

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

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**Legal and Parliamentary Affairs**

Petitions

**HANDBOOK ON THE  
INCOMPATIBILITIES  
AND IMMUNITY OF  
MEMBERS OF THE EP**

JURI





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**LEGAL AND PARLIAMENTARY AFFAIRS**

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

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## **Introductory remarks**

This handbook provides the Committee on Legal Affairs with a practical tool aimed at simplifying its tasks when verifying the credentials of the newly elected Members of the European Parliament, when ruling on the validity of their mandate or when considering requests for the waiver or defence of parliamentary immunity. The handbook is intended for internal use only and does not purport to be an exhaustive study on the incompatibilities and immunity of the Members.

The first part of the handbook briefly recalls the legal framework governing the verification of the credentials and the immunity of Members of the European Parliament. A detailed analysis of the legislative and procedural rules on the mandate of Members is available in the following studies published by the Policy Department: "Election and mandate of MEPs" and "Parliamentary immunity in the European Parliament".

The second part of the handbook is composed of national reports summarising for each Member State the relevant national provisions on parliamentary immunity and on those national offices which are incompatible with the office of a Member of the European Parliament, according to Article 7(1) and (2) of the Act concerning the election of the Members of the European Parliament by direct universal suffrage. Each national report is therefore divided into two chapters. The first chapter sets out the legal provisions on the composition of national governments and parliaments, the denomination of their respective members and the date of the beginning of their term of office. The second chapter provides an overview of national rules on parliamentary immunity and identifies the national authorities which are competent to request the waiver of Members' immunity.

Lastly, two annexes reproduce the lists of national authorities entitled to notify the names of newly elected Members to the European Parliament and those competent to request the waiver of a Member's immunity. Both lists have been drawn up by DG Presidency on the basis of official letters sent by the Permanent Representations of the Member States to the European Union. Some Member States have not yet communicated the name of their competent authorities.

## **Acknowledgement**

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**PART I:**

**LEGAL FRAMEWORK ON THE INCOMPATIBILITIES AND  
IMMUNITY OF THE MEMBERS OF THE EUROPEAN  
PARLIAMENT**

## 1. Incompatibilities with the office of Member of the European Parliament

Under the terms of Article 12 of the 1976 Act concerning the election of the Members of the European Parliament by direct universal suffrage, as amended by Council decision 2002/772/EC, the European Parliament is required to verify the credentials of its Members. For this purpose, it takes note of the results declared officially by the Member States and rules on any disputes which may arise out of the provisions of the Act, other than those arising out of the national provisions to which the Act refers. It follows that the European Parliament has a legal obligation to assess the existence of any of the grounds for incompatibilities laid down in Article 7(1) and (2) of the above mentioned Act.

Article 7(1) and (2) of the 1976 Act establish the list of offices which are incompatible with membership of the European Parliament. This list includes in particular the incompatibility with the office of "**member of the Government of a Member State**" and with that of "**member of a national parliament**". A precise knowledge of the composition of national governments and parliaments is therefore necessary in order to determine the scope and the content of such incompatibilities during the verification of credentials procedure or when ruling on any dispute on the validity of the mandate of a MEP.

Pursuant to Article 7(3) of the above mentioned 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.

## 2. Parliamentary immunity

According to article 291 of the EC Treaty the European Communities enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Communities (PPI).

Articles 9 and 10 of that Protocol lay down the classical two categories of parliamentary immunity: non-liability of Members of Parliament for votes cast and opinions expressed in the performance of their duties, on the one hand, and the protection of Members from prosecutions and restrictions of their personal freedom, on the other hand.

### **Articles 9 and 10 of PPI read as follows:**

"Article 9

*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 10

*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."*

According to Article 10 of the Protocol the immunity's regime applicable to the Members during the sessions of the European Parliament varies depending on whether the Member concerned is in the territory of his or her own Member State or in the territory of any other Member State. In the first case, Article 10(a) refers to the national rules on parliamentary immunity of the Member States. It follows, that in the territory of their own State MEPs enjoy the same immunity which are granted to the members of their respective national parliaments.

The application of Article 10 of the Protocol thus requires the prior identification and understanding of the relevant national rules governing parliamentary immunity in the Member States. An overview of these national rules is provided in the national reports.

## **PART II: NATIONAL REPORTS**

## BELGIUM

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Belgian government

The composition of the Belgian government is established by Articles 99 and 104 of the Belgian Constitution<sup>1</sup>.

Article 99 of the Constitution reads as follows: "The Council of Ministers includes fifteen members at most. With the possible exception of the Prime Minister, the Council of Ministers includes as many French-speaking members as Dutch-speaking members."<sup>2</sup>

Article 104 of the Constitution reads as follows: "The King appoints and dismisses the Federal Secretaries of State. The latter are members of the Federal Government. They are not part of the Council of Ministers. They are deputies to a minister."<sup>3</sup>

##### 1.2. Denomination of the members of the Belgian government

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

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

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<sup>1</sup> For an English translation of the Belgian Constitution please see the following website:

[http://www.fed-parl.be/constitution\\_uk.html](http://www.fed-parl.be/constitution_uk.html)

<sup>2</sup> "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".

<sup>3</sup> "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".

### **1.3. Date of the beginning of the term of office**

Under the terms of Article 96 of the Constitution, members of the 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<sup>4</sup>.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Belgian Parliament**

#### **2.1.1. Constitution**

The Belgian Parliament is composed by the Chamber of Representatives and by the Senate. Indeed, Articles 42, 63 §1 and 67 §1 of the Belgian Constitution rule that: "*Les membres des deux Chambres représentent la Nation*..."<sup>5</sup>; "*La Chambre des représentants compte cent cinquante membres*"<sup>6</sup>; "*[...]le Sénat se compose de septante et un sénateurs*..."<sup>7</sup>. Whereas according to Article 61 of the Constitution, the members of the Chamber of Representatives are all elected directly by citizens, the Senate is composed both by elected members and by appointed members. Indeed, some Senators are appointed by and within the Council of the Flemish Community, by and within the Council of the French Community, by and within the Council of the German Community and by the elected Senators (article 67 §1 of the Constitution). The children of the King are Senators by right (article 72 of the Constitution).

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the composition and the organisation of the Chamber of Representatives and of the Senate are contained in their respective Rules of Procedure<sup>8</sup>.

### **2.2. Denomination of the members of the Belgian parliament**

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

- *Membres de la Chambre des Représentants, leden van de Kamer van volksvertegenwoordigers, Mitglieder der Abgeordnetenkommer* (Deputies)
- *Sénateurs, Senatoren* (Senators)

### **2.3. Date of the beginning of the term of office**

#### **2.3.1. Chamber of Representatives**

Members of the Chamber of Representatives officially begin their term of office from the day of taking oath of office. The validation of the mandate is established by the article 48 of the

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<sup>4</sup>[http://www.belgium.be/fr/la\\_belgique/pouvoirs\\_publics/autorites\\_federales/gouvernement\\_federal/formation\\_gouvernement/](http://www.belgium.be/fr/la_belgique/pouvoirs_publics/autorites_federales/gouvernement_federal/formation_gouvernement/)

<sup>5</sup> "The members of the two Chambers represent the Nation [...]"

<sup>6</sup> "The Chamber of Representatives is made up of one hundred and fifty members."

<sup>7</sup> "[...] the Senate is made up of seventy-one senators [...]"

<sup>8</sup> The texts of the Rules of Procedure of both the Chamber of Representatives and the Senate are available on the following websites: [http://www.senate.be/doc/reglement\\_fr.html](http://www.senate.be/doc/reglement_fr.html)  
[http://www.lachambre.be/kvvcr/pdf\\_sections/publications/reglement/reglementE.pdf](http://www.lachambre.be/kvvcr/pdf_sections/publications/reglement/reglementE.pdf)

Constitution and the procedure is determined by Article 2 of the Rules of Procedure of the Chamber of Representatives, which reads as follows: "*Avant d'entrer en fonction, les membres sont tenus de prêter serment en séance plénière et publique*".

### **2.3.2. Senate**

Both the elected and the appointed Senators begin their term of office on the day of taking oath of office. Article 7 of the Rules of Procedure of the Senate states: "*Avant d'entrer en fonctions, les membres du Sénat sont tenus de prêter serment en séance publique*".

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Federal Law of 23 March 1989<sup>9</sup> on the election of Belgian members at the European Parliament, most recently amended by the Federal Law of 21 April 2007, the authority entitled to send the European Parliament the list of persons elected and the documents necessary to verify their credentials is "*le greffier de la Chambre des Rprésentants*" (the registrar of the Chamber of Representatives).

According to Article 37 of the above-mentioned Federal Law: "At the end of the procedure described in Article 43, the registrar of the Chamber 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". Article 43 reads as follows: "The Chamber 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 registrar of the Chamber of Representatives within ten days following the election. The decision taken by the Chamber of Representatives on the complaint shall be attached to the documents referred to in Article 37(2)."

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

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

#### **"Article 58**

No member of either of the two Chambers can be prosecuted or pursued with regard to opinions and votes given by him in the exercise of his duties".

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<sup>9</sup>[http://www.ibz.rn.fgov.be/fileadmin/user\\_upload/Elections2009/fr/lois/LOI\\_DU\\_23\\_MARS\\_1989\\_Vers\\_20090401.pdf](http://www.ibz.rn.fgov.be/fileadmin/user_upload/Elections2009/fr/lois/LOI_DU_23_MARS_1989_Vers_20090401.pdf)



## **"Article 59**

Except in the case of a flagrant offence, no member of any Chamber may, during a session, be directly remanded or summoned before a court or tribunal regarding repressive matters nor be arrested except with the authorisation of the Chamber of which he is a member.

Except in the case of a flagrant offence, restraining measures requiring the intervention of a judge cannot be instituted against a member of any Chamber for the duration of a session, regarding repressive matters, except by the first President of the Court of Appeal at the demand of the competent judge. This decision is communicated to the President of the concerned Chamber.

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

During the session, only the officers of the public prosecutor's department and competent officers may institute repressive proceedings against a member of any Chamber.

The member of any Chamber in question may at all stages of the investigations regarding repressive measures, request for the duration of the session that the Chamber of whom he is a member suspend the proceedings. The Chamber in question must grant this request if supported by a majority of two-thirds of the votes given.

Detention of a member of any Chamber or his investigation by a court or Tribunal is suspended for the duration of the session if the Chamber of whom he is a member so requests".

### **1.2. Implementing provisions**

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

## **2. Scope and content of national parliamentary immunities**

### **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 Chamber 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 continues to apply after the end of their term of office.

### **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 though 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, and not for the investigation itself anymore. The immunity is only valid during the term of office<sup>10</sup>.

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<sup>10</sup> For an analysis of the Belgian rules on parliamentary immunity please see the following website: [http://www.lachambre.be/kvvcr/pdf\\_sections/publications/jurid/violE.pdf](http://www.lachambre.be/kvvcr/pdf_sections/publications/jurid/violE.pdf)

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

According to an official letter<sup>11</sup> sent to the President of the European Parliament by the Permanent Representation of Belgium to the European Union, the Belgian authorities entitled to request the waiver of the immunity are both "*le Procureur général près de la Cour d'Appel de Bruxelles*" (Attorney-General of the Court of Appeal) and "*le Ministère des Affaires étrangères*" (Ministry of Foreign Affairs).

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<sup>11</sup> See table in Annex 2.

## **BULGARIA**

### **I. 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. Member of the Government of a Member State**

##### ***1.1. Legal provisions on the composition of the Bulgarian government***

###### ***1.1.1. 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."<sup>12</sup>

###### ***1.1.2. 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 216 of 12 October 2005<sup>13</sup>, in particular Article 16.

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.

##### ***1.2. 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)

##### ***1.3. 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.

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

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<sup>12</sup> The text in Bulgarian reads: "Чл. 108. (1) Министерският съвет се състои от министър-председател, заместник министър-председатели и министри." For the Bulgarian version of the Constitution please see the following website: <http://www.parliament.bg/?page=const&lng=bg> and for the English version please see the following website: <http://www.parliament.bg/?page=const&lng=en>

<sup>13</sup> Promulgated in State Gazette (SG) No 84 of 21.10.2005, last amendments promulgated in SG No 67 of 29.07.2008. The title in Bulgarian is: "Устройствен правилник на Министерския Съвет и на неговата администрация, приет с Постановление на Министерския Съвет No 216 от 12.10.2005г." See <http://lex.bg/bg/laws/ldoc/2135511901> (for consolidated version in Bulgarian).

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 1992<sup>14</sup>, 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 Assembly<sup>15</sup>.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Bulgarian Parliament**

#### **2.1.1. 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."<sup>16</sup> Bulgarian parliament has one chamber with the official denomination: *Народно събрание* (National Assembly).

#### **2.1.2. 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 Assembly<sup>17</sup>.

### **2.2. Denomination of the members of the Bulgarian Parliament**

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

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

### **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.

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<sup>14</sup> Constitutional Court Decision No 1 of 16.01.1992 on constitutional case No 18 of 1991 (State Gazette No 11 of 07.02.1992).

<sup>15</sup> The case before the Constitutional Court concerned the mandate of the members of Parliament but the Court held that the decision shall apply by analogy to the President, Vice President and the members of the Council of Ministers, who are required to take the same oath.

<sup>16</sup> Article 63 of the Constitution in Bulgarian reads: "*Народното събрание се състои от 240 народни представители*".

<sup>17</sup> Promulgated in State Gazette No. 69/23.08.2005, amended and supplemented, SG No. 74/13.09.2005, supplemented, SG No. 101/15.12.2006, amended and supplemented, SG No. 18/27.02.2007, amended and supplemented, SG No. 26/27.03.2007, amended and supplemented, SG No. 107/18.12.2007, supplemented SG No. 85/30.09.2008. See <http://www.parliament.bg/?page=app&lng=bg&aid=6> (for a consolidated version in Bulgarian) and <http://www.parliament.bg/?page=app&lng=en&aid=6> (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 N° 1 of 16.01.1992 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"<sup>18</sup>.

In a later case, involving the interpretation of a text of the Constitution<sup>19</sup> 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 2001).

According to Article 14 of Financial rules on the implementation of the budget of the National Assembly<sup>20</sup>, the remuneration of the Members of Parliament is paid as of the election day.

The term of office of Member of Parliament who fills 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. (Article 115 (1) of the Law on the election of Members of Parliament).

#### ***2.4. National authority competent to communicate cases of incompatibility to the European Parliament***

No specific rules have been adopted with regard to the national authority competent to communicate cases of incompatibility to the European Parliament. There are several texts with potential relevance.

According to Article 120 of the Law on the election of Members of the European Parliament from Republic of Bulgaria<sup>21</sup>, "after the official announcement of the election results, the President of the National Assembly informs the President of the European Parliament about the elected Members of the European Parliament from Republic of Bulgaria".

Article 121 of the same Law 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 2 of the Law." However, there are no procedural rules for the implementation of this article.

In national law, the Constitutional Court is competent to establish the ineligibility or incompatibility in the case of Members of the National Assembly (Article 72(2) of the Constitution), a possibility that is not limited in time and can be undertaken throughout the mandate. However, in the case of Members of the European Parliament, the Constitutional Court is only competent to rule on the legality of the elections not later than 14 days after the

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<sup>18</sup> Constitutional Court Decision No 1 of 16.01.1992 on constitutional case No 18 of 1991 (State Gazette No 11 of 07.02.1992).

<sup>19</sup> Article 64(1) reads: "The National Assembly shall be elected for a term of four years".

<sup>20</sup> Annex to the Rules of Organisation and procedure of the National Assembly.

<sup>21</sup> See <http://lex.bg/bg/laws/ldoc/2135545857> (for consolidated version in Bulgarian).

announcement of the election results by the Central Electoral Commission (Article 118 of the Law on the election of members of the European Parliament from Republic of Bulgaria).

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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."

#### **1.2. Implementing provisions**

The implementing rules of Articles 69 and 70 of the Constitution are contained in Article 107 of the Rules of organisation and procedure of the National Assembly which reads as follows:

##### **"Article 107**

(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 33, paragraph 2), of the Chairman of the National Assembly.

(2) 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 Chairman 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.

(3) 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 33, paragraph 2), its Chairperson, shall be notified immediately.

(4) 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 Chairman, for

permission to institute criminal proceedings. Sufficient data shall be enclosed with such request.

(5) The request of the Chief Prosecutor and the data therewith shall be considered by the National Assembly, which shall rule thereon not earlier than 14 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 33, paragraph 2), the permission to institute criminal proceedings against a Member shall be issued by the Chairman 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 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 herein. 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. 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 ("inviolability").

### **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 an opinion 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 n° 10 of 27 July 1992).

### **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 the following measures: detention criminal prosecution

Article 107 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 not required in the following two cases:

- When a member has given his/her consent (Article 70(2) of the Constitution). The agreement in writing has to be submitted to the Chairman of the National Assembly in person who should then notify the Chief Prosecutor and inform the National Assembly. Once the Member has given his/her agreement, it cannot be withdrawn (Article 107(2) of the Rules of Procedure of the National Assembly).
- When a Member is detained in flagrante delicto (Article 70 (1) of the Constitution). In such cases, the National Assembly or its Chairman (in cases when the Assembly is not in session) shall be notified immediately (Article 70(1) of the Constitution and Article 107(3) of the Rules of Procedure of the National Assembly).

### **3. National authority entitled to request the immunity of a Bulgarian 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 Bulgarian members of the European Parliament. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*.

According to Article 107 (4) the *Главен прокурор* (Chief Prosecutor) shall direct a substantiated request for permission to institute criminal proceedings.



## **CZECH REPUBLIC**

### **I. 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. Member of the Government of a Member State**

##### **1.1. Legal provisions on the composition of the Czech government**

###### **1.1.1. 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".<sup>22</sup>

###### **1.1.2. 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.*" (Law No 2/1969 on the organisation of the ministries and other state bodies, as amended, in particular Articles 1 and 2).

##### **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)
- *Místopředseda vlády* (Deputy Prime Minister)
- *Ministr* (Minister)

##### **1.3. Date of the beginning of the term of office**

Under the terms of Article 69 of the Constitution<sup>23</sup> 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.

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<sup>22</sup> "*Vláda se skládá z předsedy vlády, místopředsedů vlády a ministrů*". For an English translation of the Constitution of the Czech Republic please see the following website:  
[http://www.hrad.cz/en/ustava\\_cr/index.shtm](http://www.hrad.cz/en/ustava_cr/index.shtm)

<sup>23</sup> 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".

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Czech Parliament**

#### **2.1.1. 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"<sup>24</sup>. The Czech Parliament is composed by the Chamber of Deputies and by the Senate.

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.

#### **2.1.2. 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<sup>25</sup>.

### **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* (Chairman of the Chamber of Deputies)
- *Místopředseda Poslanecké sněmovny* (Vice-Chairmen of the Chamber of Deputies)
- *Poslanci* (Deputies)
- *Předseda Senátu* (Chairman of the Senate)
- *Místopředseda* (Vice-Chairmen of the Senate)
- *Senátori* (Senators)

### **2.3. Date of the beginning of the term of office**

#### **2.3.1. Chamber of Deputies**

Under the terms of Article 19 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: "*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.*"<sup>26</sup> Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

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<sup>24</sup>"Parlament je tvořen dvěma komorami, a to Poslaneckou sněmovnou a Senátem."

<sup>25</sup> The texts of the Rules of Procedure of both the Chamber of Deputies and the Senate are available on the following website: [http://www.psp.cz/docs/laws/1995/90\\_index.html](http://www.psp.cz/docs/laws/1995/90_index.html);  
[http://www.senat.cz/informace/zadosti/zak107.php?ke\\_dni=y&O=6](http://www.senat.cz/informace/zadosti/zak107.php?ke_dni=y&O=6)

<sup>26</sup> For English translation see: [http://www.hrad.cz/en/ustava\\_cr/index.shtm](http://www.hrad.cz/en/ustava_cr/index.shtm)

### 2.3.2. Senate

Under the terms of Article 19 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 National Electoral Committee within the period of one month after the announcement of the results of elections.

At the first sitting following elections Senators take the following oath: "*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.*"<sup>27</sup> Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

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

The Czech authority competent to communicate cases of incompatibility to the European Parliament is the "*volební komise*" (State Election Commission).

## II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES

### 1. Legal provisions on the national parliamentary immunities

#### 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:

#### "Article 27

(1) No Deputy or Senator may be disciplined for his or her voting in the Chamber of Deputies or in the Senate, or in their bodies.

(2) No Deputy or Senator may be criminally prosecuted for statements made in the Chamber of Deputies or in the Senate, or in their bodies. A Deputy or a Senator shall be subject only to the disciplinary jurisdiction of the chamber of which he or she is member.

(3) A Deputy or a Senator who has committed a transgression shall be subject only to the disciplinary jurisdiction of the chamber of which he or she is member, unless the law provides differently.

(4) No Deputy or Senator may be criminally prosecuted without the consent of the chamber of which he or she is member. If the respective chamber denies its consent, criminal prosecution shall be excluded forever.

