission shall make a record of the election results and submit it to the Speaker of the National Council of the Slovak Republic, who shall submit the election results to the European Parliament. However, neither authority is competent to examine whether the elected candidate performs any other duties or holds a function incompatible with the office of a Member of the European Parliament. This has also been confirmed in an official letter from the Permanent Representation of the Slovak Republic to the President of the European Parliament⁴⁵⁹, according to which the President of the National Council of the Slovak Republic is responsible for the notification of the entry of substitutes to the vacant seats of the Members of the European Parliament and of the results of elections to the European Parliament held in the territory of the Slovak Republic. The same letter states that "(t)he incompatibility of the functions of Members of the National Council of the Slovak Republic and Members of the Government of the Slovak Republic with the performance of the functions of a Member of the European Parliament is being monitored. In the event that an incompatibility of functions is identified, and provided that no change has occurred in the Slovak authorities, such an incompatibility would be notified to the President of the European Parliament".

⁴⁵⁹ Letter dated 25 June 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Slovakia the parliamentary immunities are granted to the members of the national Parliament by Articles 78 and 79 of the Constitution. Pursuant to legislative changes made during the fifth and sixth parliamentary terms, Members of the National Council of the Slovak Republic do not enjoy immunity from administrative or criminal proceedings. Article 78 of the Constitution of the Slovak Republic grants an indemnity to Members for statements made in the National Council of the Slovak Republic or its body in the performance of their function.

Article 78

- (1) A Member of Parliament may not be subject to legal proceedings for his voting in the National Council of the Slovak Republic, or its bodies; this applies also after the termination of his mandate.
- (2) For statements made in the National Council of the Slovak Republic, or its body, while discharging the function of a Member of Parliament, a Member of Parliament may not be subject to criminal proceedings; this applies also after the termination of his mandate. A Member of Parliament is subject to the disciplinary powers of the National Council of the Slovak Republic.
- (3) A Member of Parliament cannot be taken into custody without the consent of the National Council of the Slovak Republic.
- (4) If a Member of Parliament has been caught and detained while committing a criminal act, the relevant authority is obliged to report this immediately to the Speaker of the National Council of the Slovak Republic and the Chairperson of the Mandate and Immunity Committee of the National Council. If the Mandate and Immunity Committee of the National Council of the Slovak Republic does not give its consent to the detainment, the Member of Parliament must be released immediately.
- (5) If a Member of Parliament is in custody, his mandate does not terminate, it is only not exercised.⁴⁶⁰

⁴⁶⁰ Article 78, as amended, provides as follows: "Čl.78

- (1) Za hlasovanie v Národnej rade Slovenskej republiky alebo v jej výboroch nemožno poslanca stíhať, a to ani po zániku jeho mandátu.
- (2) Za výroky pri výkone funkcie poslanca prednesené v Národnej rade Slovenskej republiky alebo v jej orgáne nemožno poslanca trestne stíhať, a to ani po zániku jeho mandátu. Poslanec podlieha disciplinárnej právomoci Národnej rady Slovenskej republiky.
- (3) Poslanca nemožno vziať do väzby bez súhlasu Národnej rady Slovenskej republiky.
- (4) Ak bol poslanec pristihnutý a zadržaný pri trestnom čine, príslušný orgán je povinný to ihneď oznámiť predsedovi Národnej rady Slovenskej republiky a predsedovi Mandátového a imunitného výboru Národnej rady Slovenskej republiky. Ak mandátový a imunitný výbor Národnej rady Slovenskej republiky následný súhlas na zadržanie nedá, poslanec musí byť ihneď prepustený.
- (5) Ak je poslanec vo výkone väzby, jeho mandát nezaniká, iba sa neuplatňuje."

Article 79

A deputy may refuse to testify in matters about which he learned while discharging his office, even after he ceases to be a deputy.

2.1.2. Implementing provisions

The implementing rules of Articles 78 and 79 of the Constitution are contained in the Rules of Procedure of the National Council, as amended. Additional implementing rules may be found in Act no. 372/1990 Coll. on Offences (which deals with non-criminal offences) and in Act no. 300/2005 Coll. Criminal Code (which deals with criminal offences).

2.2. Scope and content of national parliamentary immunities

The system of immunity represents the classical model of immunities which consists in the freedom of speech of the Member of the Parliament ("non-liability"), and the protection against arrest and taking into custody ("immunity"). Since September 2012, after Parliament passed the necessary amendments to the Constitution and the Criminal Code, the necessity of prior approval by National council of criminal prosecution was abolished. With exception of proceedings concerning statements and voting during their mandate, Slovak Members of Parliament hence no longer enjoy immunity from criminal prosecution.

2.2.1. Non-liability principle (Article 78(1) and (2) of the Constitution)

Pursuant to Article 78(1) of the Constitution, a deputy cannot be subject to legal proceedings for his voting in the National Council of the Slovak Republic or its bodies; this rule continues to apply even after the end of the Member's mandate. Moreover, a deputy may not be subject to criminal proceedings, and is only answerable to the disciplinary powers of the National Council, for statements made in the National Council or its bodies in the exercise of his/her mandate.

Pursuant to Section 135 of the Rules of Procedure of the National Council, each Member may be subjected to the disciplinary powers of the Council for:

- *statements made during the performance of a Member's functions in the National Council or any of its bodies;*
- *breaches of the ban on voting for another Member [as provided by Section 39 (6) of the same Rules];*
- *major breaches of the Member's oath;*
- *breaches of the Member's Code of Ethics;*
- *disturbance of order at the National Council meeting [as provided by Section 32 of the same Rules].*

2.2.2. Immunity (Article 78(3) and (4) of the Constitution)

Pursuant to Article 78(3) and (4) of the Constitution, the authorisation of the National Council is needed in order to take a member into custody or to maintain him/her in detention, if arrested after being caught *in flagrante delicto*. In the latter case, the relevant authority is obliged to report this immediately to the Speaker of the National Council of the Slovak Republic and to the Chairperson of the Mandate and Immunity Committee. Unless the Mandate and Immunity Committee of the National Council of

the Slovak Republic gives its consent to the detention, the Member of Parliament must be released immediately. This limited immunity applies only during the mandate as a Member of Parliament.

Deputies also have the right to refuse to testify in matters about which they learned while discharging their office, even after they cease to be deputies, in accordance with Article 79 of the Constitution.

2.3. National authority entitled to request the immunity of a Slovak member of the European Parliament to be waived

Under Act No. 301/2005 Coll., as amended, only the Prosecutor has the right to request the immunity of Members of Parliament to be waived with respect to their detention.

According to an official letter sent to the European Parliament by the Head of the Bureau of the National Council of the Slovak Republic,⁴⁶¹ which states that the competent authority for making such a request shall therefore be the General Prosecutor.

§ § §

⁴⁶¹ Letter dated 2 October 2020.

FINLAND

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Finnish government

Constitution

The composition of the Finnish Government is set out in Sections 60 and 61 of the Finnish Constitution⁴⁶² (*perustuslaki, grundlag*), which provide as follows:

Section 60

The Government consists of the Prime Minister and the necessary number of Ministers. The Ministers shall be Finnish citizens known to be honest and competent.

The Ministers are responsible before the Parliament for their actions in office. Every Minister participating in the consideration of a matter in a Government meeting is responsible for any decision made, unless he or she has expressed an objection that has been entered in the minutes.

Section 61

The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister.

Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political programme and composition of the Government. On the basis of the outcome of these negotiations, and after having heard the Speaker of the Parliament and the parliamentary groups, the President informs the Parliament of the nominee for Prime Minister. The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament.

If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected.

In practice though, the negotiations for the formation of government normally are achieved, the programme set and the ministers chosen by their group and party bodies before the vote on the person of prime minister takes place in parliament. Hence, the vote, when it intervenes, in reality is a vote on the confidence in the whole government, which reinforces parliamentarism compared to the letter of the Constitution.