(5) A Deputy or a Senator may be detained only if he or she has been apprehended when committing a criminal offence or immediately thereafter. The competent agency shall immediately report the detention to the chairman of the chamber of which the detainee is member; if the chairman of the respective chamber does not consent within twenty-four hours of the detention to the surrender of the detainee to a court, the competent agency shall

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<sup>27</sup> For English translation see: [http://www.hrad.cz/en/ustava\\_cr/index.shtm](http://www.hrad.cz/en/ustava_cr/index.shtm)

release him or her. At its first subsequent meeting the respective chamber shall decide with final validity on the admissibility of the prosecution."<sup>28</sup>

## **1.2. Implementing provisions**

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

## **2. Scope and content of national parliamentary immunities**

### **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.

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

Pursuant to Article 27, third, fourth and fifth paragraphs, 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:

- criminal prosecution; if the respective chamber denies its consent, criminal prosecution shall be excluded forever.
- maintenance of detention when being caught in the act of committing a crime for which arrest is mandatory (*in flagrante delicto*); the competent agency shall immediately report the detention to the chairman of the chamber of which the detainee is member; if the chairman of the respective chamber does not consent within twenty-four hours of the detention to the surrender of the detainee to a court, the competent agency shall release him or her.

## **3. National authority entitled to request the immunity of a Czech 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 Czech members of the European Parliament. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*.

Pursuant to Section 12(1) of the Code of Criminal Procedure of the Czech Republic (Act No 141/1961 Coll., as amended), the court, the public prosecutor and the police authority have the right to request the immunity of a member of the parliament to be waived. This has

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<sup>28</sup> The Czech wording of this Article is the following: "Poslanec ani senátorů nelze postihnout pro hlasování v Poslanecké sněmovně nebo Senátu nebo jejich orgánech. 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. Za přestupky poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem, pokud zákon nestanoví jinak. Poslanec ani senátorů nelze trestně stíhat bez souhlasu komory, jejímž je členem. Odepře-li komora souhlas, je trestní stíhání navždy vyloučeno. Poslanec nebo senátora 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."

been confirmed by on official letter sent to the President of the European Parliament by the Permanent Representative of the Czech Republic to the European Union<sup>29</sup>.

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<sup>29</sup> See table in Annexe 2.

## DENMARK

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Danish government

###### 1.1.1. Constitution

Pursuant to Article 14 of the Constitution<sup>30</sup> "The King<sup>31</sup> 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."

###### 1.1.2. Implementing provisions

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

##### 1.2. Denomination of the members of the Danish government

Pursuant to the Article 14 of the Constitution, members of the Danish government are the following:

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

##### 1.3. Date of the beginning of the term of office

Pursuant to article 14 of the Constitution, 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<sup>32</sup>.

There are no other detailed rules on the formalities of the nomination. The term of office begins once the Queen has signed the royal decree of appointment.

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<sup>30</sup> For an English translation of the Danish Constitution please see the following website:  
<http://www.folketinget.dk/pdf/constitution.pdf>

<sup>31</sup> Read "Queen" since the denomination "King" covers the current monarch.

<sup>32</sup> See as an example: <http://www.statstidende.dk/> meddelelse nr. S10092008-1079 of 12 September 2008.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Danish Parliament**

#### **2.1.1. Constitution**

The Danish Parliament is the "*Folketing*". According to Article 28 of the Constitution 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 Constitution, members are elected for a period of four years.

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the composition and the organisation of the *Folketing* are contained in the Standing Orders of the Parliament (*Folketingets forretningsorden*)<sup>33</sup>.

### **2.2. Denomination of the members of the Danish parliament**

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

- *Medlem af Folketinget* (Member of Parliament), *Medlemmer af Folketinget* (Members of Parliament)

### **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 President and vice-presidents."

The validation of the mandates is done by a temporary committee consisting of 21 members of parliament (see Article 1 (2)-(8) of the Standing Orders of the Parliament). The same provision of the Standing Orders of the Parliament as well as Article 32 (6) and (7) of the Constitution foresee 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.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Article 40 of the Law on the election of members to the European Parliament<sup>34</sup>, Danish Parliament informs the European Parliament about the result of the elections in order for the European Parliament to verify the member's credentials. The Danish Parliament decides on questions of validity of the election of a candidate, and can also, if the question of

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<sup>33</sup> <http://www.folketinget.dk/pdf/forretningsorden.pdf>.

For the English version of the Standing Orders please see the following website:

[http://www.ft.dk/UserFiles/1FD5DDEF-92B4-4032-A4C4-71B53FFFAB2D/engelskinfo/FT\\_Forretningsorden\\_uk.pdf](http://www.ft.dk/UserFiles/1FD5DDEF-92B4-4032-A4C4-71B53FFFAB2D/engelskinfo/FT_Forretningsorden_uk.pdf)

<sup>34</sup> <https://www.retsinformation.dk/Forms/R0710.aspx?id=10813>

validity arises during the election period or if the person loses his eligibility, take a decision on this.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

The immunities of the members of the national parliament are established by Article 57 of the Constitution 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. Scope and content of national parliamentary immunities**

#### **2.1. Immunity (Article 57, first sentence, of the Constitution)**

Pursuant to Article 57, first sentence of the Constitution, members of the Parliament cannot be prosecuted or imprisoned without the consent of the Parliament. 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<sup>35</sup>.

This immunity does not cover cases where the Member is caught in *flagrante delicto*. This provision only covers Members in office. Once the mandate has ceased, prosecution can take place also for offences committed during the exercise of parliamentary mandate.

#### **2.2. Non-liability principle (Article 57, second sentence of the Constitution)**

According to Article 57, second sentence of the Constitution the non-liability for opinions expressed in the Parliament 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.

This immunity covers not only members in office, but also those who have ceased office with regard to those utterances made when he/she was a member of the *Folketing*.

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<sup>35</sup> 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 Law on Civil and Criminal Procedures (Retsplejeloven) <https://www.retsinformation.dk/Forms/R0710.aspx?id=105378>. 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.



### **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 Danish members of the European Parliament. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*.

It is for the public prosecutor to decide whether the request for waiver of immunity is to be forwarded. Should the public prosecutor consider the request justified, the request is forwarded to the *Justitsministeriet* (Ministry of Justice)<sup>36</sup> which ensures the necessary further action to be taken.

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<sup>36</sup> See table in Annex 2.

## GERMANY

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the German government

###### 1.1.1. Constitution

The composition of the German government is established by Article 62 of the Constitution<sup>37</sup>, which reads as follows: "The Federal Government shall consist of the Federal Chancellor and the Federal Ministers."<sup>38</sup>

###### 1.1.2. Implementing provisions

More detailed provisions concerning the composition and the organisation of the German government are contained in Articles 62 to 69 of the Constitution, in the Rules of Procedure of the Government (*GOBReg/ Geschäftsordnung der Bundesregierung*<sup>39</sup>) and in the Rules of Procedure of the Federal Ministries (*GGO/ Gemeinsame Geschäftsordnung der Bundesministerien*<sup>40</sup>)

##### 1.2. Denomination of the members of the German government

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

- *Bundestkanzler* (Federal Chancellor)
- *Bundesminister* (Federal Minister)

##### 1.3. Date of the beginning of the term of office

Under the terms of the second paragraph of Article 64 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 take the oath before the *Bundestag* (Parliament).

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<sup>37</sup> <http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>/ For an English translation of the German Constitution please see the following website:  
[http://www.bundestag.de/interakt/infomat/fremdsprachiges\\_material/downloads/ggEn\\_download.pdf](http://www.bundestag.de/interakt/infomat/fremdsprachiges_material/downloads/ggEn_download.pdf)

<sup>38</sup> "Die Bundesregierung besteht aus dem Bundeskanzler und aus den Bundesministern."

<sup>39</sup> [http://www.bundesregierung.de/nsc\\_true/Content/DE/\\_\\_\\_Anlagen/geschaeftsordnung-der-bundesregierung,templateId=raw,property=publicationFile.pdf/geschaeftsordnung-der-bundesregierung](http://www.bundesregierung.de/nsc_true/Content/DE/___Anlagen/geschaeftsordnung-der-bundesregierung,templateId=raw,property=publicationFile.pdf/geschaeftsordnung-der-bundesregierung)

<sup>40</sup> <http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Broschueren/2007/GGO,templateId=raw,property=publicationFile.pdf/GGO.pdf>

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the German Parliament**

#### **2.1.1. Constitution**

The German Parliament is the *Bundestag*. According to Article 38(1) of the Constitution: "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 *Bundestag* is not to be confused with the *Bundesrat*, which consists of Members of the *Länder* Governments. Pursuant to Article 50 of the Constitution "The *Länder* shall participate through the *Bundesrat* in the legislation and administration of the Federation and in matters concerning the European Union".

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the composition and the organisation of the *Bundestag* are contained in Articles 38 to 48 of the Constitution and in the *Geschäftsordnung des Deutschen Bundestages*<sup>41</sup> (Rules of Procedure).

### **2.2. Denomination of the members of the German parliament**

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

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

### **2.3. Date of the beginning of the term of office**

Under the terms of Article 45 of the *Bundeswahlgesetz*<sup>42</sup> (Federal Election Law) Members of the Bundestag begin their term of office from the day the official election results are announced.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Article 26 II of the *Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland (Europawahlgesetz-EuWG*<sup>43</sup>/ European Election Law) in connection with the *Wahlprüfungsgesetz*<sup>44</sup> (*WPrüfG*/ Election Scrunity Law) the German authority monitoring cases of incompatibility is the *Wahlprüfungsausschuss* (Election Scrunity Committee) within the *Bundestag*. The authority competent to communicate cases of incompatibility to the European Parliament is the President of the *Bundestag* (Article 20 *Europawahlgesetz* EuWG).

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<sup>41</sup> [http://www.bundestag.de/parlament/funktion/gesetze/go\\_btg/index.html](http://www.bundestag.de/parlament/funktion/gesetze/go_btg/index.html)

<sup>42</sup> [http://www.bundestag.de/parlament/funktion/gesetze/bwahlg\\_pdf.pdf](http://www.bundestag.de/parlament/funktion/gesetze/bwahlg_pdf.pdf)

<sup>43</sup> <http://www.bundeswahlleiter.de/europawahl2004/downloads/euwg.pdf>

<sup>44</sup> <http://www.bundeswahlleiter.de/bundestagswahl2005/downloads/wahlpruefg.pdf>

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Germany the parliamentary immunities are granted to the members of the *Bundestag* by Article 46 of the Constitution 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 for any speech or debate 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."<sup>45</sup>

#### **1.2. Implementing provisions**

The implementing rules of Article 46 of the Constitution are contained in Article 107 of the *Geschäftsordnung des Bundestages*<sup>46</sup> (GO-BT/ Rules of Procedure of the Parliament) and its Annex 6.

### **2. Scope and content of national parliamentary immunities**

#### **2.1. Non-liability principle (Article 46(1) of the Constitution)**

Pursuant to Article 46, paragraph 1, of the Constitution 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 votes cast when carrying out their

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<sup>45</sup>"Artikel 46: (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 verleumdende 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 ."

<sup>46</sup> [http://www.bundestag.de/parlament/funktion/gesetze/go\\_btg/index.html](http://www.bundestag.de/parlament/funktion/gesetze/go_btg/index.html)

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. Immunity (Article 46(2) and (3) of the Constitution)**

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

- prosecution or arrest for a punishable offence,
- any restriction of the personal freedom
- the initiation of proceedings against a member under Article 18<sup>47</sup> of the Constitution (Forfeiture of basic rights)

The authorisation is not required where 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 Constitution, any criminal proceedings and any proceedings under Article 18 (Forfeiture of basic rights) against a member, any detention and any other restriction of his personal freedom shall be suspended upon the request of the *Bundestag*.

## **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 provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*. Pursuant to Nr. 1 of the "*Grundsätze in Immunitätsangelegenheiten*" (Principles of Immunity) as laid down in Annex 6 of the rules of procedure of the *Bundestag*<sup>48</sup> the authorities entitled to request the immunity of a member of the *Bundestag* to be waived are the following:

- the public prosecutor's officers, courts, civil rights and professional disciplinary courts under public law and trade and professional associations exercising supervision by virtue of the law;
- in private proceedings, the court, before which the main proceedings under Section 383 of the Code of Criminal Procedure is initiated;
- a creditor in executory proceedings, where the court cannot act without his request;
- the Committee for Election Scrutiny, Immunity and Rules of Procedure of the *Bundestag*

In several cases requests for the waiver of immunity have been referred to the European Parliament by the "*Bundesministerium für Justiz*" (Federal Minister of Justice). This practice has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representative of Germany to the European Union<sup>49</sup>.

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<sup>47</sup> 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.

<sup>48</sup> [http://www.bundestag.de/parlament/funktion/gesetze/go\\_btg/index.html](http://www.bundestag.de/parlament/funktion/gesetze/go_btg/index.html)

<sup>49</sup> See tale in Annex 2.

## ESTONIA

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Estonian government

###### 1.1.1. Constitution

The composition of the Estonian government is established by Article 88 of the Constitution<sup>50</sup>, holding that the Government of the Republic shall be composed by the Prime Minister and the ministers.

###### 1.1.2. Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the Government of the Republic Act<sup>51</sup>. Article 5 of that Act regulates the appointment to office of the Government.

#### 1.2. Denomination of the members of the Estonian government

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

- *peaminister* (Prime Minister), *peaministrid* (Prime Ministers)
- *minister* (Minister), *ministrid* (Ministers)

#### 1.3. Date of the beginning of the term of office

Pursuant to Article 91 of the Constitution, the date of the beginning of the term of office of the members of the Government shall be considered the date when the Government takes an oath of office before the *Riigikogu* (Parliament of Estonia).

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<sup>50</sup> The text of the Constitution is available on the following website:

<https://www.riigiteataja.ee/ert/act.jsp?id=12846827>

For an official English translation of the Constitution please see the following website:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%F5hiseadus>

<sup>51</sup> The text of the Government of the Republic Act is available on the following website:

<https://www.riigiteataja.ee/ert/act.jsp?id=13147038>

The official English translation (consolidated text as of 08.01.2005) is available at:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0007K16&keel=en&pg=1&ptyyp=RT&tyyp=X&query=vabariigi+valitsuse+seadus>

## **2. Member of a national parliament**

### **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* shall be comprised of one hundred and one members. Members of the *Riigikogu* shall be elected in free elections on the principle of proportionality. Elections shall be general, uniform and direct. Voting shall be secret. Every Estonian citizen who has attained twenty-one years of age and has the right to vote may be a candidate for the *Riigikogu*. Regular elections to the *Riigikogu* shall be held on the first Sunday in March of the fourth year following the preceding *Riigikogu* election year.

### **2.2. Denomination of the members of the Estonian Parliament**

Pursuant to Article 60 of the Constitution, members of the *Riigikogu* are:

- *Riigikogu liikmed* (Members of the Parliament)

Furthermore, the *Riigikogu* shall elect from among its members a Chairman of the *Riigikogu* and two Deputy Chairmen, whose denominations are the following:

- *Riigikogu esimees* (the Chairman of the Parliament)
- *Riigikogu aseesimees* (Deputy Chairman of the Parliament), *Riigikogu aseesimehed* (Deputy Chairmen of the Parliament)

### **2.3. Date of the beginning of the term of office**

According to Article 61 of the Constitution, the authority of the members of the *Riigikogu* shall commence on the day the results of the elections are announced. Before assuming his or her duties, a member of the *Riigikogu* shall take an oath of office to remain loyal to the Republic of Estonia and to its constitutional order.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Article 72 of the European Parliament Election Act<sup>52</sup>, the *Vabariigi Valimiskomisjon* (National Electoral Committee) shall register the elected Members of the European Parliament. The National Electoral Committee shall forward the decision to the European Parliament.

If a candidate who is elected holds an office that is incompatible with the office of a Member of 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

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<sup>52</sup> The text of the European Parliament Election Act is available on the following website:

<https://www.riigiteataja.ee/ert/act.jsp?id=13117053>

The official English translation (consolidated text as of 01.05.2004) is available on:

<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X60009K3&keel=en&pg=1&ptyyp=RT&tyyp=X&query=euroopa+parlamendi+valimise+seadus>

The unofficial, but updated translation is available on:

[http://www.vvk.ee/public/dok/EPestonia\\_eng.pdf](http://www.vvk.ee/public/dok/EPestonia_eng.pdf)

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.

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.

The National Electoral Committee will 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.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

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

##### **"Article 62**

A member of the *Riigikogu* shall not be bound by his or her mandate, or be bear legal liability for votes cast or political statements made by him or her in the *Riigikogu* or in any of its bodies."

##### **"Article 76**

A member of the *Riigikogu* enjoys immunity. Criminal charges may be brought against him or her only on the proposal of the Chancellor of Justice, and with the consent of the majority of the membership of the *Riigikogu*."

#### **1.2. Implementing provisions**

The implementing rules of Article 76 of the Constitution are contained in the XIV Chapter of the Code of Criminal Procedure.

### **2. Scope and content of national parliamentary immunities**

#### **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. Immunity (Article 76 of the Constitution)**

Pursuant to Article 76 of the Constitution, the consent of the majority of the membership 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.

Art 376 of the Code of Criminal Procedure holds that a statement of charges with regard to members of the *Riigikogu* may be prepared only on the proposal of the Chancellor of Justice and with the consent of the majority of the membership of the *Riigikogu*.

Art 377 of the Code stipulates that a member of the *Riigikogu* may be detained as a suspect, preventive measures may be applied with regard to him or her and searches, seizure of property, inspections and physical examinations may be conducted with regard to him or her, only if the *Riigikogu* has granted consent to the preparation of a statement of charges with regard to such person. However, he or she may be detained as a suspect without the consent of the *Riigikogu* if apprehended in the act of commission of a criminal offence in the first degree. In such case, the person and any premises associated with him or her may be searched and the person subjected to inspections and physical examinations without the consent of the *Riigikogu*.

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

Pursuant to Article 3 of the Chancellor of Justice Act, the *Õiguskantsler* (Chancellor of Justice) shall request the President of the European Parliament for the waiver of the immunity of the Estonian Members of the European Parliament<sup>53</sup>.

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<sup>53</sup> See table in Annex 2.

## IRELAND

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Irish government

###### 1.1.1. Constitution

The composition of the Irish government is established by Article 28.1 of the Irish Constitution<sup>54</sup>, 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 28.5-6 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). The deputy prime minister (*Tánaiste*) is appointed by the President of Ireland upon the nomination of the prime minister (*Taoiseach*). The President then appoints the remaining ministers after they have been chosen by the *Taoiseach* and approved by the *Dáil*.

###### 1.1.2. Implementing provisions

The above-mentioned provisions of the Constitution are further supplemented by the following act of secondary law: the Ministers and Secretaries Act, 1924<sup>55</sup> and its amendments, which contain the detailed provisions regarding the functions of the Government in general. According to the Ministers and Secretaries (Amendment) (No. 2) Act, 1977<sup>56</sup>, 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.

##### 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:

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<sup>54</sup> For an official English translation of the Irish Constitution please see the following website: <http://www.taoiseach.gov.ie/index.asp?docID=243>.

<sup>55</sup> <http://www.irishstatutebook.ie/1924/en/act/pub/0016/index.html>

<sup>56</sup> <http://www.irishstatutebook.ie/1977/en/act/pub/0028/sec0004.html#zza28y1977s4>

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

### 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.

## 2. Member of a national Parliament

### 2.1. Legal provisions on the composition of the Irish Parliament

#### 2.1.1. 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. Pursuant to section 2 of the Electoral (Amendment) Act 2005<sup>57</sup>, the *Dáil* currently consists of 166 members<sup>58</sup>. 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 of the Government (*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.

<sup>57</sup> <http://www.oireachtas.ie/documents/bills28/acts/2005/a1605.pdf>

<sup>58</sup> Electoral Amendment Act 2005, s. 2 reads as follows: "Dáil Éireann shall, after the dissolution thereof that next occurs after passing of this Act, consist of 166 members".

### **2.1.2. 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 Orders<sup>59</sup>.

### **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)<sup>60</sup>

Pursuant to the provisions mentioned in paragraph 2.1., members of the Senate (*Seanad Éireann*) are the following:

- *Seanadóir* (Senator), *Seanadóirí* (Senators)

### **2.3. Date of the beginning of the term of office**

#### **2.3.1. 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 1992 provides that: "on completion of the counting of the votes the returning officer shall determine and declare the result of the poll and 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 they are not actually deemed to be members. 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 of the candidates then 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 their 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.

#### **2.3.2. 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. Section 53 of the *Seanad Electoral (Panel Members) Act, 1947*, the *Seanad* returning

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<sup>59</sup> The text of the *Dáil* Standing Orders can be found at the following link:  
[http://www.oir.ie/documents/proceduraldocuments/StandingOrders2007\\_English\\_and\\_Irish.pdf](http://www.oir.ie/documents/proceduraldocuments/StandingOrders2007_English_and_Irish.pdf)  
The text of the *Seanad* Standing Orders can be found at the following link:  
<http://www.oir.ie/documents/proceduraldocuments/SeanadSO2007.pdf>

<sup>60</sup> The abbreviations TD for singular and TDs for plural are normally used.

officer: "shall, in the 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, provides for a similar arrangement with respect to University Members: "As soon as 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 commence 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*.

#### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

No specific information on this point has been found.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Ireland the parliamentary immunity is granted to the members of the national Parliament "*The Oireachtas*" by Article 15.10-12-13 of the Irish Constitution which read as follows:

#### **" Article 15.10-12-13**

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".