⁴⁶² For the Constitution of Finland, see, in Finnish, [Suomen Perustuslaki](#); in Swedish, [Finlands grundlag](#); and in English (unofficial translation), [The Constitution of Finland](#).

The Parliament shall be in session when the Government is being appointed and when the composition of the Government is being essentially altered.

Implementing provisions

There are no specific provisions for the composition of the Finnish government.⁴⁶³ Ministers need not necessarily be MPs though they normally are.

1.1.2. Denomination of the members of the Finnish government

Members of the government are called:

- *pääministeri, statsminister (Prime Minister),*
- *ministeri, minister (Minister)*

1.1.3. Date of the beginning of the term of office

The term of office begins as soon as the President appoints a new government (Constitution, Section 61).

1.2. Member of a national parliament

1.2.1 Legal provisions on the composition of the Finnish Parliament

Constitution

The composition of the Finnish Parliament is set out in Sections 24 and 25 of the Finnish Constitution, which provide as follows:

Section 24

The Parliament is unicameral. It consists of two hundred Representatives, who are elected for a term of four years at a time.

The term of the Parliament begins when the results of the parliamentary elections have been confirmed and lasts until the next parliamentary elections have been held.

Section 25

The Representatives shall be elected by a direct, proportional and secret vote. Every citizen who has the right to vote has equal suffrage in the elections.

For the parliamentary elections, the country shall be divided, on the basis of the number of Finnish citizens, into at least twelve and at most eighteen constituencies. In addition, the Åland Islands shall form their own constituency for the election of one Representative.

⁴⁶³ The composition of the current Government of Finland is available at: <http://valtioneuvosto.fi/hallitus/jasenet/en.jsp>.

The right to nominate candidates in parliamentary elections belongs to registered political parties and, to associations founded to this effect by at least 100 electors in the constituency (Electoral Act, *vaalilaki, vallag*) 714/1998⁴⁶⁴, Section 119).

In addition, Section 28.1 of the Constitution and Section 77 of The Parliament's Rules of Procedure contain provisions on those Representatives who become Members of the European Parliament:

Constitution

Section 28.1

The office of a Representative is suspended for the time during which the Representative is serving as a Member of the European Parliament. During that time a deputy of the Representative shall replace the Representative.

The Parliament's Rules of Procedure

Section 77⁴⁶⁵

A Representative who has been elected as a Member of the European Parliament shall notify the Speaker whether he or she will choose to serve as a Representative or whether he or she will serve as a Member of the European Parliament. After an election to the European Parliament, the notification shall be made before the European Parliament convenes in its first plenary session. After parliamentary elections, the notification shall be made at the latest at noon on the third day after the scrutiny of the Representative's credentials. If the Representative has chosen to serve as a Member of the European Parliament, his or her office of Representative shall be suspended as from the date when the credentials of the substitute Representative have been examined.

Implementing provisions

The Electoral Act provides in more detail for conduct of elections.

1.2.2. Denomination of the members of the Finnish Parliament

Members of the Finnish Parliament are referred to as:

- *kansanedustaja, riksdagsledamot (Member of Parliament)*

1.2.3. Date of the beginning of the term of office

The term of the Parliament begins when the results of the parliamentary elections have been confirmed and lasts until the next parliamentary elections have been held (Constitution, Section 24).

⁴⁶⁴ For the text of the Electoral Act (No 714/1998) in Finnish, see [Vaalilaki](#), and in Swedish, see [Vallag](#). For an English unofficial translation including amendments up to Act No 361/2016, see [Election Act](#).

⁴⁶⁵ See [Eduskunnan työjärjestys](#).

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

The national authority competent to communicate both the cases of incompatibility to the European Parliament and the names of the elected MEPs entitled to take a vacant seat is the Ministry of Justice (*oikeusministeriö, justitieministeriet*). These notifications are dealt with by its Electoral Administration department, as confirmed in an official letter to the President of the European Parliament from the Permanent Presentation of Finland to the European Union⁴⁶⁶.

⁴⁶⁶ Letter dated 17 June 2020.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

Members of Parliament are basically immune against charges for their parliamentary activity. A very high threshold (83 per cent of votes cast) is required to lift this immunity. Concerning charges for common law offences, they do not however enjoy immunity but may not, for offences punishable with prison for less than six months, be arrested or taken into custody on remand unless Parliament by simple majority consents to such a coercive measure (Constitution, Section 30).

Section 30

A Representative shall not be prevented from carrying out his or her duties as a Representative.

A Representative shall not be charged in a court of law nor be deprived of liberty owing to opinions expressed by the Representative in the Parliament or owing to conduct in the consideration of a matter, unless the Parliament has consented to the same by a decision supported by at least five sixths of the votes cast.

If a Representative has been arrested or detained, the Speaker of the Parliament shall be immediately notified of this. A Representative shall not be arrested or detained before the commencement of a trial without the consent of the Parliament, unless he or she is for substantial reasons suspected of having committed a crime for which the minimum punishment is imprisonment for at least six months.

2.1.2. Implementing provisions

The Rules of Procedure of Parliament do not contain further provisions for the implementation of parliamentary immunity. For confirmation of lack of such provisions, see also under 2.3 below.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to the members of the Finnish Parliament consist in the freedom of speech of the Member of Parliament, and the protection against arrest and taking into custody for minor offences.

2.2.1. Limited liability principle (Section 30 of the Constitution)

The limited liability set out in Section 30 implies protection against prosecution and arrest or detention for Members for their opinions expressed in Parliament and their conduct in the consideration of a matter. For such opinions and conduct, Members may only be charged in court or deprived of liberty with the consent of Parliament; such authorization is to be supported by at least five sixths of the votes cast. The section only applies to criminal acts committed in the Parliament that are linked to the

functions of a member; other crimes committed by members can be prosecuted as if they had been committed by any other person, and the permission of Parliament is not required.

This limited liability continues even after the end of the mandate of the Member.

2.2.2. Immunity (Section 30 of the Constitution)

The enhanced protection of members in criminal proceedings established in Section 30 prevents the arrest or custody on remand for MPs for minor offences until criminal proceedings have commenced in Court, unless the Chamber consents to it. Once proceedings have begun, the competent court may impose detention without the consent of Parliament. It should be noted that if a member is sentenced to a term of imprisonment, Section 30 does not give protection against the carrying-out of that sentence. In respect of criminal sanctions, members are in the same position as any other citizen.

The enhanced protection of members in criminal proceedings relates to the office of member generally. It thus applies both to activities in Parliament and to other conduct. This protection does not, however, apply if a member is for substantial reasons suspected of having committed a crime for which the minimum penalty is imprisonment for at least six months. Moreover, it only lasts until the person is still in office.

2.3. National authority entitled to request the immunity of a Finnish member of the European Parliament to be waived

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the Finnish members of the European Parliament. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

According to official letters sent to the President of the European Parliament by the Permanent Representation of Finland to the European Union,⁴⁶⁷ Finnish legislation contains no provision concerning requests for waiver of the immunity of MEPs, and requests for the waiver of immunity of a Member of the European Parliament are communicated via the Permanent Representation.

For the lifting of immunity against coercive measures for minor common law offences to start, a conditional arrest warrant or decision by court ordering custody is required. Pursuant to Chapter 2, Section 9 of the Coercive Measures Act (No 806/2011) (*pakkokeinolaki, tvångsmedelslag*)⁴⁶⁸, a detention order must be issued by an official who has the power of arrest which are, depending on the context, the police (*poliisi, polisen*); the prosecution (*sytttjä, åklagare*); customs (*Tullihallitus, Tullstyrelsen*) and border guard (*Rajavartiolaitos, Gränsbevakningsväsendet*).

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⁴⁶⁷ Letters dated 16 April 2013 and 17 June 2020.

⁴⁶⁸ For the text of the Coercive Measures Act (No 806/2011), in Finnish, see [Pakkokeinolaki](#), and in Swedish, see [Tvångsmedelslag](#). For an unofficial English translation, see [Coercive Measures Act](#).