## 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 Committees of the Houses of the *Oireachtas* (Privilege and Procedure) Act, 1976<sup>61</sup>, "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: "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."

## 2. Scope and content of national parliamentary immunities

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.

Deputies and Senators may not be sued for defamation because of any speech in the House. This privilege protects members both in the House and, pursuant to legislation, at Committee hearings.

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.

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

There are no provisions governing requests for waiver of immunity in the Irish Parliament. All privileges, whether granted by the Constitution or legislation, are absolute. Once granted, privileges cannot be taken away or waived. As for the specific question concerning the position of the European Parliament's members a reply from Ireland's Attorney-General's office provides that the Department of Foreign Affairs as the Minister for Foreign Affairs is the Minister domestically responsible for our Diplomatic Relations and Immunities Act 1967 (which implements the Vienna Convention on Diplomatic Immunity of 1961).

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<sup>61</sup> <http://acts2.oireachtas.ie/zza10y1976.1.html>

## GREECE

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Greek government

###### 1.1.1. Constitution

En vertu de l'article 81 de la Constitution<sup>62</sup>, le gouvernement est constitué par le Conseil des Ministres, dont les membres sont le Premier ministre et les ministres. Une loi fixe la composition et le fonctionnement du Conseil des Ministres. Un ou plusieurs ministres peuvent être nommés vice-présidents du gouvernement<sup>63</sup> par décret édicté sur proposition du Premier ministre.

Ce même article dispose que la loi détermine le statut des ministres-délégués et des ministres sans portefeuille, de même pour les vice-ministres, qui peuvent avoir la qualité de membre du gouvernement.

###### 1.1.2. Implementing provisions

La loi N° 1558/1985<sup>64</sup> régit la composition et le fonctionnement du gouvernement ainsi que de tous les organes gouvernementaux restreints (constitués généralement par domaine d'action gouvernementale).

#### 1.2. Denomination of the members of the Greek government

Les dispositions constitutionnelles et législatives utilisent les termes suivants:

- Πρωθυπουργός (Premier ministre)
- Υπουργός (Ministre), Υπουργοί (Ministres)
- Αναπληρωτής Υπουργός (Ministre-délégué), Αναπληρωτές Υπουργοί (Ministres-délégués)
- Υπουργός χωρίς χαρτοφυλάκιο (Ministre sans portefeuille), Υπουργοί χωρίς χαρτοφυλάκιο (Ministres sans portefeuille)
- Υφυπουργός (Vice-ministre), Υφυπουργοί (Vice-ministres)<sup>65</sup>

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<sup>62</sup> Constitution entrée en vigueur en 1975 et révisée en dernier lieu le 27 mai 2008. Texte disponible dans le site du parlement grec en original <http://www.parliament.gr/politeuma/default.asp>; version anglaise <http://www.parliament.gr/english/pdf/001-156%20aggliko.pdf>.

<sup>63</sup> Selon la loi, ces vice-présidents font partie du gouvernement même dans le cas exceptionnel où un décret présidentiel prévoit qu'ils n'ont pas la charge d'un ministère.

<sup>64</sup> Le décret présidentiel N° 63/2005 procède à la codification de cette loi et de 66 autres textes législatifs et réglementaires relatifs au gouvernement et aux organes gouvernementaux. Le texte de la loi est accessible dans le site du Secrétariat général du Gouvernement:

[http://www.ggk.gr/docs/kodikas\\_5\\_4\\_2005.pdf](http://www.ggk.gr/docs/kodikas_5_4_2005.pdf). Le "Centre de services aux citoyens" publie une traduction du texte de cette loi en anglais:

<http://www.kep.gov.gr/kepportal/CitizenGuide/CitizenGuideC1/CitizenGuideC2?PARAM1=701&lng=US>

La loi N° 1558/1985 dispose que les vice-ministres ne font pas partie du gouvernement. Cette possibilité est prévue par la Constitution<sup>66</sup>; la Constitution précise, néanmoins, dans son article 85, que ces vice-ministres sont, avec les membres du Conseil des ministres, collectivement responsables de la politique générale du gouvernement.

### **1.3. Date of the beginning of the term of office**

Le Président de la République nomme le Premier ministre qui doit prêter serment avant la prise de ses fonctions. Sur proposition du Premier ministre, le Président de la République nomme et révoque les autres membres du gouvernement et les vice-ministres; la loi dispose qu'ils sont nommés par décret et doivent prêter serment, mais sans reproduire la phrase "avant la prise des fonctions". Le Président de la République met fin aux fonctions du gouvernement si celui-ci démissionne, ainsi que si le Parlement lui retire sa confiance.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Greek Parliament**

#### **2.1.1. Constitution**

Selon l'article 51 de la Constitution, les députés représentent la nation et sont élus au suffrage direct, universel et secret par les citoyens ayant droit de vote. Le nombre des députés est fixé par la loi, sans pouvoir toutefois être inférieur à deux cents ni supérieur à trois cents.

#### **2.1.2. Implementing provisions**

La loi électorale<sup>67</sup> fixe le nombre des députés à 300 et prévoit les modalités organisationnelles et le mode du scrutin.

### **2.2. Denomination of the members of the Greek parliament**

Les membres du Parlement grec sont désignés par le terme:

- βουλευτής (député), βουλευτές (députés)

### **2.3. Date of the beginning of the term of office**

Selon l'article 59 de la Constitution, les députés prêtent serment avant la prise de leurs fonctions. L'article 53 prévoit que les députés sont élus pour quatre ans consécutifs qui commencent le jour des élections générales<sup>68</sup>. D'ailleurs, à propos des incompatibilités nationales de l'article 57, la Constitution dispose que les députés "sont tenus de déclarer, dans les huit jours après que leur élection est devenue définitive, leur choix entre le mandat parlementaire et les activités ou qualités" incompatibles. A défaut d'une telle déclaration faite

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<sup>65</sup> Désignés parfois (en français) par les termes "ministre adjoint" ou "secrétaire d'État"; en anglais le terme généralement utilisé est "deputy minister".

<sup>66</sup> Article 81, cité ci-dessus.

<sup>67</sup> Codifiée par le décret présidentiel 96/2007 et modifiée de nouveau, début 2008.

<sup>68</sup> Il est à noter qu'en 2007 des membres du Parlement européen ont été élus députés au Parlement grec; le Parlement européen en a pris acte et a constaté la vacance de leur siège le jour même de la séance inaugurale des travaux du Parlement grec, pendant laquelle a lieu la prestation de serment des députés présents (26 septembre 2007).



dans le délai, ils sont déchus de plein droit de leur mandat parlementaire. Ni la prestation de serment ni la prise des fonctions ne sont mentionnées dans ce cadre.

Les députés proclamés par les tribunaux compétents et dont l'élection est contestée devant la Cour spéciale suprême<sup>69</sup> exercent leurs fonctions (et bénéficient des immunités parlementaires) jusqu'à la publication de l'arrêt définitif de cette Cour.

#### ***2.4. National authority competent to communicate cases of incompatibility to the European Parliament***

Le Ministre de l'intérieur communique les noms des députés élus au Parlement européen ainsi que, le cas échéant, les noms de ceux qui les remplacent. Cette communication est faite généralement via la Représentation permanente de la Grèce auprès de l'UE.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### ***1.1. Constitution***

En Grèce les immunités accordées aux membres du Parlement national sont régies par les articles 61 et 62 de la Constitution, qui sont ainsi rédigés:

#### **"Article 61**

1. Le député n'est ni poursuivi, ni interrogé de quelque manière que ce soit, à l'occasion d'opinion ou de vote émis par lui dans l'exercice de ses fonctions parlementaires.

2. Le député est poursuivi uniquement pour diffamation calomnieuse, selon la loi, et après autorisation du Parlement. La cour d'appel est compétente pour ces affaires. L'autorisation est considérée comme définitivement refusée si le Parlement ne se prononce pas dans les quarante-cinq jours à compter de la réception de la plainte par le président du Parlement. Si le Parlement refuse d'accorder l'autorisation, ou si le délai s'est écoulé sans qu'une décision ne soit prise, l'acte est considéré comme ne pouvant plus faire l'objet d'une plainte.

Ce paragraphe est applicable à partir de la prochaine législature.<sup>70</sup>

3. Le député n'est pas tenu de témoigner sur des informations reçues ou données par lui dans l'exercice de ses fonctions, ni sur les personnes qui lui ont confié ces informations ou auxquelles lui-même les a données".

#### **"Article 62**

Durant la législature, aucun député n'est poursuivi, arrêté, emprisonné ou soumis à d'autres contraintes sans l'autorisation du Parlement. De même, aucun membre du Parlement dissous n'est poursuivi pour délits politiques entre la dissolution du Parlement et la proclamation des députés du nouveau Parlement.

L'autorisation est considérée comme refusée si le Parlement ne se prononce pas dans les trois mois à compter de la transmission de la demande de poursuite par le procureur au Président du Parlement.

Le délai de trois mois est suspendu durant les vacances parlementaires.

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<sup>69</sup> Instituée par l'article 100 de la Constitution et dont le fonctionnement est régi par la loi N° 345/1976.

<sup>70</sup> Cet alinéa figure dans le texte de la Constitution depuis son adoption, en 1975.

Aucune autorisation n'est requise en cas de crime<sup>71</sup> flagrant."

## **1.2. Implementing provisions**

Le Règlement du Parlement grec organise, dans son article 83, la procédure applicable au traitement des demandes de levée de l'immunité, reçues de la part du ministère public. C'est la commission de la déontologie parlementaire<sup>72</sup> qui en est saisie et qui établit les rapports à l'intention de la plénière.

## **2. Scope and content of national parliamentary immunities**

On retrouve une combinaison classique d'absence de responsabilité relative aux votes et opinions exprimés par les parlementaires dans l'exercice de leur mandat et d'une immunité contre les poursuites pénales.

### **2.1. Non-liability principle (Article 61 of the Constitution)**

Toute responsabilité à l'occasion d'une opinion ou de vote émis par le député dans l'exercice de ses fonctions est couverte par cette disposition, qu'elle soit pénale ou civile<sup>73</sup>.

On note deux spécificités du régime de l'absence de responsabilité; d'une part l'exception possible en cas de diffamation calomnieuse et d'autre part la règle sur le témoignage du député à propos d'informations données ou reçues dans l'exercice de ses fonctions.

### **2.2. Immunity (Article 62 of the Constitution)**

Aucun député n'est poursuivi, arrêté, emprisonné ou soumis à d'autres contraintes sans l'autorisation du Parlement. L'interdiction des poursuites sans autorisation du Parlement ne couvre que les poursuites pénales en cas de crime flagrant.

En vertu du Code de procédure pénale, même dans les cas où une autorisation est nécessaire pour une poursuite, cela n'empêche pas les enquêtes, même avant l'autorisation. Néanmoins il n'est pas permis de procéder à des tels actes d'instruction contre la personne dont la poursuite est soumise à autorisation.

## **3. National authority entitled to request the immunity of a Greek member of the European Parliament to be waived**

Les règles applicables aux députés du Parlement grec<sup>74</sup> prévoient que les demandes du ministère public (*public prosecutor*) pour l'octroi de l'autorisation d'exercer des poursuites pénales contre un député, après avoir été contrôlées par le procureur de la Cour de Cassation, sont soumis au Parlement par le Ministre de la justice (Υπουργός Δικαιοσύνης).

C'est précisément le Ministre de la justice qui adresse les demandes de levée de l'immunité au Parlement européen, ce qui fait que les deux procédures coïncident sur ce point. Ceci a été confirmé dans une lettre<sup>75</sup> que le Représentant permanent de la Grèce auprès de l'UE a adressée au Président du Parlement européen.

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<sup>71</sup> La Constitution emploie à ce propos le terme technique "crime" (*κακούργημα*), par opposition à la notion (plus large) de "flagrant délit".

<sup>72</sup> Prévue par l'article 43 bis du Règlement.

<sup>73</sup> Ou même disciplinaire, le cas échéant, ajoute la doctrine.

<sup>74</sup> Article 83 du Règlement du Parlement grec.

<sup>75</sup> See table in Annex 2.

## **SPAIN**

### **I. 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 Member of the Government of a Member State**

##### ***1.1. Legal provisions on the composition of the Spanish government***

###### ***1.1.1. 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"<sup>76</sup>.

###### ***1.1.2. 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*" (*Law No 50/1997 of the Government*), in particular Articles 1, 2, 3 and 4.

##### ***1.2. Denomination of the members of the Spanish government***

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

- *Presidente* (President)
- *Vicepresidente/s* (Vice-president/s)
- *Ministro* (Minister)

##### ***1.3. Date of the beginning of the term of office***

Under the terms of Articles 99 and 100 of the Constitution, of Article 171 of the Rules of Procedure of the Chamber of Deputies and of the Article 12 of Law No 50/1997 of the government, the date of the beginning of the term of office of the members of the government shall be considered the date they are nominated by the King of Spain.

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<sup>76</sup> "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 of the Spanish Constitution please see the following website: <http://www.tribunalconstitucional.es/constitucion/laconstitucion.html>

## **2. Member of a national parliament**

### **2.1. Legal provisions on the composition of the Spanish parliament**

#### **2.1.1. Constitution**

The composition of the parliament in Spain is established by Article 66, first paragraph of the Constitution which reads as follows: "The *Cortes Generales* represent the Spanish people and consist of the Congress of Deputies and the Senate"<sup>77</sup>.

The following Article 68 of the Constitution fixes the number of the Deputies which amounts to three hundred minimum until four hundred maximum. Furthermore, Article 162 of Law 5/1985 of General Electorate Regime specifies that the Chamber of Deputies is composed of three hundred fifteen as maximum.

As far as the Senate is concerned, Article 69 of the Constitution establishes the number of 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"<sup>78</sup>. Pursuant to Article 69.4 and 69.5 of the Constitution: "The cities of Ceuta and Melilla shall each elect two Senators. The Autonomous Communities shall, moreover, nominate one Senator and a further Senator for each million inhabitants in their respective territories"<sup>79</sup>.

#### **2.1.2. 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 Procedure: *Reglamento del Congreso de los Diputados 10 de febrero de 1982*; *Reglamento del Senado de 3 de mayo de 1994*.

### **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:

- *Diputado* (Deputy)
- *Senador* (Senator)

### **2.3. Date of the beginning of the term of office**

#### **2.3.1. Chamber of Deputies**

Under the terms of Article 68.1.4 of the Constitution and of Article 20.1 and 20.2 of the Rules of Procedure of the Chamber of Deputies, Deputies officially begin their term of office from the date of their proclamation, which takes place at the opening of the first sitting following the elections.

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<sup>77</sup> "Las Cortes Generales representan al pueblo español y están formadas por el Congreso de los diputados y el Senado."

<sup>78</sup> "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".

<sup>79</sup> "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."

### **2.3.2. Senate**

Under the terms of Article 69.6 of the Constitution, Senators officially begin their term of office from the date of their proclamation. The proclamation takes place at the opening of the first sitting following the elections.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Under the terms of the Article 220 of the Organic Law of electoral Regime, (LOREG) "*Para la elección de Diputados al Parlamento Europeo, la Junta Electoral competente para todas las operaciones previstas en el Título I, capítulo VI, sección segunda de la presente Ley, en relación a la presentación y proclamación de candidatos es la Junta Electoral Central*".

Therefore, in case of any disputes concerning the alleged existence of cases of incompatibility, the communication is done by *La Junta Electoral Central* (the Electoral Central Committee of Spain).

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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**

Deputies and Senators shall enjoy indemnity for opinions expressed when in office. During their terms of office, Deputies and Senators shall likewise enjoy immunity and may only be arrested in the event of *delicto flagrante*. They may be neither indicted nor tried without prior authorisation of the respective Houses"<sup>80</sup>.

#### **1.2. Implementing provisions**

The implementing rules of Article 71 of the Constitution are contained in the Rules of Procedure of the Chamber of Deputies and 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. Scope and content of national parliamentary immunities**

#### **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 or votes cast in the exercise of their

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<sup>80</sup> "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."

functions. Deputies and Senators are therefore exempted from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities. This exemption continues to apply after the end of their term of office, according to Articles 10 and 21 of the Rules of Procedure of the Chamber of Deputies and of the Senate.

## **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. According to Article 11 of the Rules of Procedure of the Chamber of Deputies, *"Los diputados no podrán ser inculcados ni procesados sin la previa autorización del Congreso"*. According to Article 22.1 of the Rules of Procedure of the Senate: *"Los Senadores no podrán ser inculcados ni procesados sin la previa autorización del Senado, solicitada a través del correspondiente suplicatorio"*.

## FRANCE

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the French government

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<sup>81</sup>.

##### 1.2. Denomination of the members of the French government

The composition of each government is established in a decree. The denomination of the members of the current French government is established in a decree of 19 June 2007 which mentions<sup>82</sup>:

- *Premier Ministre* (Prime Minister)
- *Ministre d'Etat* (Minister of State)
- *Ministres* (Minister)
- *Secrétaires d'Etat* (Secretary of State)
- *Haut commissaire* (High Commissioner)

##### 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 publication of the decree establishing their appointment by the President of the French Republic<sup>83</sup>.

#### 2. Member of a national Parliament

##### 2.1. Legal provisions on the composition of the French Parliament

###### 2.1.1. Constitution

The composition of the French Parliament is established by Articles 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

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<sup>81</sup>For an English translation of the French Constitution see : <http://www.assemblee-nationale.fr/english/8ab.asp>

<sup>82</sup> The composition of the French government has been established in a decree of 19 June 2007 ([http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=F756D1096759974F029D984B9E436FE3.tpdjo13v\\_1?cidTexte=JORFTEXT000000274401&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=F756D1096759974F029D984B9E436FE3.tpdjo13v_1?cidTexte=JORFTEXT000000274401&categorieLien=id)). The government as composed in June 2007 has been modified several times; see "décrets" of 18 March 2008, 15 January 2009 and 21 January 2009. The composition of the current French government is available in English at the following website: <http://www.premier-ministre.gouv.fr/en/acteurs/gouvernement/>

<sup>83</sup> Article 1 of the French Civil Code states that legislative texts come into force the day following their publication in the Official Journal.

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. [...]"<sup>84</sup>

### **2.1.2. Implementing provisions**

Article 25 of the French Constitution provides: "*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 appartenaient.*"<sup>85</sup>

- National Assembly: Article LO 119 to LO 122 of the French electoral code provides the details related to deputies.

- Senate: Article LO 275 to LO 278 of the French electoral code provides the details related to senators. They are elected for 6 years and half of this chamber is renewed every 3 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 Procedure<sup>86</sup>.

### **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).

Members of the National Assembly are:

- *député* (Deputy), *députés* (Deputies)

Members of the Senate are:

- *sénateur* (Senator), *sénateurs* (Senators)

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<sup>84</sup> "[...]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 (577), sont élus au suffrage direct. Le Sénat, dont le nombre de membres ne peut excéder trois cent quarante-huit (348), est élu au suffrage indirect. Il assure la représentation des collectivités territoriales de la République. [...]"

<sup>85</sup> **ARTICLE 25.** 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.

<sup>86</sup> The texts of the Rules of Procedure of both the National assembly and the Senate are available on the following websites: [http://www.assemblee-nationale.fr/english/8ac.asp#chap\\_14](http://www.assemblee-nationale.fr/english/8ac.asp#chap_14);  
<http://www.senat.fr/lng/en/index.html>



## **2.3. Date of the beginning of the term of office**

### **2.3.1. 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.*" 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.

### **2.3.2. 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.*"

## **3. National authority competent to communicate cases of incompatibility to the European Parliament**

No information found.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In France the parliamentary immunities are granted to the members of the national parliament by Article 26 of the Constitution.

#### **"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."<sup>87</sup>

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<sup>87</sup> "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

## 1.2. Implementing provisions

The implementing provisions are contained in the "Instruction générale du Bureau de l'Assemblée Nationale" and in the "Instruction générale du Bureau du Sénat".

Article 16 of the "Instruction générale du Bureau de l'Assemblée Nationale" reads as follows<sup>88</sup>:

*"Les demandes présentées en application de l'article 26, alinéa 2, de la Constitution sont adressées au Président de l'Assemblée qui en saisit le Bureau de l'Assemblée nationale, dont les décisions sont préparées par une délégation désignée en son sein.*

*Elles doivent être formulées par les procureurs généraux intéressés qui précisent les mesures d'arrestation ou les mesures privatives ou restrictives de liberté dont l'autorisation est sollicitée. Les demandes des procureurs généraux sont transmises au Président de l'Assemblée par le garde des sceaux, ministre de la justice.*

*Les demandes de suspension de poursuite, de détention ou de mesures privatives ou restrictives de liberté présentées en application de l'article 26, alinéa 3, de la Constitution sont imprimées sous la forme de proposition de résolution, distribuées et renvoyées à la commission instituée à l'article 80 du Règlement.*

*Les décisions du Bureau sont notifiées au garde des sceaux et publiées au Journal officiel. Les décisions de l'Assemblée en matière de suspension de poursuite, de détention ou de mesures privatives ou restrictives de liberté sont notifiées au Premier ministre."*

Article III bis of the Instruction générale du Bureau du Sénat<sup>89</sup> reads as follows:

*"Dans les cas prévus au deuxième alinéa de l'article 26 de la Constitution, l'arrestation ou toute autre mesure privative ou restrictive de liberté susceptible d'être décidée à l'encontre d'un sénateur fait l'objet d'une demande d'autorisation formulée par le procureur général près la cour d'appel compétente et transmise par le garde des sceaux, ministre de la justice, au Président du Sénat. Cette demande indique précisément les mesures envisagées ainsi que les motifs invoqués.*

*L'autorisation donnée par le Bureau du Sénat ne vaut que pour les faits mentionnés dans la demande prévue à l'alinéa précédent.*

*Les décisions du Bureau sont notifiées au garde des sceaux et au sénateur visé par la demande. Elles font l'objet d'une insertion au Journal officiel (édition des Lois et décrets)."*

- Article 105 of the Standing Orders of the Senate<sup>90</sup>.

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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."

<sup>88</sup> Available at: <http://www.assemblee-nationale.fr/connaissance/reglement.asp#igb>

<sup>89</sup> Available at: [http://www.senat.fr/reglement/reglement\\_mono.html#toc216](http://www.senat.fr/reglement/reglement_mono.html#toc216)

<sup>90</sup> [http://www.senat.fr/lng/en/reglement\\_anglais/reglement\\_anglais0.html#toc0](http://www.senat.fr/lng/en/reglement_anglais/reglement_anglais0.html#toc0). Translated as: "1. - A Committee consisting of thirty members shall be appointed whenever there are grounds for the Senate to examine a draft resolution tabled with a view to calling for the suspension of a Senator's arrest, measures restricting, or depriving him/her of his/her freedom, or of legal proceedings being taken against him/her.

When a Committee is being appointed, the President of the Senate shall determine the period wherein candidacies must be presented according to proportional representation. When this period of time has elapsed, the President of the Senate, the Chairmen of Political Groups and the delegate representing non-aligned Senators shall meet to draw up a list of members of the Committee. This list shall be published in the *Journal officiel*. The appointment shall take effect as soon as the issue of the *Journal officiel* is published. 2. - The Committee shall elect a Bureau consisting of a Chairman, a deputy

## **2. Scope and content of national parliamentary immunities**

### **2.1. Non-liability principle (Article 26 of the Constitution, first paragraph)**

Pursuant to the first paragraph of Article 26 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. Deputies 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 continues to apply after the end of their term of office.

### **2.2. Inviolability (Article 26 of the Constitution, second and third paragraphs)**

Members of parliament may be arrested or otherwise deprived of their freedom, or face restrictions thereof, only with the permission of the desk of their assembly. There are limitations to this immunity in case of flagrant felony or in case of a definitive condemnation by a court of law, where the authorisation of the Bureau is not needed. This exemption applies only during their term of office.

## **3. National authority entitled to request the immunity of a French 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 French members of the European Parliament. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*.

Article 9 bis of the "Ordonnance n°58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires" reads as follows:

*"L'arrestation ou toute autre mesure privative ou restrictive de liberté susceptible d'être décidée à l'encontre d'un membre du Parlement fait, à peine de nullité, l'objet d'une demande d'autorisation formulée par le procureur général près la cour d'appel compétente et transmise par le garde des sceaux, ministre de la justice, au président de l'assemblée intéressée. Cette demande indique précisément les mesures envisagées ainsi que les motifs invoqués.*

*L'autorisation donnée par le Bureau de l'assemblée intéressée ne vaut que pour les faits mentionnés dans la demande prévue au premier alinéa."*

Requests for the arrest or detention of a member of one of the chambers are issued by the general prosecutor of the competent Court of Appeal, sent to the Minister of Justice, who transmits them to the Desk of the relevant assembly. The Desk examines the requests and rules on it.

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Chairman and a Secretary, and shall appoint a *Rapporteur*. 3. - The Committee's conclusions must be tabled within three weeks of the members of the Committee being designated: they shall be placed on the Senate agenda by the Chairmen's Conference as soon as the Committee's report has been distributed. 4. - If asked to adjourn legal proceedings against a Senator who has been arrested or is the subject of measures restricting, or depriving him/her of his/her freedom, the Senate may only decide to suspend the custodial order or to suspend all or part of any others restrictions placed upon him/her."

## ITALY

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Italian government

###### 1.1.1. 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."<sup>91</sup>

###### 1.1.2. 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 Ministers), in particular Articles 1, 9 and 10.

##### 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* (Minister<sup>92</sup>), *Ministri* (Ministers)
- *Sottosegretario di Stato* (Undersecretary of State), *Sottosegretari di Stato* (Undersecretaries of State)
- *Viceministro* (Deputy-Minister), *Viceministri* (Deputy-Ministers)

##### 1.3. Date of the beginning of the term of office

Under the terms of Article 93 of the Constitution<sup>93</sup> and of Article 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.

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<sup>91</sup> "Il Governo della Repubblica è composto del Presidente del Consiglio e dei ministri, che costituiscono insieme il Consiglio dei ministri". For an English translation of the Italian Constitution please see the following website:

<http://www.cortecostituzionale.it/eng/testinormativi/costituzionedellarepubblica/costituzione.asp>

<sup>92</sup> In the Italian government ministers may be with or without a portfolio. The website of the Italian government is the following: <http://www.governo.it/>

<sup>93</sup> Article 93 of the Italian Constitution reads as follows: "The President of the Council of Ministers and the Ministers, before entering on his duties, shall be sworn in by the President of the Republic".

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Italian Parliament**

#### **2.1.1. 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."<sup>94</sup>

The following Articles 56-59 of the Constitution fix the number of the Deputies and of the elective Senators which respectively amounts to six hundred thirty and to three hundred fifteen. Whereas all members of the Chamber of Deputies are elected, the Senate is composed both by elected members and by appointed members. Indeed, former Presidents of the Republic are Senators by right and for life unless they renounce the nomination. Furthermore, the President of the Republic may appoint Senators for life five citizens who have contributed to the honour of the country through their outstanding achievements in social, scientific, artistic and literary fields.

#### **2.1.2. 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 Procedure<sup>95</sup>.

### **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* (Deputy), *Deputati* (Deputies)
- *Senatore* (Senator), *Senatori* (Senators)

### **2.3. Date of the beginning of the term of office**

#### **2.3.1. 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, which takes place at the opening of the first sitting following the elections. Once the provisional Bureau has been set up at the first sitting following the elections, the President proclaims elected as Deputies those candidates who have been declared elected by the chairman of the "*ufficio centrale circoscrizionale*" (central district electoral office) as a result of the counting of votes and the distribution of the seats. For the purpose of the proclamations the documents certifying the declarations at district level are transmitted by the chairman of the central district electoral office to the Secretariat General of the Chamber of Deputies<sup>96</sup>. Record of the proclamations is to be found in the minutes of the first sitting of the Chamber.

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<sup>94</sup> "Il Parlamento si compone della Camera dei deputati e del Senato della Repubblica."

<sup>95</sup> The texts of the Rules of Procedure of both the Chamber of Deputies and the Senate are available on the following websites: <http://english.camera.it/> <http://www.senato.it/>

<sup>96</sup> See Articles 2 and 3 of the Rules of Procedure of the Chamber of Deputies and 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.

### **2.3.2. 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 takes place at the opening of the first sitting following the elections. At that sitting the President of the provisional Bureau proclaims elected as Senators those candidates who have been declared elected by the chairman of the "*ufficio elettorale regionale*" (regional electoral office) following the counting of votes and the distribution of the seats. For the purpose of the proclamations the documents certifying the declarations at regional level are transmitted by the chairman of the regional electoral office to the Secretariat of the Senate<sup>97</sup>. Record of the proclamations is to be found in the minutes of the first sitting of the Senate.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Law No 18, of 24 January 1979, on the election of the Italian members at the European Parliament, as amended by Law No 78, of 27 March 2004, the Italian authority competent to communicate cases of incompatibility to the European Parliament is the "*ufficio elettorale nazionale per il Parlamento europeo*" (national electoral office for the European Parliament) 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<sup>98</sup>.

As a result of a consolidated practice, this communication is transmitted to the European Parliament by the Permanent Representation of Italy to the European Union and takes effect from the date of its official transmission by the latter authority.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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 required to give account of any opinions expressed or votes cast in the exercise of their functions.

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<sup>97</sup> See Articles 2 and 3 of the Rules of Procedure of the Senate and the Legislative Decree No 533, of 20 December 1993, as modified in particular by Law No 270/2005.

<sup>98</sup> The competent judicial authorities are established by Articles 42 and 43 of Law No 18/1979. 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 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).

Without authorization from the House to which they belong, no member of Parliament may be subjected to a personal search or have their domicile searched, neither may they be arrested or otherwise deprived of personal freedom, or kept in detention, except to enforce a final conviction, or if caught in the act of committing a crime for which arrest is mandatory.

Similar authorization is also required before members of Parliament may have their conversations or communications intercepted, or their mail impounded<sup>99</sup>.

## **1.2. Implementing provisions**

The implementing rules of Article 68 of the Constitution are contained in Law No 140 of 20 June 2003.

## **2. Scope and content of national parliamentary immunities**

### **2.1. Non-liability principle (Article 68, first paragraph, of the Constitution)**

Pursuant to Article 68, first paragraph, 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. Deputies and Senators are therefore exempted from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities<sup>100</sup>. This exemption continues to apply after the end of their term of office.

Article 3 of Law No140/2003 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 both Chambers;
- 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 office inside or outside the Parliament.

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<sup>99</sup> "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."

<sup>100</sup> In its decision No 58/2000 the Constitutional Court adopted a restrictive interpretation with regard to the 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, the declaration made by a member outside the parliamentary premises has to be itself an expression of the parliamentary activity in order to be covered by the immunity. The same approach 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.



## **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 member belongs is needed in order to subject the member to the following measures:

- personal search or house search,
- arrest, deprivation of personal freedom, or maintenance of detention, except in the case of enforcement of a final conviction or unless he or she is caught in the act of committing a crime for which arrest is mandatory (in flagrante delicto),
- interceptions, by any means, of conversations or communications ,
- mail sequestration.

Following an amendment to the Constitution approved in 1993<sup>101</sup> no previous authorisation of the competent Chamber is necessary in order to subject a member of the Parliament to criminal proceedings.

## **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. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*.

### **3.1. Non-liability principle (Article 68, first paragraph, of the Constitution)**

As far as the non-liability principle established in Article 68, first paragraph, of the Constitution is concerned, Article 3(4) of Law No140/2003 rules the following:" when during a criminal or civil proceedings there are doubts about the applicability of Article 68, first paragraph of the Constitution, the judicial authority shall refer the matter to the Chamber, to which the member in question belongs, which 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.

### **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 concerned belongs by the judicial authority which ordered the adoption of one or more of those measures. More specifically, since these judicial orders usually pertain to the preliminary investigations of criminal proceedings, the judicial authority requiring the authorisation is the "giudice per le indagini preliminari" (judge of the preliminary investigation).

In several cases requests for the waiver of immunity have been referred to the European Parliament by the "Ministro di Giustizia" (Minister of Justice). This practice has been confirmed by an official letter<sup>102</sup> sent to the President of the European Parliament by the Permanent Representative of Italy to the European Union in order to specify which Italian authority is entitled to submit such requests.

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<sup>101</sup> Constitutional Law No 3, of 29 October 1993.

<sup>102</sup> See table in Annex 2.



## CYPRUS

### I. 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. Member of the Government of a Member State

##### *1.1. Legal provisions on the composition of the Cypriot government*

###### *1.1.1. Constitution*

The composition of the Cypriot government is established, indirectly, by Articles 1, 36 and 54 of the Constitution<sup>103</sup>, 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:[...]"

###### *1.1.2. Implementing provisions*

There are no further implementing provisions other than the Constitution itself.

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<sup>103</sup> The text of the constitution is available on the internet, in Greek  
<http://www.cyprus.gov.cy/portal/portal.nsf/All/6A74CFDB511C3691C2256EBD004F3D57?OpenDocument>  
and in English  
<http://www.cyprus.gov.cy/portal/portal.nsf/All/C44572D7363776ACC2256EBD004F3BB3?OpenDocument>

## **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)
- Υπουργός (Minister)

According to the Cypriot Constitution, the President of the Republic has to be a Turkish Cypriot. 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 partition of the island in 1974, the position of Vice-President is vacant. This has been justified by the "*doctrine of necessity*"<sup>104</sup>, according to which the application of constitutional provisions related to the bi-communal character of the state are suspended until the functioning of the state becomes possible without the participation of the Turkish Cypriots.

## **1.3. Date of the beginning of the term of office**

Under the terms of Article 43 of the Constitution 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.

Under Article 46 of the Constitution the Ministers are designated respectively by the President and the Vice-President of the Republic who shall appoint them by an instrument signed by them both. A more detailed provision than this in respect to the date of the beginning of their term of office does not exist.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Cypriot Parliament**

#### **2.1.1. 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".

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 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.<sup>105</sup>

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<sup>104</sup> See also case Attorney General of the Republic v. Mustafa Ibrahim (1964), CLR, at p. 195.

<sup>105</sup> 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 division of the island since 1974. For reasons of simplicity and brevity, those Communal Chambers will not be dealt with in this document.

The number of representatives has been increased in 1985 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. This decision was taken invoking the "*doctrine of necessity*", since the Constitution calls for separate majorities of Greek Cypriots and Turkish Cypriots in the case of the relevant amendment.

### **2.1.2. Implementing provisions**

More detailed provisions concerning the structure and the organisation of the House of Representatives are contained in the Rules of Procedure<sup>106</sup>.

### **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)

### **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 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."

On the basis of this provision, it is to be assumed that the term of office of a Member of Parliament commences once he is solemnly declared as Member of Parliament by the President during the sitting following the affirmation referred to in Article 69 of the Constitution.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Le Ministère de l'Intérieur, plus particulièrement *le service des élections*, est l'organe compétent pour vérifier s'il y a un problème d'incompatibilité, et ceci, après les élections. De tels cas sont déjà identifiés pendant la présentation des candidatures. Si un élu se trouve dans une situation d'incompatibilité, le service des élections notifie ce dernier officiellement par lettre. La personne en question doit choisir le poste qu'il préfère et ceci doit être fait avant la proclamation officielle qui normalement a lieu pendant la première plénière du nouveau parlement. De toute façon, le député potentiel (l'élu) ne peut devenir député (proclamé officiellement) avant sa résignation de l'autre poste qui le met en situation d'incompatibilité, et de toute façon pas avant qu'il ait exprimé son choix. Si la personne choisit l'autre poste, la procédure de remplacement est mise en route: cette procédure consiste simplement à convoquer la personne suivante sur la liste des élus.

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<sup>106</sup> The text of the Rules of Procedure is available on the following website:  
<http://www.parliament.cy/parliamenteng/index.htm>.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Cyprus 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 High 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 death or imprisonment for five years or more in case the offender is taken in the act. In such a case the High 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 High 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 High 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".

#### **1.2. Implementing provisions**

Implementing provisions are set by the law of 2004 on the elections of the members of the European Parliament and electoral law of 1979.

### **2. Scope and content of national parliamentary immunities**

#### **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. This specification has to be underlined, especially in view of the broader correspondent provision of the Protocol on the Privileges and Immunities of the European Communities: the granting of immunities is linked to the performance of the functions of the member of European Parliament, without requiring that those functions have to be undertaken in the European Parliament itself.

## **2.2. Immunity (Article 83(2)-(4) of the Constitution)**

Pursuant to Article 83(2)-(4) of the Constitution, the authorisation of the High Court (and not of the House of Representatives) is required in order to subject the member to the following measures:

- prosecution
- arrest
- imprisonment

Leave by the Supreme Court is not necessary in cases of offences punishable with death or imprisonment for five years or more in case the offender is taken in the act. The action of the immunity ceases once the function of Member of Parliament is terminated.

## **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 immunity of a member of the European Parliament to be waived is the Γενικός Εισαγγελέας της Δημοκρατίας (Attorney-General of the Republic). The authority competent for granting leave for the prosecution is the High Court. However, in practice this request is transmitted to the European Parliament by the Permanent Representative of Cyprus to the EU.

## LATVIA

### I. 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 Member of the Government of a Member State

##### 1.1 Legal provisions on the composition of the Latvian government

###### 1.1.1 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"<sup>107</sup> and by Article 56 which provides "The Cabinet shall be formed by the person who has been invited by the President to do so"<sup>108</sup>.

###### 1.1.2 Implementing provisions

The above-mentioned provisions of the Constitution are implemented and further specified by the following law: *Ministru kabineta iekārtas likums* (Law on Structure of Cabinet)<sup>109</sup> adopted on 15 May 2008, in force from 1 July 2008 (LV, 28.05.2008, nr. 82).

##### 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) may be members of the government (Article 5(2) of Law on Structure of Cabinet).

##### 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". From this provision it follows that the term 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, as it is also stated in Article 17 of Law on Structure of Cabinet.

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<sup>107</sup> "*Ministru kabinets sastāv no ministru prezidenta un viņa aicinātiem ministriem*". For an English translation of the Latvian Constitution please see the following website: [http://www.saeima.lv/Likumdosana\\_eng/likumdosana\\_satversme.html](http://www.saeima.lv/Likumdosana_eng/likumdosana_satversme.html)

<sup>108</sup> "*Ministru kabineta sastāda persona, kuru uz to aicina Valsts Prezidents*".

<sup>109</sup> The text in Latvian is available at <http://www.mk.gov.lv/lv/mk/darbibu-reglamentejosie-dokumenti/mk-iekartas-likums/>, no official or unofficial translation in English of this law is available.

## **2. Member of a national parliament**

### **2.1 Legal provisions on the composition of the Latvian parliament**

#### **2.1.1 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"<sup>110</sup>.

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.

#### **2.1.2 Implementing provisions**

More detailed provisions concerning the structure and the organisation of the parliament are contained in its Rules of Procedure "*Kārtības rullis*"<sup>111</sup>.

### **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)

### **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* shall acquire the mandate of a member of the *Saeima* if such person gives a solemn promise, the text of which is provided in the same article.

### **2.4 National authority competent to communicate cases of incompatibility to the European Parliament**

There is no special procedure for communicating the incompatibilities to the European Parliament.

Article 6(2) of the *Saeima* election law "*Saeimas vēlēšanu likums*"<sup>112</sup> provides that a member of the European Parliament who is inscribed in the list of candidates for the elections of the *Saeima* has an obligation within one month from the moment of registration of the candidates' list, to submit to the Central Election Commission of Latvia (*Centrālā Vēlēšanu*

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<sup>110</sup> " *Saeima* sastāv no simts tautas priekšstāvjiem".

<sup>111</sup> For an English version of *Kārtības rullis* please see the following webiste:  
[http://www.saeima.lv/Likumdosana\\_eng/likumdosana\\_kart\\_rullis.html](http://www.saeima.lv/Likumdosana_eng/likumdosana_kart_rullis.html).

<sup>112</sup> The text in Latvian is available at <http://web.cvk.lv/pub/public/28367.html>, no official translation in English of this law is available, unofficial translation in English is available at <http://web.cvk.lv/pub/public/28126.html>

*komisija*) documents confirming that he/she has left the office of the member of the European Parliament. Failure to do so results in this person being deleted from the list of candidates for the elections of the *Saeima*.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Latvia the parliamentary immunities are granted to the members of the *Saeima* by Articles 28 - 31 of the Constitution.

#### **"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 and administrative fines may not be levied against its members."

#### **"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."<sup>113</sup>

## **1.2 Implementing provisions**

The implementing rules of Articles 28 - 31 of the Constitution are contained in the Rules of Procedure of the *Saeima* "*Kārtības rullis*".

## **2. Scope and content of national parliamentary immunities**

### **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 a member of the *Saeima* if he/she, albeit in the course of performing parliamentary duties, disseminate defamatory statements which he/she knows to be false, or defamatory statements about private or family life.

### **2.2 Immunity (Articles 29 - 31 of the Constitution)**

Pursuant to Article 29 of the Constitution arrest, search of premises and restriction of any kind of personal liberty cannot be performed against members of the *Saeima*, without its consent. Consent for arrest is not necessary if a member is apprehended in the act of committing a crime.

Pursuant to Article 30 of the Constitution criminal prosecution may not be commenced and administrative fines may not be levied against members of the *Saeima*, without its consent.

## **3. National authority entitled to request the immunity of a Latvian member of the European Parliament to be waived**

Latvian legislation does not expressly determine national authorities empowered to request the immunity of a Latvian member of the European Parliament to be waived. However, the interpretation of the above-mentioned provisions of the Constitution suggests that the judiciary power (*tiesa*, depending on court instance it is *rajona tiesa* (district court), *apgabala tiesa* (regional court) or *Augstākā tiesa* (Supreme Court)) is the only authority entitled to request the immunity of a member to be waived.

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<sup>113</sup> "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.

29. Saeimas locekli nevar apcietināt, izdarīt pie viņa kratišanas, 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 vai uzlikt viņam administratīvu sodu 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".

## LITHUANIA

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Lithuanian government

###### 1.1.1. 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".<sup>114</sup>

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".