SWEDEN

1. National legal provisions determining the scope and the content of the incompatibilities as referred to by the first indent of Article 7(1) and by Article 7(2) of the 1976 Act

1.1. Member of the Government of a Member State

1.1.1. Legal provisions on the composition of the Swedish government

Constitution

The composition of the Swedish government is established by Chapter 6, Article 1 of the Instrument of Government⁴⁶⁹ (*Regeringsformen*), which reads as follows: "The Government consists of the Prime Minister and other ministers. The Prime Minister is appointed in accordance with the procedure laid down in Articles 4 to 6. The Prime Minister appoints the other ministers". Article 2 further states that the ministers must be Swedish citizens, and may not have any other employment or hold any appointment or engage in any activity which might impair public confidence in them.

According to the Instrument of Government, Government business is settled by the Government at Government meetings, which shall be attended by at least five members (Chapter 7, Articles 3 and 4). Thus, a lower limit is set for the number of Government ministers, but there is no upper limit. In recent years, the number has been just over 20.

1.1.2. Denomination of the members of the Swedish government

Pursuant to the provisions mentioned in paragraph 1.1.1, members of the Swedish government are the following:

- *Statsministern* (Prime Minister),
- *Statsråd* (Ministers).

1.1.3. Date of the beginning of the term of office

When the *Riksdag* has approved a proposal for a new Prime Minister, the Prime Minister shall inform the *Riksdag* as soon as possible of the names of the ministers. Government changes hands thereafter at a Council of State before the Head of State (i.e. the King or Queen) or, in his or her absence, before the Speaker who shall always be summoned to attend such a Council. The Speaker issues a letter of appointment for the Prime Minister on the *Riksdag's* behalf (Instrument of Government, Chapter 6, Article 6).

⁴⁶⁹ Regeringsformen (1974:152), see [Kungörelse \(1974:152\) om beslutad ny regeringsform](#).
For an official English translation, see [The Instrument of Government](#).

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Swedish Parliament

Constitution

The composition of the *Riksdag* (the Swedish Parliament) is established by Chapter 3, Article 2, of the Instrument of Government, which reads as follows: "The *Riksdag* consists of a single chamber comprising three hundred and forty-nine members. Alternates shall be appointed for members."

Ordinary elections for the *Riksdag* are held every four years (Instrument of Government, Chapter 3, Article 3).

Eligibility is regulated in Chapter 3, Article 4 of the Instrument of Government, which reads as follows: "Every Swedish citizen who is currently domiciled within the Realm or who has ever been domiciled within the Realm, and who has reached the age of eighteen, is entitled to vote in an election to the *Riksdag*. Only a person who is entitled to vote may be a member or alternate member of the *Riksdag*. The question of whether a person has the right to vote is determined on the basis of an electoral roll drawn up prior to the election."

Implementing provisions

More detailed provisions concerning the organisation of the *Riksdag* are contained in the *Riksdag Act* (*Riksdagsordningen*)⁴⁷⁰, which occupies a position between a fundamental law and an ordinary law.

1.2.2. Denomination of the members of the Swedish Parliament

Pursuant to the provisions mentioned in paragraph 1.2.1., members of the Swedish parliament are the following:

- *Riksdagsledamot* (Member of Parliament); *Riksdagsledamöter* (Members of Parliament).

1.2.3. Date of the beginning of the term of office

Chapter 3, Article 10 of the Instrument of Government stipulates that "[e]ach election is valid for the period from the date on which the newly-elected *Riksdag* convenes to the date on which the *Riksdag* elected next thereafter convenes. The newly-elected *Riksdag* convenes on the fifteenth day following election day but no sooner than the fourth day after the result of the election has been declared".

The date of the beginning of the term of office of the *Riksdag* Members coincides with the date of the first sitting of the *Riksdag*. At the first meeting, a report from the Election Review Board concerning the examination of the certificates of members and alternate members is presented and a roll-call of members is taken (*Riksdag Act*, Chapter 3, Article 3).