###### 1.1.2. 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 last amended on 20 March 2008).

##### 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* (Prime Minister)
- *Ministras* (Minister)

##### 1.3. Date of the beginning of the term of office

Under the terms of Article 93 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 take an oath to be faithful to the Republic of Lithuania, to observe the Constitution and laws.<sup>115</sup>

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<sup>114</sup> "Lietuvos Respublikos Vyriausybę sudaro Ministras Pirmininkas ir ministrai." For an English translation of the Constitution of the Republic of Lithuania see: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>

<sup>115</sup> 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

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Lithuanian Parliament**

#### **2.1.1. Constitution**

Chapter V of the Lithuanian Constitution sets all the basic principles related to the *Seimas* (Lithuanian Parliament). Article 55 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.

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the structure and the organisation of the *Seimas* are provided in the *Seimas* statute<sup>116</sup>.

### **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* (member of the *Seimas*)

### **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. It 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 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 *Seimas* shall adopt a corresponding resolution thereon.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Article 94 of the Law on Elections to the European Parliament<sup>117</sup> 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).

The law provides that in case a candidate elected to the European Parliament does not resign from a post incompatible with the function of the member of the European Parliament within set time limit, the Central electoral commission, within 5 working days from the moment it

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stipulation shall mean that the Prime Minister or a minister has not sworn the oath and may not hold his office". For an English version of this Law see:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=318386](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=318386)

<sup>116</sup> For the English text of the *Seimas* Statute please see the following website:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=326185](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=326185)

<sup>117</sup> The Law on Elections to the European Parliament No IX-1837 of 20 November 2003 as last amended on 24 May 2008.

becomes known about the incompatibility, shall take a decision to revoke the mandate of the member of the European Parliament and shall inform thereof the European Parliament, publish in the internet and in the Official journal "Valstybės žinios".

The case concerning the revocation of the mandate of the member of the European Parliament shall be brought within 10 days before the Supreme Administrative Court which shall take a decision on it within 3 days.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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."<sup>118</sup>

#### **1.2. Implementing provisions**

The implementing rules of Article 62 of the Constitution are contained in the *Seimas* statute<sup>119</sup>.

### **2. Scope and content of national parliamentary immunities**

#### **2.1. Non-liability principle**

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, for personal insult or slander, be held liable in accordance with the general procedure.

#### **2.2. Immunity**

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

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<sup>118</sup> "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."

<sup>119</sup> See note 116.

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.

### **3. National authority entitled to request the immunity of a Lithuanian 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 Lithuanian members of the European Parliament. According to an unofficial consultation with the colleagues from the national parliament it seems that general provisions of the Criminal procedure code and its chapter related to an international cooperation would apply.

According to Article 66 of the Criminal procedure code the national courts and prosecution offices send their requests to international organisation through *Lietuvos Respublikos teisingumo ministeriją* (Lithuanian Ministry of foreign affairs) or through the office of the *Lietuvos Respublikos generalinę prokuratūrą* (General prosecutor).

## LUXEMBOURG

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Luxembourgish government

###### 1.1.1. Constitution

The composition of the Luxembourgish government is established by Article 76, first paragraph of the Constitution<sup>120</sup>, which reads as follows: "The Grand Duke regulates the organization of his Government, which shall consist of at least three members<sup>121</sup>". Moreover, Article 77 of the Constitution reads as follows: "The Grand Duke appoints and dismisses the members of Government<sup>122</sup>".

###### 1.1.2. Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: "*Arrêté royal grand-ducal du 9 juillet 1857 portant organisation du Gouvernement gran-ducal*"<sup>123</sup>.

#### 1.2. Denomination of the members of the Luxembourgish government

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

- *Premier Ministre*<sup>124</sup> (Prime Minister)
- *Vice-Premier Ministre* (Deputy Prime Minister)
- *Ministre* (Minister), *Ministres* (Ministers)
- *Secrétaire d'Etat* (Secretary of State), *Secrétaires d'Etat* (Secretaries of State)

#### 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.

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<sup>120</sup> The text in French is available on the following website:  
<http://www.gouvernement.lu/gouvernement/constitution-luxembourgeoise.pdf>

<sup>121</sup> "Le Grand-Duc règle l'organisation de son Gouvernement, lequel est composé de trois membres au moins".

<sup>122</sup> "Le Grand-Duc nomme et révoque les membres du Gouvernement".

<sup>123</sup> For a detailed description of the composition of the Luxembourgish government please see the following website: <http://www.gouvernement.lu/gouvernement/organisation/orga.html>

<sup>124</sup> Prime Minister is also qualified as "*ministre d'État*".

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Luxembourgish Parliament**

#### **2.1.1. 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"<sup>125</sup>.

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the composition and the organisation of the Chamber of Deputies is contained in its Rules of Procedure<sup>126</sup>.

### **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* (Deputy), *Députés* (Deputies)

### **2.3. Date of the beginning of the term of office**

According to Article 124 of the electoral Law of 18 February 2003<sup>127</sup> the date of the beginning of the term of office of the members of Chamber of Deputies shall be considered the date of the first meeting of the Chamber<sup>128</sup>.

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".

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

The above-mentioned electoral Law of 18 February 2003 also regulates the European elections in Luxembourg. According to Article 283 of this piece of legislation, the President of the Chamber of Deputies shall send the President of the European Parliament the documents

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<sup>125</sup> "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".

<sup>126</sup> The text of the Rules of Procedure of the Chamber of Deputies is available on the following website: <http://www.legilux.public.lu/leg/a/archives/2007/0206/a206.pdf>

<sup>127</sup> The text in French is available on the following website: <http://www.legilux.public.lu/leg/a/archives/2003/0030/a030.pdf>

<sup>128</sup> 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".

necessary for the verification of the credentials of representatives of the Grand-Duchy of Luxembourg<sup>129</sup>.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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.

##### **"Article 68**

No deputy may be prosecuted or investigated on account of opinions expressed or votes cast by him in the course of his duties"<sup>130</sup>.

##### **"Article 69**

No deputy can be prosecuted or arrested in a repressive matter in the course of a session, without the Chamber's authorization, unless caught in the act of committing a serious offence. None of its members may be imprisoned for debt during the session without the same authorization. The detention or prosecution of a deputy is suspended during and throughout the session if the Chamber so demands"<sup>131</sup>.

### **2. Scope and content of national parliamentary immunities**

#### **2.1. Non-liability principle (Article 68 of the Constitution)**

Article 68 of the Constitution grants to the members of the Chamber of Deputies of Luxembourg the classical non-liability for opinions expressed and for votes cast in the exercise of their functions.

#### **2.2. Immunity (Article 69 of the Constitution)**

According to Article 69 of the Constitution, immunity is restricted to criminal matters and the authorisation of the Chamber is necessary in order to subject one of its members to:

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<sup>129</sup> 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".

<sup>130</sup> "Aucun député ne peut être poursuivi ou recherché à l'occasion des opinions et votes émis par lui dans l'exercice de ses fonctions".

<sup>131</sup> "Aucun député ne peut, pendant la durée de la session, être poursuivi ni arrêté en matière de répression, qu'avec l'autorisation de la Chambre, sauf le cas de flagrant délit. - Aucune contrainte par corps ne peut être exercée contre un de ses membres, durant la session, qu'avec la même autorisation. - La détention ou la poursuite d'un député est suspendue pendant la session et pour toute sa durée, si la Chambre le requiert".



prosecution, arrest or imprisonment for debt. No authorisation is needed if the Deputy is caught in the act of committing a serious offence.

### **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. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*. Therefore, the Luxembourg Public Prosecutor's Office is competent.

## HUNGARY

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Hungarian government

###### 1.1.1 Constitution

The composition of the Hungarian government is established by Article 33(1) of the Constitution<sup>132</sup>, which reads as follows: "The Government shall consist of : a) the Prime Minister; and b) the Ministers".

###### 1.1.2 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 the Hungarian Republic"<sup>133</sup>; "Act on the central administrative bodies and the statute of members of the Government and state secretaries"<sup>134</sup>.

##### 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), *Miniszterek* (Ministers)

##### 1.3. Date of the beginning of the term of office

Under the terms of Article 33(3) of the Constitution, the Prime Minister is elected by the majority of the members of the Parliament<sup>135</sup>. In accordance with article 16(1) of the "Act on the central administrative bodies and the statute of members of the Government and state

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<sup>132</sup> Act "1949. évi. XX. törvény, a Magyar Köztársaság Alkotmánya". A Hungarian version of all the legal instruments referred to in this document is available on:

<http://www.magyarorszag.hu/kereses/jogszabalykereso>

An English version of the Constitution is available on the site of the Hungarian Parliament:

[http://www.parlament.hu/internet/plsql/ogy\\_biz.keret\\_frissit?p\\_szerv=182&p\\_fomenu=11&p\\_almenu=4&p\\_ckl=38&p\\_rec=1&p\\_nyelv=EN](http://www.parlament.hu/internet/plsql/ogy_biz.keret_frissit?p_szerv=182&p_fomenu=11&p_almenu=4&p_ckl=38&p_rec=1&p_nyelv=EN).

<sup>133</sup> Act "2006. évi LV. törvény a Magyar Köztársaság minisztériumainak felsorolásáról". The actual number and name of ministries are supposed to be amended by each new government. No English version is available on the Internet.

<sup>134</sup> Act "2006. évi LVII. törvény a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról". No English version has been found.

<sup>135</sup> "33. § (3) The Prime Minister shall be elected by a majority of the votes of the Members of Parliament, based on the recommendation made by the President of the Republic. The Parliament shall hold the vote on the election of the Prime Minister and on the passage of the Government's program at the same time."

secretaries" (see paragraph 1.1.2 above), the date of the beginning of the term of office of the Prime Minister is the moment of his election by Parliament<sup>136</sup>.

Under the terms of Article 33(4) of the Constitution, the ministers are appointed by the President of the Republic<sup>137</sup>. In accordance with article 35(1) of the "Act on the central administrative bodies and the statute of members of the Government and state secretaries" (see paragraph 1.1.2 above), the date of the beginning of the term of office of the minister is the date indicated in the assignment document or otherwise the date of the appointment<sup>138</sup>.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Hungarian Parliament**

#### **2.1.1. Constitution**

The Hungarian Parliament is the "*Országgyűlés*". This is a single chamber assembly. General constitutional rules on Parliament can be found in chapter 2 of the Constitution (articles 19 to 28/E).

#### **2.1.2. Implementing provisions**

Article 4(1) of the "Act on the election of members of Parliament"<sup>139</sup> sets the number of the members of the Parliament to 386 (176 members are elected from individual constituencies, another 210 from different party-lists).

Further basic rules are contained in the following instruments: "Act on the statute of members of Parliament"<sup>140</sup> and "Act on the election procedure"<sup>141</sup>.

More detailed provisions concerning the structure and the internal organisation of the Parliament are contained in its Rules of Procedure<sup>142</sup>.

### **2.2. Denomination of the members of the Hungarian parliament**

Members of the Hungarian parliament are the following:

- *országgyűlési képviselő* (Member of the Parliament), *országgyűlési képviselők* (Members of the Parliament)

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<sup>136</sup> "16. § (1) A miniszterelnök a megválasztásával hivatalba lép. (2) A megválasztott miniszterelnök az Országgyűlés előtt esküt tesz."

<sup>137</sup> "33. § (4) The Ministers shall be appointed and dismissed by the President of the Republic, based on the recommendation made by the Prime Minister."

<sup>138</sup> "35. § (1) A miniszter a kinevezésében megjelölt időpontban, ennek hiányában a kinevezésével hivatalba lép. (2) A kinevezett miniszter az Országgyűlés előtt esküt tesz."

<sup>139</sup> Act "1989. évi XXXIV. törvény az országgyűlési képviselők választásáról". An English version of this Act is available on [http://www.valasztas.hu/parval2006/en/02/1989\\_34tv.html](http://www.valasztas.hu/parval2006/en/02/1989_34tv.html) (only excerpts).

<sup>140</sup> Act "1990. évi LV. törvény az országgyűlési képviselők jogállásáról". An English version of this Act is available on the site of the Hungarian Parliament : [http://www.parlament.hu/angol/act\\_lv\\_of1990.htm](http://www.parlament.hu/angol/act_lv_of1990.htm).

<sup>141</sup> Act "1997. évi C. törvény a választási eljárásról". An English version of this Act is available on [http://www.valasztas.hu/parval2006/en/02/acts/1997c\\_en.html](http://www.valasztas.hu/parval2006/en/02/acts/1997c_en.html).

<sup>142</sup> Decision of Parliament "46/1994 (IX. 30.) OGY Határozat a Magyar Köztársaság Országgyűlésének Házzsabályáról". An English version of the Rules of Procedure is available on the site of the Hungarian Parliament : <http://www.parlament.hu/hazszabaly/resolution.htm>.

### **2.3. Date of the beginning of the term of office**

In accordance with article 8 of the Rules of Procedure, the members officially begin their term of office from the moment of taking oath (after validation of their credentials)<sup>143</sup>.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Article 8 of the "Act on the statute of members of the European Parliament"<sup>144</sup> extends the scope of rules relating to incompatibility defined in the Election Act of 1976, by setting a more detailed list of incompatible functions.

Procedural rules relating to incompatibility are laid down in Article 9 of the same act: "(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 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 on that a Member of the 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".

No public authority is specified in the Act in order 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 Committee), each candidate must submit a declaration on incompatibilities to the latter body. The National Election Committee has thus information on cases of incompatibility (at the time of the elections).

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<sup>143</sup> Standing Order No. 8 of the Rules of Procedure : "(1) At the constituent sitting - after the passing of the resolution on the results of the examination of mandates - the Members shall take an oath and sign the text of the oath. (2) The text of the oath is contained in Schedule 1 to the Standing Orders. (3) Members who have been absent at the constituent sitting, as well as Members cleared according to paragraph (2) of Standing Order No. 7, shall take the oath before Parliament and sign the text of the oath. (4) The Member - with the exception of tasks necessarily related to the constituent sitting - may not take part in the work of Parliament until the taking of the oath and the signing of its text; he shall only be entitled to remuneration and reimbursement of expenses - also retroactively -, or may only take advantage of benefits after having taken the oath."

<sup>144</sup> Act "2004. évi LVII. törvény az Európai Parlament magyarországi képviselőinek jogállásáról". An English version of this Act is available on the site of the Hungarian Parliament:  
[http://www.parlament.hu/internet/plsql/ogy\\_biz.keret\\_frissit?p\\_szerv=182&p\\_fomenu=51&p\\_almenu=20&p\\_ckl=&p\\_rec=l&p\\_nyelv=EN](http://www.parlament.hu/internet/plsql/ogy_biz.keret_frissit?p_szerv=182&p_fomenu=51&p_almenu=20&p_ckl=&p_rec=l&p_nyelv=EN).

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Hungary the parliamentary immunities are granted to the members of the national parliament by Article 20(3) of the Constitution:

##### **"Article 20(3)**

Members of Parliament are granted parliamentary immunity, in accordance with the regulations of the law defining the legal status of Members of Parliament".

#### **1.2. Implementing provisions**

Immunity rules applicable to Members of the national Parliament are in fact defined in articles 4 to 7 of the "Act on the statute of members of Parliament" (see above: paragraph 2.1.2). Further procedural rules are contained in articles 130-131 of the Rules of procedure.

### **2. Scope and content of national parliamentary immunities**

#### **2.1. Non-liability principle (art. 4 of the Act on the statute of members of Parliament)**

Pursuant to article 4 of the Act on the statute of members of Parliament: "Active or former MPs can not be accountable before court, or by any other authority, for their votes cast, or facts and opinions stated in the course of the duration of their mandate. This immunity shall not be applicable in case of violation of state secret, of defamation or libel, and in connection with the accountability of MPs under civil law".

#### **2.2. Immunity (art. 5 of the Act on the statute of members of Parliament)**

Pursuant to article 5 of the Act on the statute of members of Parliament: "MPs can be only arrested in case of *flagrante delicto*. Criminal procedures or legal procedures for petty offences against MPs can only be started and pursued with prior permission given by Parliament. Prior permission by Parliament is also required for law enforcement actions against MPs in criminal procedures".

The Act on the statute of members of Parliament does not list the "law enforcement actions". However, Chapter VIII of the Act on Criminal Procedure<sup>145</sup> contains an exhaustive list of such "Law enforcement actions": arrest (*őrizetbe vétel*), detention (*előzetes letartóztatás*), bail (*óvadék*), house arrest (*lakhelyelhagyási tilalom és házi őrizet*), temporary coercive medical treatment (*ideiglenes kényszergyógykezelés*), seizure of travel document (*úti okmány elvétele*), search, body search and seizure (*házkutatás, motozás, lefoglalás*), obligation to keep digitally recorded data (*számítástechnikai rendszer útján rögzített adatok megőrzésére kötelezés*), impoundment (*zár alá vétel*), precautionary measure (*biztosítási intézkedés*), disciplinary fine (*rendbírság*), accompanying by police before the authority (*elővezetés*), use of bodily constraint (*testi kényszer alkalmazása*).

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<sup>145</sup> Act "1998. évi XIX. törvény a büntetőeljárásról". No English version has been found.

### **3. National authority entitled to request the immunity of a Hungarian member of the European Parliament to be waived**

Under the Act on the statute of members of Parliament, a request for waiver is addressed to the President of the Hungarian Parliament by either the Chief Public Prosecutor ("*legfőbb ügyész*") or the competent court (depending on the case)<sup>146</sup>.

According to a letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Hungary to the EU, the applications for a waiver of immunity are to be addressed to the European Parliament by the Chief Public Prosecutor or by the court which is hearing the case<sup>147</sup>.

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<sup>146</sup> Art. 5 of the Act "1990. évi LV. törvény az országgyűlési képviselők jogállásáról": "5. § (2) Until indictment is submitted, a request concerning the suspension of parliamentary immunity shall be submitted to the Speaker of Parliament by the Chief Public Prosecutor. After the submission of the indictment, and in criminal cases initiated by private motion, such a request is submitted to the Speaker of Parliament by the court. Such a request must be submitted immediately in case of flagrante delicto of an MP. (3) Upon notification from the competent authorities, the Chief Public Prosecutor shall submit the request concerning the suspension of parliamentary immunity to the Speaker of Parliament in legal procedures for petty offences".

<sup>147</sup> See table in Annex 2.

## MALTA

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Maltese government

###### 1.1.1. Constitution

The composition of the Maltese government is established by Article 79 of Chapter VII of Constitution of Malta Act, 1964<sup>148</sup> Substituted by LVIII.1974.32.

Article 79 reads as follows: "(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 therefore to Parliament". 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".

###### 1.1.2. Implementing provisions

The above-mentioned provision of the Constitution is implemented by the **ACT VII of 1975**, as amended by Acts XLIX of 1981, XXXV of 1990, I of 2001, IX of 2003 and XIII of 200 (the Interpretation Act') and further specified by the following act of secondary law: **Public Administration Act No 1 of 2009**, Government Gazette of Malta No. 18,374 - 3rd February, 2009.

##### 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)
- *Vici Prim Ministru* (Deputy Prime Minister)
- *Ministru* (Minister), *Ministri* (Ministers)
- *Ministru temporanju* (Temporary Minister)
- *Sekretarju Parlamentari* (Parliamentary Secretary), *Sekretarji Parlamentari* (Parliamentary Secretaries)

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<sup>148</sup> 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.

### **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 appoints, acting in accordance with the advice of the Prime Minister, 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 normally starts mandate as soon as he swears in front of president.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Maltese Parliament**

#### **2.1.1. 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*)."<sup>149</sup>

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".

#### **2.1.2. 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<sup>150</sup>.

## **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)

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<sup>149</sup> The House currently has 69 members, elected for a five year term in thirteen five-seat constituencies with a possibility of rewarding bonus members for the popular largest party which doesn't succeed in getting absolute majority of seats. 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. Malta uses single transferable vote to elect its MPs and local councillors. Even though transferrable preferences should help third parties since independence the Maltese electorate has consistently voted in two dominant political parties and effectively created a two party system.

<sup>150</sup> [http://www.parliament.gov.mt/information/sta\\_ord\\_eng.htm](http://www.parliament.gov.mt/information/sta_ord_eng.htm)



### **2.3. Date of the beginning of the term of office**

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".

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

The European Parliament Election Act<sup>151</sup> does not provide for a specific formal system of communication to the European Parliament.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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."

#### **1.2. Implementing provisions**

The implementing rules of Article 65 of the Constitution are found in the House of Representatives (Privileges and Powers) Ordinance<sup>152</sup>. Reference to the House of Representatives may also be found in Sections 118, 120, 208 and 604 of the Criminal Code (Cap. 9). The above mentioned Ordinance also protects the officers of the House, while in the execution of Parliamentary business.

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<sup>151</sup> [http://docs.justice.gov.mt/lom/legislation/english/leg/vOL\\_14/chapt467.pdf](http://docs.justice.gov.mt/lom/legislation/english/leg/vOL_14/chapt467.pdf)

<sup>152</sup> <http://parliament.gov.mt/information/data/Privileges%20and%20Powers.html>

## **2. Scope and content of national parliamentary immunities in Malta**

The Constitution of Malta establishes the freedom of speech of Members of the House (non-liability regime in civil or criminal proceedings) for statements - orally or by written - made in the course of the activities of the member in the House of Representatives. This non liability does not seem to concern activities of the Member performed outside the House.

Moreover, for the duration of the session members of the House of Representatives enjoy the immunity from arrest for any civil debt "provided that this is not fraudulent or otherwise in contravention of the Criminal Code"<sup>153</sup>

## **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. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*. According to these provisions, the competent authority is the *Il-Qorti tal-Magistrati ta' Malta* (Court of Magistrates of Malta).

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<sup>153</sup> 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".

## THE NETHERLANDS

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Dutch government

According to Article 42 of the Constitution of the Kingdom of the Netherlands<sup>154</sup> (*Grondwet voor het Koninkrijk der Nederlanden*) the government is composed of the King (*de Koning*) and the Ministers. Deputy Ministers (*Staatssecretarissen*) may be appointed (Article 46 Constitution) by Royal Decree. They may replace Ministers.

##### 1.2. Denomination of the members of the Dutch government

Pursuant to Articles 42-45 of the Constitution members of the Hungarian government are the following:

- *de Koning* (the King), (in accordance with the system of ministerial responsibility cf art. 42 Constitution. The King does not form part of the Council of Ministers (*Ministerraad*), body established by Article 45 of the Constitution)
- *Minister-President* (Prime Minister)
- *Minister* (Minister)

##### 1.3. Date of the beginning of the term of office

For Prime Minister and Ministers the date of beginning of their term of office is the day the Royal Decree of their nomination enters into force (cf. article 48 Constitution). The day they take the oath before the King (art 49 Constitution) may be a different one and is not considered to be the constitutive moment.

#### 2. Member of a national Parliament

##### 2.1. Legal provisions on the composition of the Dutch Parliament

###### 2.1.1. Constitution

Under the Constitution, the Dutch parliament (the literal translation being States-General; *Staten-Generaal*) is composed of the Second Chamber (*Tweede Kamer*) with 150 seats and the First Chamber (*Eerste Kamer*) with 75 seats (cf. art. 51 Constitution). Both Chambers are elected on the basis of proportional representation, but the electoral procedures are different: the Members of the Second Chamber are directly elected by the Dutch electorate (defined in

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<sup>154</sup> The text of the Constitution is available on the following website: <http://wetten.overheid.nl/>  
For the English official version please see the following website:  
<http://www.postbus51.nl/nl/home/publicaties/overheid-en-democratie/organisatie-van-de-overheid/parlement-en-regering/wetgeving/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>

Article 54 of the Constitution); the Members of the First Chamber are elected by the Members of the Provincial Councils (*Provinciale Staten*) (cf. art. 55 Constitution).

### **2.1.2. Implementing provisions**

The Electoral Act<sup>155</sup> (*Kieswet*) provides for detailed provisions on the elections, the mandate and its ending (Chapter C), the allocation of seats by the system of the largest remainder (Chapter P), the scrutiny of the result (Chapter U), possible procedures to contest the election result, verification of credentials and the beginning of the membership (chapter V). Chapter Y contains specific provisions as to the election of members of the European Parliament, which are largely based on the rules for the election of the Members of the Second Chamber.

### **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* (Member of Parliament); specified as: *leden van de Tweede Kamer* (Members of the Second Chamber); or *leden van de Eerste Kamer* (Members of the First Chamber)

### **2.3. Date of the beginning of the term of office**

Under Article V. 11 of the Electoral Act, the membership of Parliament (both Chambers) begins when the admission of the Member has become irrevocable. To that effect, the elected Member has firstly to accept his election/nomination in writing within a delay - normally 28 days - from the notification of the result of the elections (Article V.2. Electoral Act). The admission procedure can then start.

The exact moment of the beginning is the subject of some legal controversy in doctrine: the Government is of the opinion that it is the moment of taking the oath (Article 60 Constitution); a majority of scholars advocates that it is the moment that all procedures finally leading to the admission of the Members have come to an end. Apart from administrative procedures as to the possible contestation of the election result before the central electoral office (the *Centraal Stembureau*), in this case the national Electoral Council, the *Kiesraad* ), cf. Chapter V of the Electoral Act, the main procedure as to an individual Member is the verification of credentials procedure (Article 58 Constitution and V.1 - V.4 of the Electoral Act. The verification of credential procedure is effected by a special Committee on the examination of credentials (for the second Chamber cf. article 19 Rules of Procedure (*Reglement van Orde van de Tweede Kamer*)).

This scrutiny involves inter alia the quality to be elected resulting from article 56 of the Constitution, as well as incompatibilities following from the Constitution (Article 57) and the implementing legislation, the Parliament and European Parliament Incompatibilities Act (*Wet incompatibiliteiten Staten Generaal en Europees Parlement*) of 20 April 1994.

The Second Chamber finally takes a decision on admission.

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<sup>155</sup> <http://wetten.overheid.nl/>

## **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Both in cases of election of a Member of the European Parliament as well as in case of loss of membership/disqualification, the Second Chamber is the competent body for the purpose of establishing the occurrence of that situation. The Committee on the verification of credentials of the Second Chamber is competent for the factual examination (cf. Articles 2, 3 and 19 of the Rules of Procedure Second Chamber).

The *Voorzitter van de Tweede Kamer* (President of the Second Chamber) is the competent authority to inform the European Parliament<sup>156</sup>.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

Article 71 of the Constitution reads as follows:

#### **"Article 71**

Members of the Parliament, 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 Parliament or of its committees or for anything they submit to them in writing."

#### **1.2. Implementing provisions**

There are no implementing provisions, but the Rules of Procedure of the Second Chamber provide for measures of order against Members.

### **2. Scope and content of national parliamentary immunities**

#### **2.1. Non-liability principle**

The non-liability principle covers all procedures (civil, criminal, administrative and disciplinary) but is strictly limited to positions (oral and writing) taken in deliberation (during parliamentary sessions).

#### **2.2. Immunity**

The immunity is purely functional, and common law acts, including irregularities or criminal acts, fall outside the scope of the immunity. There is no procedure foreseen as to waivers of immunity, but Article 119 of the Constitution provides that present and former members of the Parliament, Ministers, and State Secretaries shall be tried by the Supreme Court for offenses committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Second Chamber. Article 119 Constitution applies to specific offences, i.e.

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<sup>156</sup> See Chapter Y of the Electoral Act, especially Articles Y 25 - Y 28.

*offenses committed while in office* ("ambtsmisdrijven"). All other criminal offences follow normal procedures of criminal law

### **3. National authority entitled to request the immunity of a Dutch member of the European Parliament to be waived**

No procedure is foreseen: either the non-liability *ex-lege* of article 71 Constitution occurs, which cannot be waived; or the Member's act does not fall within the scope of that provision. However, according to an official letter sent to the President of the European Parliament by the Representation of the Kingdom of Netherlands to the European Union, the national competent authority is *Minister van Justitie* (Minister of Justice), at the request of the *College van Procureurs-Generaal* (Assembly of the general prosecutors)<sup>157</sup>.

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<sup>157</sup> See table in Annex 2.

## AUSTRIA

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Austrian government

###### 1.1.1. Constitution

The composition of the Austrian government is established by Article 69 of the Constitution<sup>158</sup>, 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."<sup>159</sup>

State Secretaries (*Staatssekretäre*) who can be attached to the federal ministers according to Article 78 of the Constitution are not part of the federal government.

###### 1.1.2. Implementing provisions

More detailed provisions concerning the structure and the organisation of the Austrian government are contained in Articles 69 to 78 of the Constitution and in the Federal law on the Federal Ministries.<sup>160</sup>

##### 1.2. Denomination of the members of the Austrian government

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

- *Bundeskanzler* (Federal Chancellor)
- *Vizekanzler* (Vice-Chancellor)
- *Bundesminister* (Federal Minister)

##### 1.3. Date of the beginning of the term of office

It follows from Article 72 (1) and (2)<sup>161</sup> of the Constitution that the term of office of the members of the government begins on the day they render an affirmation to the Federal

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<sup>158</sup> <http://www.bundeskanzleramt.gv.at/Docview.axd?Cobid=3462>

<sup>159</sup> "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."

<sup>160</sup> Bundesgesetz über die Zahl, den Wirkungsbereich und die Einrichtung der Bundesministerien (Bundesministeriengesetz 1986 - BMG), BGBl. Nr. 76/1986, idF BGBl. Nr. 4/2008; <http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000873>

<sup>161</sup> "(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-

President after signature of the instrument of appointment by the Federal President and counter-signature by the newly appointed Federal Chancellor.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Austrian Parliament**

#### **2.1.1. 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*)<sup>162</sup>.

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 woman who, on the day of election, have completed their sixteenth year of life.<sup>163</sup> Paragraph 1 of the National Council electoral regulations (*Nationalratswahlordnung, NRWO*)<sup>164</sup> sets the number of its Members to 183. The Federal territory is divided in 9 constituencies following the *Länder* boundaries. These constituencies are subdivided in regional constituencies. The number of deputies is divided among the qualified voters of the constituencies (electoral bodies) in proportion to the number of nationals who in accordance with the result of the last census had their principal domicile in a particular constituency plus the number of those who on the day of the census did not have their principal domicile in Federal territory but were entered on the electoral register of a municipality pertaining to that particular constituency. The National Council electoral regulations provide for a final distribution procedure relating to the whole Federal territory whereby in accordance with the principles of proportional representation there ensues a balance between the seats allocated to the parties standing for election in the constituencies and the distribution of the as yet unallocated seats.<sup>165</sup>

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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."

<sup>162</sup> Membership in the EP is incompatible with membership in the national Council or in the federal Council but not with membership in the provincial Diets.

<sup>163</sup> Artikel 26 (1) B-VG: "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."

<sup>164</sup> Bundesgesetz über die Wahl des Nationalrates (Nationalrats- Wahlordnung 1992 - NRWO), StF:BGBl.Nr.471/1992, zgd BGBl. II Nr. 147/2008

<http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10001199>

<sup>165</sup> Artikel 262 (2) B-VG: "Das Bundesgebiet wird in räumlich geschlossene Wahlkreise geteilt deren Grenzen die Landesgrenzen nicht schneiden dürfen; diese Wahlkreise sind in räumlich geschlossene Regionalwahlkreise zu untergliedern. Die Zahl der Abgeordneten wird auf die Wahlberechtigten der Wahlkreise (Wahlkörper) im Verhältnis der Zahl der Staatsbürger, die nach dem Ergebnis der letzten Volkszählung im jeweiligen Wahlkreis den Hauptwohnsitz hatten, vermehrt um die Zahl der Staatsbürger, die am Wahltag im Bundesgebiet zwar nicht den Hauptwohnsitz hatten, aber in einer Gemeinde des jeweiligen Wahlkreises in der Wählerevidenz eingetragen waren, verteilt; in gleicher Weise wird die Zahl der einem Wahlkreis zugeordneten Abgeordneten auf die Regionalwahlkreise verteilt. Die Wahlordnung zum Nationalrat hat ein abschließendes Ermittlungsverfahren im gesamten Bundesgebiet vorzusehen, durch das sowohl ein Ausgleich der den wahlwerbenden Parteien in den Wahlkreisen zugeteilten als auch eine Aufteilung der noch nicht zugeteilten Mandate nach den Grundsätzen der Verhältniswahl erfolgt. Eine Gliederung der Wählerschaft in andere Wahlkörper ist nicht zulässig."



The Federal Council (*Bundesrat*) represents the Austrian Länder. Its composition is in proportion to the number of nationals in each Land. It consists actually of 62 members<sup>166</sup>. 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.<sup>167</sup>

### **2.1.2. Implementing provisions**

More detailed provisions on the electoral procedure are to be found in the National Council electoral regulations (*Nationalratswahlordnung*). Rules on the structure and organisation of the National Council are contained in Articles 27 to 33 of the Constitution and in the Federal law on the National Council's Standing Orders (*Bundesgesetz über die Geschäftsordnung des Nationalrates*<sup>168</sup>).

More detailed provisions on the Federal Council are to be found in Articles 34 to 37 of the Constitution and in the Federal Council's Standing Orders.<sup>169</sup>

### **2.2. Denomination of the members of the Austrian parliament**

Pursuant 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 Bundesrat)<sup>170</sup>

### **2.3. Date of the beginning of the term of office**

The legal position of members of a newly elected National Council starts 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<sup>171</sup>.

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<sup>166</sup> 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.

<sup>167</sup> Article 35 (1) of the Constitution.

<sup>168</sup> Bundesgesetz vom 4. Juli 1975 über die Geschäftsordnung des Nationalrates (Geschäftsordnungsgesetz 1975) StF: BGBl. Nr. 410/1975, zgd BGBl. I Nr. 29/2005: <http://www.ris2.bka.gv.at/Dokument.wxe?QueryID=Bundesnormen&Dokumentnummer=NOR11000578&WxeFunctionToken=2d098687-4129-46ec-946c-fae80af3f2b2>

<sup>169</sup> Kundmachung des Bundeskanzlers vom 5. Juli 1988 betreffend die Geschäftsordnung des Bundesrates StF: BGBl. Nr. 361/1988, zgd BGBl. Nr 106/2000: <http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000976>

<sup>170</sup> § 1. (1) der GeO des Bundesrates: "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."

The legal position of members of the Federal Council starts with their election by the Diet.<sup>172</sup>

#### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

No particular national procedure has been implemented.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

The Austrian constitutional law combines the non-accountability for votes and opinions in the exercise of the parliamentary mandate with the immunity from criminal prosecution with the exception of action "*in flagrante delicto*". Without the National Council's consent, a member of the National Council may only be prosecuted for a criminal offence, if it is manifestly not connected with his or her political activity. Article 57 of the Constitution reads 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 and only by the National Council on the grounds of oral or written utterances made in the course of their function.

(2) The members of the National Council may on the ground of a criminal offence – the case of apprehension in the act of committing a crime excepted – be arrested only with the consent of the National Council. Domiciliary visitations of National Council members likewise require the National Council's consent.

(3) Legal action on the ground of a criminal offence may otherwise without the national Council's consent be taken against members of the National Council only if it is manifestly not connected with the political activity of the member in question. The authority concerned must however seek 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 entrusted with these matters so demands. Every act of legal process shall in the case of such a demand immediately cease or be discontinued.

(4) In all these cases the consent of the National Council counts as granted if within eight weeks it has not given a ruling on an appropriate request by the authority competent for the institution of legal action; the President, with a view to the National Council's adoption of a resolution in good time, shall at the latest put such a request to the vote on the day but one before expiry of the deadline. The latter does not include the period when the National Council is not in session.

(5) In case of a member's apprehension in the act of committing a crime, the authority concerned must immediately notify the President of the National Council of the occurrence of the arrest. If the National Council or when it is not in session the Standing Committee

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<sup>171</sup> Article 27(2) of the Constitution. In case of vacancies, the legal position of the replacements starts with the appointment by the Electoral Authority. The reasons leading to the end of the mandate are enumerated in § 2 of the GOG. Further details: §§ 108 - 113 NRW.

<sup>172</sup> Article 35 (1) and (3) of the Constitution. § 1 (1) GeO des Bundesrates. The reasons leading to the end of the mandate are enumerated at § 3 GeO des Bundesrates.

entrusted with these matters so demands, the arrest must be suspended or the legal process as a whole be dropped.

(6) The immunity of members ends with the day of the meeting of the newly elected National Council, that of functionaries of the National Council whose tenure of office extends beyond this date on the expiry of this term of office.

(7) The detailed provisions are settled by the federal law on the House of Representatives' Standing Orders".<sup>173</sup>

According Article 58 of the Constitution, the members of the Federal Council enjoy for the duration of their tenure of office the immunity of the members of the Diet which has delegated them<sup>174</sup>.

## **2. Scope and content of national parliamentary immunities**

### **2.1. Non-liability (Article 57(1) of the Constitution)**

Members of the National Council are not accountable for votes and written or oral opinions in the exercise of their parliamentary mandate. Oral utterances can 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).

This immunity covers all votes cast and oral and written statements made by Members of the National Council during the proceedings of the plenary and the committee meetings, during parliamentary inquiries and in written statements recorded in parliamentary documents.

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<sup>173</sup> "(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 hinausgeht, mit dem Erlöschen dieser Funktion.

(7) Die näheren Bestimmungen trifft das Bundesgesetz über die Geschäftsordnung des Nationalrates".

<sup>174</sup> "Die Mitglieder des Bundesrates genießen während der ganzen Dauer ihrer Funktion die Immunität von Mitgliedern des Landtages der sie entsendet hat."

Professional immunity 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.

## **2.2. Immunity (inviolability) (Article 57(2) and (3) of the Constitution)**

According to Austrian law immunity covers acts punishable by a court of law, 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 concerned. It does not afford any protection against civil proceedings in a court of law.

Immunity is not a ground for exemption from prosecution but an obstacle to prosecution which lapses with the end of the term of office.

A member may be arrested only with the consent of the National Council even if the offence is obviously not related to political activities. The only exception to this rule arises where a member is caught in the act of committing a crime, but even then the National Council may request the release of that member. The national Council's consent is also required for domiciliary visitations.

Legal action on the ground of a criminal offence may only be taken against members of the National Council without the latter's consent if it is manifestly not connected with the political activity of the member in question. The question of the obvious lack of political connection has to be decided by the respective authority. The authority concerned must however seek 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 entrusted with these matters so demands. In case the authority finds that the offence may be linked to the member's political activity, it has to seek for the National Council's consent before starting the prosecution. If the national Council finds that there is no connection with the member's political activity, the authority may proceed in its prosecution; if, on the opposite, the National Council finds that there is a connection between the offence and the political activity, it has to decide at the same time whether prosecution may take place or not.

## **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.

The authority empowered to request the parliamentary immunity to be waived is the authority competent for the legal action to be taken against the Member in the respective case, i.e. in case of criminal proceedings the competent court, in case of administrative proceedings the competent authority and in case of disciplinary proceedings the competent disciplinary board.

Requests for waiver of the immunity will be forwarded by the *Bundesministerium für Justiz*<sup>175</sup>.

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<sup>175</sup> See table in Annex 2.

## POLAND

### I. 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

The election of Members of the European Parliament in Poland is governed by the Election Code of 5<sup>th</sup> of January 2011, chapter VI "European Parliament elections" (*Ustawa z dnia 5 stycznia 2011 r. Kodeks wyborczy*, w szczególności dział VI „Wybory do Parlamentu Europejskiego”) It is worth noting that its Article 333 explicitly states that "The mandate of a Member of the European Parliament may not be performed jointly with the post or functions described in provisions of European Union law."<sup>176</sup>

#### 1. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Polish government

###### 1.1.1. Constitution

The composition of the government in Poland is established by the first paragraph of Article 147 of the Constitution which reads as follows: "The Council of Ministers shall be composed of the President of the Council of Ministers (Prime Minister) and ministers."<sup>177</sup> Additionally, fourth paragraph of the said article states that "The presidents of committees specified in statutes may also be appointed to membership in the Council of Ministers."<sup>178</sup>

###### 1.1.2. Secondary legislation and 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 49 Rady Ministrów z dnia 19 marca 2002 r. Regulamin pracy Rady Ministrów*).

##### 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)
- *Minister* (Minister)
- *Członek Rady Ministrów* (Member of the Council of Ministers)

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<sup>179</sup> but these

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<sup>176</sup> "Mandatu posła do Parlamentu Europejskiego nie można łączyć ze sprawowaniem stanowiska lub pełnieniem funkcji określonych w przepisach prawa Unii Europejskiej."

<sup>177</sup> "Rada Ministrów składa się z Prezesa Rady Ministrów i ministrów."

<sup>178</sup> "W skład Rady Ministrów mogą być ponadto powoływani przewodniczący określonych w ustawach komitetów." At the time of writing (May 2009), there was no such case, while at the time of publication (2012) there is one such Member of the Council.

<sup>179</sup> According to Article 37(1) of the Act of 8 August 1996 on the Council of Ministers: "Minister exercises his tasks with the help of a Secretary and Undersecretaries of State as well as his political cabinet."

positions are incompatible with the mandate of Member of European Parliament under national law.<sup>180</sup>

### **1.3. Date of the beginning of the term of office**

Under the terms of Article 154 of the Constitution ("The President of the Republic shall [...] 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.")<sup>181</sup> 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.

### **1.4. National authority competent to communicate cases of incompatibility to the European Parliament**

According to Article 366 of the Election Code of 5<sup>th</sup> of January 2011 *Marszałek Sejmu* (Marshal of the Chamber of Deputies) 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 appointment to a member of the government.<sup>182</sup>

It should also be noted that pursuant to Article 364(2), the seat of a Member of the European Parliament who has been appointed a member of the government shall become vacant if this Member fails to submit to *Marszałek Sejmu*, within fourteen days following the appointment, a declaration on his or her resignation from that appointment.<sup>183</sup>

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(Minister wykonuje swoje zadania przy pomocy sekretarza i podsekretarzy stanu oraz gabinetu politycznego ministra).

<sup>180</sup> i.e. 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 fulfil 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." (*Posel 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*).

<sup>181</sup> "Prezydent Rzeczypospolitej powołuje Prezesa Rady Ministrów wraz z pozostałymi członkami Rady Ministrów [...] i odbiera przysięgę od członków nowo powołanej Rady Ministrów."

<sup>182</sup> "O utracie mandatu posła do Parlamentu Europejskiego Marszałek Sejmu niezwłocznie zawiadamia Przewodniczącego Parlamentu Europejskiego, z zastrzeżeniem art. 367."