⁴⁷⁰ See [Riksdagsordning \(2014:801\)](#).
For an official English version, see [The Riksdag Act \(2014:801\)](#).

1.3. National authority competent to communicate to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat

Cases of incompatibility with membership of the European Parliament are set out in Chapter 1, Article 6 of the Swedish Elections Act (2005:837)⁴⁷¹. No national authority is explicitly entrusted with the task of communicating incompatibilities to the European Parliament, but the Elections Act establishes procedures for determining which candidates have been elected and for the issuance and examination of certificates for those appointed. However, as communicated by the Permanent Representation of Sweden⁴⁷² the central election authority is the national authority that communicates to the European Parliament the cases of incompatibility and the names the elected MEPs entitled to take a vacant seat.

According to Chapter 14, Article 1 of the Elections Act, the central election authority (*Valmyndigheten*) shall, on the basis of the result of the final counting of votes, distribute the seats in the *Riksdag* and the European Parliament and also determine which candidates have been elected as members and substitutes. For those who have been appointed as a member of the *Riksdag* or the European Parliament or as a substitute, the central election authority immediately issues a certificate to that effect, stating the name of the person who has been appointed, and the time, the party and the constituency that he/she has been appointed for. An extract from the record or another document from the calculation upon which the member of substitute has been appointed shall apply as a certificate. A certificate that relates to a member of the European Parliament shall be sent to the person appointed, to the Election Review Board and the Speaker of the *Riksdag*, and to the European Parliament (Elections Act, Chapter 14, Articles 28 and 29).

The Election Review Board (Swe. *Valprövningsnämnden*), which is appointed by the *Riksdag*⁴⁷³, shall examine certificates for members of the *Riksdag* or members of the European Parliament and substitutes to consider whether these have been properly issued. A report on the examination shall be immediately delivered to the Speaker of the *Riksdag* and, if the election relates to members of the European Parliament, to the Parliament (Chapter 14, Section 30).

Chapter 15, Article 10 of the Elections Act states that "Members of the European Parliament shall take up their assignment when they have been appointed and their eligibility considered by the European Parliament".

⁴⁷¹ See [Vallag \(2005:837\)](#).

⁴⁷² Email dated 28 September 2020.

⁴⁷³ Instrument of Government, Chapter 3, Article 12.

2. National immunities as referred to in Article 9 first paragraph point (a) of Protocol (No 7) on the privileges and immunities of the European Union

2.1. Legal provisions on the national parliamentary immunities

2.1.1. Constitution

In Sweden the parliamentary immunity is granted in accordance with Chapter 4, article 12 of the Instrument of Government, which reads as follows:

Chapter 4, article 12

Legal proceedings may not be initiated against a person who holds a mandate as a member of the *Riksdag*, or who has held such a mandate, on account of a statement or an act made in the exercise of his or her mandate, unless the *Riksdag* has given its consent thereto in a decision supported by at least five sixths of those voting.

Nor may such a person be deprived of his or her liberty, or restricted from travelling within the Realm, on account of an act or statement made in the exercise of his or her mandate, unless the *Riksdag* has given such consent thereto.

If, in any other case, a member of the *Riksdag* is suspected of having committed a criminal act, the relevant legal provisions concerning apprehension, arrest or detention are applied only if he or she admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years.

2.1.2. Implementing provisions

Further provisions on the prosecution or deprivation of liberty of members of the *Riksdag* are laid down in Chapter 5, Article 7 the *Riksdag* Act. According to the Article, an application for the consent of the *Riksdag* (cf. Instrument of Government, Chapter 4, Article 12 above) shall be submitted by a prosecutor, or any other person wishing to initiate legal proceedings, to the Speaker. If the application is so incomplete that it cannot be used as a basis for consideration by the *Riksdag*, or if the applicant has failed to demonstrate that he or she is competent to raise charges or apply for such action to be taken by a public authority, the Speaker shall reject the application. In any other case, the Speaker shall notify the matter to a meeting of the Chamber. A supplementary provision (5.7.1) establishes that such an application shall be submitted in writing and shall contain the grounds for the application.