<sup>183</sup> "Utrata mandatu posła do Parlamentu Europejskiego [...] powołanego w czasie kadencji na stanowisko lub funkcję, o których mowa w przepisach art. 333 i art. 334 ust. 2, następuje, jeżeli nie złoży on Marszałkowi Sejmu, w terminie 14 dni od dnia [...] powołania na stanowisko lub funkcję, o których mowa w przepisach art. 333 i art. 334 ust. 2 ustawy, oświadczenia o złożeniu rezygnacji z zajmowanego stanowiska lub pełnionej funkcji."

## **2. Member of a national parliament**

### **2.1. Legal provisions on the composition of the Polish parliament**

#### **2.1.1. Constitution**

The composition of the parliament in Poland is established by the first paragraph of Article 95 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)."<sup>184</sup>

The following Articles 96 and 97 of the Constitution fix the number of the Deputies and Senators which respectively amounts to four hundred sixty and to one hundred.

#### **2.1.2. Secondary act and implementing provisions**

The Election Code of 5<sup>th</sup> of January 2011 (*Kodeks wyborczy, Dz. U. z dnia 31 stycznia 2011 r.*) 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.

Conditions appropriate to the effective discharge of their duties by the Deputies and Senators, as well as for defence of their rights resulting from the performance of their mandate, are specified by the Act of 9 May 1996 on the performance of the mandate of Deputy or Senator (*Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu Posła i Senatora*).

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*).

### **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)
- *Senator* (Senator).

Article 334(1) of the Election Code explicitly states that "The mandate of a Member of the European Parliament may not be performed simultaneously with the mandate of a Deputy to the *Sejm* nor a Senator."<sup>185</sup>

### **2.3. Date of the beginning of the term of office**

Under the terms of Article 98(1) 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."<sup>186</sup>

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<sup>184</sup> "Władzę ustawodawczą w Rzeczypospolitej Polskiej sprawują Sejm i Senat."

<sup>185</sup> "Mandatu posła do Parlamentu Europejskiego nie można łączyć ze sprawowaniem mandatu posła na Sejm albo senatora."

<sup>186</sup> "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."



Article 104(2) of the Constitution provides for an obligation for all Deputies and (jointly with Article 108) Senators to take an oath the presence of the *Sejm* or *Senat* before the commencement of the performance of the mandate. According to Article 104(3) "A refusal to take the oath shall be deemed to be a renunciation of the mandate".<sup>187</sup>

#### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

According to Article 366 of the Election Code of 5<sup>th</sup> of January 2011, *Marszałek Sejmu* (Marshal of the Chamber of Deputies) 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 Republic of Poland.<sup>188</sup>

Pursuant to Article 364(3) of the abovementioned 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 EP on the day of the publication of the results of elections.<sup>189</sup>

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 EP on the day of issue of the decision of *Marszałek Sejmu* on assigning the national mandate.<sup>190</sup>

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution<sup>191</sup>**

The parliamentary immunities are granted to the Members of the Polish parliament (*Sejm* and *Senate*) by Article 105 of the Constitution which reads as follows:

#### **"Article 105**

1. 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*.

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<sup>187</sup> "Odmowa złożenia ślubowania oznacza zrzeczenie się mandatu."

<sup>188</sup> "O utracie mandatu posła do Parlamentu Europejskiego Marszałek Sejmu niezwłocznie zawiadamia Przewodniczącego Parlamentu Europejskiego."

<sup>189</sup> "Poseł do Parlamentu Europejskiego wybrany w czasie kadencji na posła na Sejm albo na senatora traci mandat posła do Parlamentu Europejskiego z dniem ogłoszenia przez Państwową Komisję Wyborczą wyników wyborów do Sejmu albo do Senatu."

<sup>190</sup> "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."

<sup>191</sup> Original text, as well as English, French and German translations are available at <http://www.sejm.gov.pl/prawo/konst/konst.htm>



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<sup>192</sup>.

## **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 performance of the mandate of Deputy or Senator, and the internal procedures of *Sejm* and *Senat* in dealing with the immunity questions are contained in their respective Rules of Procedure (*Regulaminy*).

## **2. Scope and content of national parliamentary immunities**

### **2.1. Non-liability principle**

Pursuant to Article 105(1) of the Constitution, Members of Polish parliament may not be held liable both under civil and criminal law for activities carried out as part of the parliamentary mandate, for an unlimited period.

Article 6(2) of the Act on the performance of the mandate of Deputy or Senator contains the following list of activities falling within the scope of the non-liability principle: tabling

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<sup>192</sup> 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.

proposals, speeches and votes during sessions of parliament and other parliamentary meetings, as well as other acts related to the performance of their duties.<sup>193</sup>

Waiver of the inviolability is possible in the event of a violation of the rights of third parties (defamation and slander), in accordance with Article 6a of the abovementioned Act.<sup>194</sup> Poland has notified Prosecutor General (Head of the Public Prosecution Service in Poland) as the single authority competent to transmit such request for a waiver to the President of the European Parliament.

## **2.2. Immunity from criminal proceedings**

Pursuant to Article 105 paragraphs 2, 3 and 4 of the Constitution, the Deputy or Senator can not be brought to criminal liability without their own consent or the consent of *Sejm* or *Senat*, unless the criminal proceedings were instituted before his or her election to parliament. In this last case, the parliament can request the suspension of such proceedings.

In accordance with Article 7a of the Act on the performance of the mandate of Deputy or Senator, the statute of limitation in proceedings relating to activity covered by immunity is extended for the equivalent time.<sup>195</sup>

## **2.3. Immunity from detention**

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 '*in flagrante delicto*' and where detention is essential for the proper course of proceedings.

In accordance with Article 10(2) of the Act on the performance 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.<sup>196</sup>

## **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 immunity of the 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.

Poland has notified Prosecutor General (Head of the Public Prosecution Service in Poland) as the competent authority to request a waiver of immunity both in case when the offence is prosecuted publicly and privately. Through this notification Poland responded positively to the demands formed by the European Parliament in its resolution of 24 April 2009 on parliamentary immunity in Poland (2008/2232(INI)).

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<sup>193</sup> "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."

<sup>194</sup> "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."

<sup>195</sup> "Przedawnienie w postępowaniu karnym czynu objętego immunitetem nie biegnie w okresie korzystania z immunitetu."

<sup>196</sup> "Zakaz zatrzymania [...] obejmuje wszelkie formy pozbawienia lub ograniczenia wolności osobistej posła lub senatora przez organy stosujące przymus."

### 3.1. Non-liability principle

Requests for waiver of immunity in civil proceedings concerning the activities carried out as part of the parliamentary mandate (defamation and slander) are made according to the same rules as those concerning the privately prosecuted criminal offences (*vide* paragraph 3.2.2. below).

### 3.2. Immunity from criminal proceedings

#### 3.2.1. Offences subject to public prosecution

If proceedings are initiated by the public prosecutor (which is the basic principle), Article 7b (1) of the Act<sup>197</sup> applies and the request will be brought through the intermediary of *Prosecutor General* (Head of the Public Prosecution Service in Poland). The same rule will apply if proceedings are initiated or pursued by a private person (called a 'subsidiary prosecutor' - *oskarżyciel posiłkowy*).

#### 3.2.2. Offences subject to private prosecution<sup>198</sup>

Pursuant to Article 7b (2) of the Act "An application for authorisation to bring criminal proceedings against a Deputy or Senator in the event of an offence subject to private prosecution shall be lodged by *oskarżyciel prywatny* (the private prosecuting party), once the matter has been referred to the courts."<sup>199</sup> The same rule will apply if the public prosecutor subsequently acceded to these proceedings or if the proceedings are initiated by the public prosecutor (with or without participation of the person having the right to act as a private prosecutor in the proceedings before the court).

In accordance with Article 7b (3) of the Act, the 'private' request for a waiver of immunity has to be written and signed by an advocate or legal counsel, with the exception of such requests that are submitted in their own cases by judges, prosecutors, advocates, legal counsels, notaries or professors and PhD doctors in legal studies.<sup>200</sup>

### 3.3. Immunity from detention

In accordance with Article 10 (4) of the Act, requests for an authorisation of detention or arrest are made through the intermediary of *Prosecutor General* (Head of the Public Prosecution Service in Poland). .<sup>201</sup>

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<sup>197</sup> "Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej w sprawie o przestępstwo ścigane z oskarżenia publicznego składa się za pośrednictwem Prokuratora Generalnego."

<sup>198</sup> At present there are only five such offences.

<sup>199</sup> "Wniosek o wyrażenie zgody na pociągnięcie posła lub senatora do odpowiedzialności karnej w sprawie o przestępstwo ścigane z oskarżenia prywatnego składa oskarżyciel prywatny, po wniesieniu sprawy do sądu."

<sup>200</sup> "Wniosek [...] sporządza i podpisuje adwokat lub radca prawny, z wyjątkiem wniosków składanych w swoich sprawach przez sędziów, prokuratorów, adwokatów, radców prawnych, notariuszy oraz profesorów i doktorów habilitowanych nauk prawnych."

<sup>201</sup> "Wniosek o wyrażenie zgody na zatrzymanie lub aresztowanie posła lub senatora składa się za pośrednictwem Prokuratora Generalnego."

## PORTUGAL

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Portuguese government

###### 1.1.1. Constitution

The composition of the government in Portugal is established by the paragraph 1 of Article 183 of the Constitution<sup>202</sup>, which reads as follows: "The Government shall be composed of the Prime Minister, Ministers and Secretaries and Under Secretaries of State." Besides, paragraph 2 of that same article states that "The Government may include one or more Deputy Prime Ministers".<sup>203</sup>

##### 1.2. Denomination of the members of the Portuguese government

Pursuant to the provisions mentioned in paragraph 1.1., Members of the government in Portugal are the following:

- *Primeiro Ministro* (Prime Minister)
- *Vice -Primeiro Ministro/s* (Deputy-Prime Minister/s), if any
- *Ministro/s* (Minister/s)
- *Secretário/s de Estado* (Secretary/ies of State)
- *Subsecretário/s de Estado* (Under Secretary/ies of State)

##### 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<sup>204</sup>. In fact, paragraph 1 of that article states that "*As funções do*

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<sup>202</sup> Both Portuguese and English versions of the Constitution are available on the following website: <http://www.parlamento.pt/LEGISLACAO/Paginas/ConstituicaoRepublicaPortuguesa.aspx>

<sup>203</sup> "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. 3. O número, a designação e as atribuições dos ministérios e secretarias de Estado, bem como as formas de coordenação entre eles, serão determinados, consoante os casos, pelos decretos de nomeação dos respectivos titulares ou por decreto-lei."

<sup>204</sup> "Article 186 (Taking and leaving office)

1. The Prime Minister shall take office upon his installation and shall leave office when he is discharged by the President of the Republic.

2. The remaining Members of the Government shall take office upon their installation and shall leave office when they or the Prime Minister are discharged.

3. Secretaries and Under Secretaries of State shall also leave office when their Minister is discharged.

*Primeiro-Ministro iniciam-se com a sua posse e cessam com a sua exoneração pelo Presidente da República* ", while the subsequent paragraphs state that the beginning of the term of office of the other members of the Government depends also of their installation (also by the President of the Republic).

## **2. Member of a national parliament**

### **2.1. Legal provisions on the composition of the Portuguese parliament**

#### **2.1.1. 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 possess a minimum of one hundred and eighty and a maximum of two hundred and thirty Members, as laid down by electoral law"<sup>205</sup>.

#### **2.1.2. Implementing provisions**

Furthermore, Article 13 paragraph 1 of Law 14/79 defining the Electoral Regime for the *Assembleia da República* specifies that the *Assembleia da República* is composed by 230 Members: "*O número total de deputados é de 230*".<sup>206</sup>

### **2.2. Denomination of the Members of the Portuguese parliament**

Pursuant to the provisions mentioned in point 2.1, Members of the Portuguese Parliament are named *Deputados*.

### **2.3. Date of the beginning of the term of office**

Under the terms of Article 153 paragraph 1 of the Constitution<sup>207</sup> and Article 2, paragraph 1 of the Statute of Members<sup>208</sup>, Deputies officially begin their term of office on the date of the first sitting of the Parliament which takes place after the elections.

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4. In the event that the Government resigns or is removed, the Prime Minister of the outgoing Government shall be discharged on the date of the appointment and installation of the new Prime Minister.

5. Until its Programme has been considered by the Assembly of the Republic, and after its resignation or removal, the Government shall limit itself to undertaking such acts as are strictly necessary in order to ensure the management of public affairs."

<sup>205</sup> " 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 ".

<sup>206</sup> "The total number of Members is 230." (*ad hoc translation*)

<sup>207</sup> "Article 153 (Beginning and end of term of office)

1. Members' terms of office shall commence upon the first sitting of the Assembly of the Republic following elections thereto and shall end upon the first sitting following the subsequent elections thereto, without prejudice to the suspension or termination of any individual mandate."

<sup>208</sup> Article 2 of Law 7/93 of 1 March 1993, the Statute of Members, which text is identical to Article 153 paragraph 1 of the Constitution mentioned before.

## **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Portuguese law does not specify any authority competent to communicate to the European Parliament any alleged existence of cases of incompatibility.

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.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Portugal the parliamentary immunities are granted to the Members of the national parliament by Article 157 of the Constitution, which reads as follows:

#### **"Article 157**

1. Members shall not be civilly or criminally liable for or subject to disciplinary proceedings in relation to their votes or the opinions they express in the performance of their functions.
2. Members shall not appear as makers of declarations or defendants without the Assembly's authorisation. In the event of strong evidence of the commission of a serious crime punishable by imprisonment for a maximum term of more than three years, the Assembly shall obligatorily authorise a Member's appearance as defendant.
3. No Member may be detained, arrested or imprisoned without the Assembly's authorisation, save for a serious crime punishable by the type of prison term referred to in the previous paragraph and in *flagrante delicto*.
4. In the event that criminal proceedings are brought against any Member and he is definitively charged, the Assembly shall decide whether or not he is to be suspended so that the proceedings can take their course. In the event of a crime of the type referred to in the previous paragraphs, the Assembly shall obligatorily suspend the Member."<sup>209</sup>

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<sup>209</sup> " 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 delito.
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,

## 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 *Assembleia da República*.<sup>210</sup>

## 2. Scope and content of national parliamentary immunities

### 2.1. Non-liability principle (Article 157.1 of the Constitution)

Pursuant to Article 157, first paragraph 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

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sendo obrigatória a decisão de suspensão quando se trate de crime do tipo referido nos números anteriores."

<sup>210</sup> "Article 10 Non-liability

Members shall not be civilly or criminally liable for, or subject to disciplinary sanctions in relation to, their votes or the opinions they express in the performance or because of their functions."

"Article 11 Inviolability

1 - No Member may be detained, arrested or imprisoned without the Assembly's authorisation, save only for a serious crime which is punishable by imprisonment for a maximum term of more than three years and in relation to which he is found in flagrante delicto.

2 - Members shall not appear as makers of declarations or be questioned as official suspects without the Assembly's authorisation. In the event of the existence of compelling evidence of the commission of a serious crime punishable by imprisonment for a maximum term of more than three years, the Assembly shall obligatorily authorise a Member's questioning as an official suspect.

3 - In the event that criminal proceedings are brought against a Member and he is definitively charged, the Assembly shall decide, within the period laid down by the Rules of Procedure, whether or not he is to be suspended so that the proceedings can take their course, as follows:

a) In the case of a crime of the type referred to in paragraph (1) above, suspension shall be mandatory;  
b) The Assembly 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 his mandate and the furtherance of the criminal proceedings.

4 - A charge shall become definitive, whereupon the procedural acts shall be pursued up until the trial hearing:

a) When, in the case of the intervention of an investigating magistrate, the said magistrate confirms the charge brought by the Public Prosecutors' Office and his ruling is not judicially opposed, or, in the event of an appeal, is upheld by a higher court;

b) Once the indictment ruling has transited in rem judicatam due to facts other than those set out in the charge brought by the Public Prosecutors' Office;

c) In the event that no official suspect requests further investigation, once the trial judge has issued the curative ruling;

d) In the event of summary proceedings, once the Public Prosecutors' Office has requested the imposition of sanctions.

5 - 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.

6 - The decisions to which this Article refers shall be taken by the Plenary, which shall first hear the Member in question and consider a formal opinion from the committee with responsibility for the matter in question.

7 - The deadline for the prescription of the criminal proceedings shall be suspended when the authorisation request issued by the competent judge is submitted to the Assembly of the Republic, in accordance with and for the purposes of Article 120(1)a of the Penal Code; in the event that the Assembly decides not to lift the Member's immunity, the said suspension shall remain in effect for as long as he is entitled to the prerogative in question."



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. This exemption continues to apply after the end of their term of office.

## **2.2 .Immunity (Article 157.2 of the Constitution)**

Pursuant to Article 157, paragraph 2 of the Constitution, the authorisation of the parliament is required in order for a Member to appear as "*maker(s) of declarations*" or as "*defendants*". However, the same paragraph specifies that the authorisation must be obligatorily granted in the event that "*there is strong evidence that a serious crime has been committed*", should this crime be punishable with "*a maximum sentence of imprisonment for 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 *flagrant delicto* committing a serious crime punishable by the same type of prison term referred to in the previous paragraph.

According to paragraph 4, in the event that criminal proceedings are moved against a Member and this one 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 *supra* the decision of suspension shall be 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 his mandate and the furtherance of the criminal proceedings.

## **3. National authority entitled to request the immunity of a Portuguese Member of the European Parliament to be waived**

Concerning the entity competent to transmit to the European Parliament a request for the waiving of the immunity of a Portuguese MEP, the same rule that applies to the Members of the Portuguese Parliament should be followed: it is up to the competent judge in the procedure to submit the request<sup>211</sup>.

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<sup>211</sup> According to Article 1 of the Law 14/87 of 29 April defining the Electoral Regime for Elections to the European Parliament, "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, after the necessary adaptations, that govern the election of Members of the Assembly of the Republic." Consequently, Article 11, paragraph 5 of the Statute of Members should apply: "5 - 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."



## ROMANIA

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Romanian government

###### 1.1.1. Constitution

The composition of the government in Romania is established by the third paragraph of Article 102 of the Constitution which states: "The government is made up of the Prime Minister, Ministers and other members, as established by an organic law".<sup>212</sup>

###### 1.1.2. Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following acts of secondary law: "*Legea 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 ministries), in particular Articles 3 and 22 (1); "*Legea 23 din 3 martie 2004 pentru modificarea si completarea Legii 90/2001 privind organizarea si functionarea Guvernului Romaniei si a ministerelor*" (Law No 23 of 3 March 2004 modifying and completing Law No 90 of 2001 on the organization and functioning of the Romanian government and ministries), Articles I.2 and I.5(2).

##### 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):
  - a) *Ministri de Stat* (Ministers of State<sup>213</sup>)
  - b) *Ministri delegati cu insarcinari speciale pe langa primul ministru* (delegate ministers with special assignments to the Prime Minister<sup>214</sup>)
  - c) *Seful cancelariei primului ministru* (The chief of chancellery of the Prime Minister<sup>215</sup>)

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<sup>212</sup> "*Guvernul este alcătuit din prim-ministru, miniștri și alți membri stabiliți prin lege organică*". For an English translation of the Romanian constitution please see the following website:  
<http://www.cdep.ro/pls/dic/site.page?id=339&idl=2>

<sup>213</sup> Article 3, paragraph 2 of the Law No 90 of 26 March 2001 modified by the Law 23 of the 3rd March 2004 states: "The Government may also be made of 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." The website of the Romanian government is the following:  
<http://www.gov.ro/>

<sup>214</sup> Idem

d) *Secretarul General al Guvernului* (The Secretary General of the Government<sup>216</sup>)

### **1.3. Date of the beginning of the term of office**

Under the terms of Article 104, paragraph 2 of the Constitution<sup>217</sup> 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.

## **2. Member of a national parliament**

### **2.1. Legal provisions on the composition of the Romanian parliament**

#### **2.1.1. Constitution**

The composition of the parliament in Romania is established by the second paragraph of Article 61 of the Constitution which reads as follows: "The Parliament consists of the Chamber of Deputies and the Senate ".<sup>218</sup>

Article 62 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.

#### **2.1.2. Implementing provisions**

The provisions of the Constitution are implemented by a secondary act of law "*Legea 373/ 24 septembrie 2004 pentru alegerea Camerei Deputatilor si a Senatului*" (Law No 373 of 24 September 2004 on the election of the Chamber of Deputies and of the Senate). Under the terms of Article 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 number of inhabitants used for the calculation is the one valid on the 1st of July of the year preceding the elections, published in the Romanian Statistic Yearbook. The organization and functioning of the Chamber of Deputies and of the Senate are regulated by their own Rules of Procedure<sup>219</sup>.

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<sup>215</sup> Article 21, first paragraph of the Law No. 90 of 23 March 2001, modified by Law No. 23 of 3rd March 2004 states: "The Chancellery of the Prime Minister is led by the chief of the chancellery, who has the rank of minister..."

<sup>216</sup> Article 22, first paragraph 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".

<sup>217</sup> Article 104 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. The Government as a whole and each of its members shall exercise the mandate from the date of taking the oath".

<sup>218</sup> "Parlamentul este alcatuit din Camera Deputatilor si Senat ".