Pursuant to Chapter 10, Article 2 of the *Riksdag* Act, an application for consent to prosecution or deprivation of liberty which has been notified in the Chamber shall be referred to the Committee on the Constitution for preparation.

2.2. Scope and content of national parliamentary immunities

2.2.1. *Limited liability principle (Chapter 4, article 12, paragraph 1 of the Instrument of Government)*

According to Chapter 4, Article 12, paragraph 1 of the Instrument of Government, legal proceedings may not be initiated against a person who holds, or has held, a mandate as a member of the *Riksdag*, on account of a statement or an act made in the exercise of his or her mandate, unless the *Riksdag* has given its consent thereto in a decision supported by at least five sixths of those voting. Nor may such a person be deprived of his or her liberty, or be restricted from travelling within the Realm, on account of an act or statement made in the exercise of his or her mandate, unless the *Riksdag* has given such consent thereto.

According to the preparatory works, this immunity should apply only to members' activities in the Chamber and in *Riksdag* bodies where the members' activities are clearly linked to the mandate, e.g. the parliamentary committees.⁴⁷⁴

The rules in paragraph 1 also apply to the Speaker and to an alternate exercising a mandate as a member (Instrument of Government, Chapter 4, Article 13).

The *Riksdag* has received applications from prosecutors with respect to initiation of legal proceedings against a member of the *Riksdag* on two occasions. On both occasions, the Committee on the Constitution, during its preparation of the matter, found that the acts in question had not been made in the exercise of the member's mandate and, consequently, that no permission from the *Riksdag* was needed for prosecution (cf. below regarding relative immunity).⁴⁷⁵

2.2.2. *Immunity (Chapter 4, Article 12, Paragraph 2 of the Instrument of Government)*

Chapter 4, Article 12, Paragraph 2 of the Instrument of Government provides limited immunity for crimes committed by a member of the *Riksdag* in an individual capacity, i.e. beyond the exercise of his or her mandate as a member of the *Riksdag*. The provision states that if a member of the *Riksdag*, in any other case than under the paragraph 1 (cf. above), is suspected of having committed a criminal act, the relevant legal provisions concerning apprehension, arrest or detention are applied only if he or she admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years. Note however, that there are no restrictions regarding prosecution, nor does the immunity cover travelling restrictions or bringing a member in for questioning.

The rules on relative immunity also apply to an alternate exercising a mandate as a member (Instrument of Government, Chapter 4, Article 13).

Chapter 4, Article 11, paragraph 3 of the Instrument of Government sets out that a member of the *Riksdag* may only be removed if that member, has committed a crime, and is obviously unsuitable for the. Such decision is decided by a court.

⁴⁷⁴ See [Government bill 1973:90 p.266](#).

⁴⁷⁵ Report of the Committee on the Constitution 1993/94:KU49; Report of the Committee on the Constitution 1999/2000:KU21.

2.3. National authority entitled to request the immunity of a Swedish member of the European Parliament to be waived

Cf. provisions governing the procedure of a request for the waiver of immunity of members of the national parliament referred to under 2.1.2 above. No specific procedural rules have been adopted with regard to requests for waiver of immunity of the Swedish members of the European Parliament.

According to the information received from the Permanent Representation of Sweden to the European Union⁴⁷⁶, the Swedish Prosecution Authority (*Åklagarmyndigheten*) is the national competent authority to request the immunity of a Swedish member of the European Parliament to be waived.

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⁴⁷⁶ Email dated 28 September 2020.

Abstract

Upon request by the Committee on Legal Affairs, this handbook, provided by the Policy Department for Citizens' Rights and Constitutional Affairs, summarises, in its first part, the EU legal framework on the incompatibilities and immunity of Members of the European Parliament. Based on national reports, the second part of the handbook gives an overview, for each EU Member State, of the relevant national provisions on the composition of national governments and parliaments as well as those on national parliamentary immunities.

This handbook will be updated regularly based on information received; please hold as reference the date of edition.