<sup>219</sup> The Rules of Procedure of both the Chamber of Deputies and the Senate are available in the following websites: <http://www.cdep.ro/pls/dic/site.page?id=233&idl=2>  
<http://www.senat.ro/PaginaPrincipala.aspx?tdID=41&divID=14&b=0&adr=%2fpagini%2fengleza%2fRegulamentul+Senatului+engleza.pdf>

## **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)

## **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".

### **2.3.1. 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.

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 resulted 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 the "*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 their mandate is being suggested, with a brief reasoning of the proposals for invalidation or deferral. The Chamber of Deputies rightfully convenes on the 5th 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<sup>220</sup>. Deputies who refuse to take oath are deemed invalidated. Refusal to take oath has to be ascertained by the Chairman.

### **2.3.2. Senate**

Under the terms of Article 3 of the Rules of Procedure of the Senate the newly elected Senate convenes, in compliance with the Romanian Constitution, upon notice of the President of Romania, within twenty days from the elections. The 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 the above mentioned Rules of Procedure, the Senate is legally established after the validation of  $\frac{3}{4}$  mandates of the total number of Senators and after these ones have taken the oath.

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<sup>220</sup> Article 11 of the Rules of Procedure of the Romanian Chamber of Deputies.

## **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Pursuant to Law No 33 of 16 January 2007, on the elections for the European Parliament, *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 who informs the European Parliament of cases of incompatibility.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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. If, after being notified, the Chamber in question finds there are no grounds for the detainment, it shall order the annulment of such a measure at once."<sup>221</sup>

#### **1.2. Implementing provisions**

The implementing rules of Article 72 of the Constitution are contained in Chapter 5 of the Law No 96 of 21 April 2006 on the statute of Deputies and Senators. Detailed procedures on the

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<sup>221</sup> "(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 acestor măsuri."

parliamentary immunities are also contained in Articles 191 to 195 of the Rules of Procedure of the Chamber of Deputies and Articles 172 to 173 of the Rules of Procedure of the Senate.

## **2. Scope and content of national parliamentary immunities**

### **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.

Under the terms of Article 21, paragraph 3 of the Statute of Deputies and Senators this immunity applies only during their term of office.

### **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*)
- arrest or detention, except in the case of a flagrant crime (*infractiune flagranta*)

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. Criminal proceedings may initiate without prior authorisation of the Chamber.

## **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. The provisions governing the requests for waiver of immunity of the members of the national parliament should apply *mutatis mutandis*.

The waiving of the immunity of a member of the Romanian Parliament is regulated by the Rules of Procedure of the Chamber of Deputies and those of the Senate. Under these provisions<sup>222</sup>, *Ministrul Justiției* (the Minister of Justice) is entitled to submit to the President of the Chamber, to which the member in question belongs, a request for detaining, arrest or search. In the event of a flagrant crime, Deputies<sup>223</sup> and Senators<sup>224</sup> 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, without delay of such detention or search. If the Chamber finds there are no grounds for detention, it can order immediate cancellation of such measure.

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<sup>222</sup> Rules of Procedure of the Chamber of Deputies, Article 193, paragraph 2. Rules of Procedure of the Senate, Article 172, paragraph 6.

<sup>223</sup> Rules of Procedure of the Chamber of Deputies, Article 194, paragraph 1.

<sup>224</sup> Rules of Procedure of the Senate, Article 172, paragraph 5.

## SLOVENIA

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Slovene government

###### 1.1.1. Constitution

The Slovene government is formed in accordance with the constitutional provisions, in particular Article 110 of the Constitution, 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".<sup>225</sup>

###### 1.1.2. Implementing provisions

The provisions of the Constitution are implemented by the rules laid down in the Government of the Republic of Slovenia Act,<sup>226</sup> and in particular its Article 10, which states that "The prime minister and the ministers cannot perform functions in state bodies, courts, local authorities and other public functions, nor can they engage in other activities, which are incompatible with the function of a member of Government in accordance with law".<sup>227</sup>

##### 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)
- *Minister* (Minister), *Ministri* (Ministers)
- *Poslanec* (Deputy), *Poslanci* (Deputies)

##### 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. The date of the beginning of the term of office of the members of the Government is thus the date of the appointment of the entire Government by the National Assembly.

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<sup>225</sup> "Vlado sestavljajo predsednik in ministri. Vlada in posamezni ministri so v okviru svojih pristojnosti samostojni in odgovorni državnemu zboru". For an English translation of the Slovene Constitution please see the following website: <http://www.dz-rs.si/>

<sup>226</sup> Zakon o Vladi Republike Slovenije, ZVRS-UPB1, official consolidated version, Ur.l. RS, št. 24/2005. <http://www.uradni-list.si/1/objava.jsp?urlid=200524&stevilka=823>

<sup>227</sup> "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".

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Slovene Parliament**

#### **2.1.1. Constitution**

The Slovene Parliament is officially called the National Assembly, but it should be pointed out that the legislative process in Slovenia also involves another body - the National Council, which has a consultative role.

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."<sup>228</sup> According to Article 43, 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. The second paragraph of Article 82 states 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.

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the composition and the organisation of the National Assembly are contained in its Rules of Procedure<sup>229</sup> and the Deputies Act.<sup>230</sup> Important provisions are also laid down in the Election of Members of the European Parliament from the Republic of Slovenia Act,<sup>231</sup> which states in its Article 2 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.

### **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 the following:

- *Predsednik* ( President)
- *Podpredsednik* (Vice-President)
- *Predsednik odbora* (Chairman of a Parliamentary Committee)
- *Člani odborov* (Members of Parliamentary Committees)
- *Poslanci* (Deputies)

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<sup>228</sup> "Državni zbor sestavljajo poslanci državljanov Slovenije in šteje 90 poslancev".

<sup>229</sup> *Poslovnik Državnega zbora - Uradno prečiščeno besedilo (PoDZ-1-UPB1)*, Uradni list RS 92/07, str. 12284, 10. 10. 2007. The text of the Rules of Procedure in English is available at: <http://www.dz-rs.si/>

<sup>230</sup> *Zakon o poslancih - Uradno prečiščeno besedilo (ZPos-UPB2)*, Uradni list RS 112/2005, str. 12020, 15. 12. 2005. <http://www.uradni-list.si/1/objava.jsp?urlid=2005112&stevilka=4917>

<sup>231</sup> *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. English translation available at: [http://www.mju.gov.si/en/legislation/legal\\_acts\\_in\\_force/](http://www.mju.gov.si/en/legislation/legal_acts_in_force/)



### **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 election of more than half of the deputies is confirmed. 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.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Under the terms of Article 24 of the Election of Members of the European Parliament from the Republic of Slovenia Act, the *Predsednik* (President of the National Assembly) shall inform the President of the European Parliament about the cessation of a MEP's term of office and about who has been elected a MEP instead of the MEP whose term of office terminated.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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".

#### **1.2. Implementing provisions**

The implementing rules concerning immunities are found in 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 election until the expiry of his term.



## **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, taking into the custody and prosecution ("inviolability").

### **2.1. Non-liability principle**

Pursuant to the first paragraph of Article 83 of the Constitution, a deputy cannot be made criminally liable because of the opinion expressed or his voting in the National Assembly or its bodies. This principle is without prejudice to the rule laid down in Article 77 of the Rules of Procedure, according to which 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 these Rules of Procedure.

### **2.2. Inviolability**

According to the second paragraph of Article 83 of the Constitution, permission of the National Assembly is necessary 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 (*in flagrante delicto*) 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, it should be noted that the National Assembly has the power to grant immunity even to a deputy who has not claimed such immunity or who has been apprehended committing such criminal offence.

## **3. National authority entitled to request the immunity of a Slovene member of the European Parliament to be waived**

With respect to the Members of the European Parliament, 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 the Deputies Act and other applicable legislation shall apply.

Article 204 of the Rules of Procedure of the National Assembly provides that 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. The case is considered by competent parliamentary committee, which makes a proposal to the National Assembly. The latter decides to grant or not to grant immunity to the deputy without debate.

The "competent state authority" in such cases is the *Državno tožilstvo* (State Prosecutor's Office or the competent court).

## **SLOVAKIA**

### **I. 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. Member of the Government of a Member State**

##### ***1.1. Legal provisions on the composition of the Slovak government***

###### **1.1.1. 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 consists of the prime minister, deputy prime ministers, and ministers"<sup>232</sup>.

###### **1.1.2. 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 particular Articles 1, 2, 3, 4 and 5.

##### ***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* (Prime Minister)
- *Podpredsedovia* (Deputy Prime Ministers)
- *Ministri* (Ministers)

##### ***1.3 Date of the beginning of the term of office***

There is no specific rule on that question. The setting up of the government is regulated by the following provisions of the Constitution. Under Articles 110 and 111 of the Constitution, the prime minister is appointed and recalled by the president of the Slovak Republic and at the recommendation of the prime minister, the president of the Republic 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 appointment, the Government is obliged to appear before the National Council of the Slovak Republic, to present to it its program, and to request the expression of its confidence.

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<sup>232</sup> "Vláda sa skladá z predsedu, podpredsedov a ministrov". For an English translation of the Slovak Constitution please see the following website: <http://www.vescc.com/constitution/slovakia-constitution-eng.html>

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Slovak Parliament**

#### **2.1.1. Constitution**

The Slovak Parliament is composed by the *Národná* (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 established 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".<sup>233</sup>

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the composition and the organisation of the Parliament are contained in Act No 350/1996 Coll. on Rules of Procedure of the Slovak National Council, as amended<sup>234</sup>.

### **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* ( President)
- *Podpredsedovia* (Vice-Presidents)
- *Predsedomia výborov* (Chairmen of Parliamentary Committees)
- *Členovia výborov* (Members of Parliamentary Committees)
- *Poslanci* (Deputies)

### **2.3. Date of the beginning of the term of office**

Under the terms of Article 5 of the Act No 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic "Each Member shall assume his/her office and shall commence to exercise the mandate on taking the pledge". As Article 75 of the Constitution specifies: "Refusing to take this oath, or taking it with reservations, results in the loss of mandate."

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Under the terms of Article 58 of the Act No. 350/1996 Coll., the Slovak authority competent to communicate cases of incompatibility to the European Parliament is the "*Výbor pre nezlučiteľnosť funkcií*" ( Committee on Incompatibility of Functions) established within the National Council of the Slovak Republic.

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<sup>233</sup> Article 73 (1): " Národná rada Slovenskej republiky má 150 poslancov, ktorí sú volení na štyri roky ".

<sup>234</sup> The text of the Act on Rules of Procedure of the Slovak National Council is available on the following websites:

[http://www1.worldbank.org/publicsector/civilservice/epublishdocs/immunity/legislation/SlovakiaActNationalCouncil\\_on\\_rules\\_of\\_procedure.pdf](http://www1.worldbank.org/publicsector/civilservice/epublishdocs/immunity/legislation/SlovakiaActNationalCouncil_on_rules_of_procedure.pdf)

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **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.

##### **"Article 78**

(1) A Member of Parliament may not be prosecuted 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 criminally prosecuted; 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) No criminal prosecution, or disciplinary proceedings, may be initiated against a Member of Parliament, and he may not be taken into custody, without the consent of the National Council of the Slovak Republic; they may face the prosecution for an offence determined by law. If the National Council of the Slovak Republic denies its consent, criminal prosecution, or taking into custody is ruled out during the term of the mandate. In such case, the statute of limitations does not apply during the exercise of the mandate.

(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. Unless the Mandate and Immunity Committee of the National Council of the Slovak Republic gives 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."

##### **"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"<sup>235</sup>.

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<sup>235</sup>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 trestne ani disciplinárne stíhať, ani vziať ho do väzby bez súhlasu Národnej rady Slovenskej republiky; možno však prejednať priestupok, o ktorom to ustanoví zákon. Ak Národná rada Slovenskej republiky súhlas odoprie, trestné stíhanie alebo vzatie do väzby je počas trvania poslaneckého mandátu vylúčené. V takomto prípade počas ďalšieho výkonu poslaneckého mandátu premlčacia doba neplynie. (4) Ak bol poslanec pristihnutý a zadržaný pri trestnom čine, príslušný orgán je povinný to ihneď oznámiť predsedovi 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. Čl. 79: (1) Poslanec môže odoprieť svedectvo vo veciach, o ktorých sa dozvedel pri výkone svojej funkcie, a to aj keď prestal byť poslancom".

## **1.2. Implementing provisions**

The implementing rules of Articles 78 and 79 of the Constitution are contained in the Act No 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic, as amended.

## **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, taking into the custody and prosecution ("inviolability").

### **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 prosecuted because of his voting in the National Council of the Slovak Republic or its bodies, which applies also to the period after the expiry of his mandate. For statements made in the National Council of the Slovak Republic or its bodies while discharging the functions of a deputy, a deputy is answerable to the disciplinary powers of the National Council of the Slovak Republic.

Pursuant to Article 135 of the Act No 350/1996 Coll., each Member may be subject to disciplinary powers of the National Council in the case of:

- any statement made during the performance of a Member's functions in the National Council or any of its bodies;
- any breach of the ban on voting for another Member [Section 39 paragraph (6)];
- any major breach of the Member's pledge.

### **2.2. Inviolability (Article 78(3) and (4) of the Constitution)**

Pursuant to Article 78(3) and (4) 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:

- criminal proceedings; there is no possibility to initiate criminal proceedings (or continue proceedings being initiated before a person has become a deputy of the Slovak Parliament) without the prior consent of the Slovak Parliament. However, they may face the prosecution for an offence determined by law.
- maintenance of detention when being caught in the act of committing a crime for which arrest is mandatory (*in flagrante delicto*); , 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. Unless the Mandate and Immunity Committee of the National Council of the Slovak Republic gives its consent to the detainment, the Member of Parliament must be released immediately.

To the immunity of a deputy also belongs the right to refuse to testify in matters about which he learned while discharging his office, even after he ceases to be a deputy.

## **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 an MEP to be waived with respect to a specific criminal proceeding and criminal action.

## FINLAND

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Finnish government

According to Section 60 of the Finnish Constitution<sup>236</sup> (*Perustuslaki*), "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".

According to Section 61 of the Finnish Constitution, "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".

##### 1.2. Denomination of the members of the Finnish government

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

- *Pääministeri* (Prime Minister)
- *Ministeri* (Minister), *Ministerit* (Ministers)

##### 1.3. Date of the beginning of the term of office

As mentioned in Section 61 of the Finnish Constitution, the term of office begins as soon as the President appoints a new government.

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<sup>236</sup> The Finnish Constitution can be found online: <http://www.finlex.fi/fi/laki/ajantasa/1999/19990731>; English translation: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Finnish Parliament**

#### **2.1.1. Constitution**

According to Section 24 of the Finnish Constitution, "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".

According to Section 25 of the Finnish Constitution, "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. The right to nominate candidates in parliamentary elections belongs to registered political parties and, as provided by an Act, to groups of persons who have the right to vote. More detailed provisions on the timing of parliamentary elections, the nomination of candidates, the conduct of the elections and the constituencies are laid down by an Act".

#### **2.1.2. Implementing provisions**

The Election Act (*Vaalilaki*)<sup>237</sup> provides for more detailed provisions on the elections and the electoral procedure.

### **2.2. Denomination of the members of the Finnish parliament**

Pursuant to the provisions of the Constitution, members of the Finnish parliament are referred to as:

- *kansanedustaja* (Member of Parliament), *kansanedustajat* (Members of Parliament)

### **2.3. Date of the beginning of the term of office**

According to Section 24 of the Finnish Constitution "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.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

Ministry of Justice (*Oikeusministeriö*) and Central Election Commission (*Keskusvaalilautakunta*).

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<sup>237</sup> <http://www.finlex.fi/en/laki/kaannokset/1998/en19980714.pdf>

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

The immunity of Members of Parliament is enshrined in the Constitution of Finland. Section 30 of the Constitution contains the basic rule according to which Members of Parliament are subject to only limited legal liability for their actions as Members. The same section guarantees members enhanced protection in criminal proceedings.

##### **"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".

#### **1.2. Implementing provisions**

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

### **2. Scope and content of national parliamentary immunities**

The limited liability of members in *Section 30* implies protection against prosecution and arrest or detention. The limited liability of members applies to their opinions expressed in Parliament and to their conduct in the consideration of a matter. The section thus applies only to criminal acts committed at 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; the permission of Parliament is not required.

The enhanced protection of members in criminal proceedings in Section 30 prevents the arrest or detention of members until criminal proceedings have commenced in court. 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.



### **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, and such national authority has not yet been needed. Most likely the authority entitled to request the immunity of a Finnish member of the European Parliament to be waived is the Office of the Prosecutor General.

According to an official letter sent to the President of the European Parliament by the Permanent Representation of Finland to the European Union the complete list of Finnish authorities entitled to request the waiver of the immunity is the following<sup>238</sup>:

- la police (*Poliisi*)
- le procureur général (*Yleinen syyttäjä*)
- la direction des douanes (*Tullihallitus*)
- la police des frontières (*Rajavartiolaitos*)

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<sup>238</sup> See table in Annex 2.

## SWEDEN

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the Swedish government

###### 1.1.1 The Instrument of Government

The composition of the Swedish government is established by Chapter 6, Article 1 of the *Regeringsformen*<sup>239</sup> (The Instrument of Government), 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 2 to 4. The Prime Minister appoints the other ministers".

###### 1.1.2. Implementing provisions

More detailed provisions concerning the structure and the organisation of the Swedish government are contained in Chapter 6, Articles 1-10, Chapter 7, Articles 1-8 of the Instrument of Government and in the Ordinance (1996:1515) with instruction for the Government offices<sup>240</sup>.

##### 1.2. Denomination of the members of the Swedish government

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

- *Statsministern* (Prime Minister)
- *Statsråd* (Ministers)

##### 1.3. Date of the beginning of the term of office

Under the terms of Chapter 6, article 4 of the Instrument of Government<sup>241</sup> the date of the beginning of the term of office of the members of the government shall be considered the date the Speaker of the Riksdagen (Parliament) issues a letter of appointment for the Prime Minister on the Riksdag's behalf. This is done at a Council of State where the King attends, although his presence is not formally required in order to appoint the Prime Minister.

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<sup>239</sup> *Kungörelse (1974:152) om beslutad ny regeringsform*,  
<http://www.riksdagen.se/webbnav/index.aspx?nid=3911&bet=1974:152>

For an English translation of this instrument please see the following website:

[http://www.riksdagen.se/templates/R\\_Page\\_\\_\\_\\_6307.aspx](http://www.riksdagen.se/templates/R_Page____6307.aspx)

<sup>240</sup> *Förordning (1996:1515) med instruktion för Regeringskansliet*.

<sup>241</sup> "When the Riksdag has approved a proposal for a new Prime Minister, he informs the Riksdag as soon as possible of the names of the ministers he has appointed. Government changes hands thereafter at a Council of State before the Head of State or, in his absence, before the Speaker. The Speaker is always summoned to attend such a Council."

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the Swedish Parliament**

#### **2.1.1. The Instrument of Government**

The composition of the *Riksdag* (the Swedish Parliament) is established by Chapter 3, Article 1, second sentence 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 on the third Sunday of September. The last ordinary election was held in September 2006. The distribution of the seats is established by Chapter 3, Articles 6-9 of the Instrument of Government.

#### **2.1.2. Implementing provisions**

More detailed provisions concerning the structure and the organisation of the *Riksdagen* are contained in The *Riksdag* Act<sup>242</sup>.

### **2.2. Denomination of the members of the Swedish Parliament**

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

- *Riksdagsledamot* (Member of Parliament)

### **2.3. Date of the beginning of the term of office**

The electoral period of the *Riksdag* is from the date on which the newly-elected *Riksdag* convenes to the date on which the *Riksdag* elected next thereafter convenes<sup>243</sup>.

Pursuant to Chapter 1, article 2, of the *Riksdag* Act and Chapter 3, article 5 of the Instrument of Government, the *Riksdag* convenes for a new session after an election on the fifteenth day after the election day, but not before the fourth day after the election result has been declared.

The date of the beginning of the term of office of the *Riksdag's* Members coincides with the date of the first sitting of the *Riksdag*.

### **2.4. National authority competent to communicate cases of incompatibility to the European Parliament**

The Swedish system regarding possible incompatibilities with taking up the duty as a member of the European Parliament is based on the issuing of certificates to the person having just been appointed a member by the Central Election Authority. It can be assumed that the national authority competent to communicate cases of incompatibilities to the European Parliament is the Central Election Authority (*Valmyndigheten*).

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<sup>242</sup> Kungörelse (1974:153) om beslutad ny riksdagsordning,  
[http://www.riksdagen.se/templates/R\\_Page\\_\\_\\_6429.aspx](http://www.riksdagen.se/templates/R_Page___6429.aspx)

<sup>243</sup> Instrument of Government, chapter 3 article 5, second sentence.

The procedure leading up to the issuing of certificates, publishing the results of the election and formally informing the European Parliament of the results are described below in detail. The Central Election Authority is notified by the county administrative board of the result of the counting of votes as regards elections to the European Parliament. The county administrative board and the Central Election Authority thereafter appoint members and substitutes according to the provisions contained in Chapter 14 of the Election Act<sup>244</sup>.

Chapter 14, article 25 of the Election Act states that: When the Central Election Authority has distributed seats between the parties and appointed members and substitutes, the election results shall be pronounced by being announced by public notice in *Post- och Inrikes Tidningar* (Swedish Official Gazette). The election is thereby concluded. Public notice shall also be given in *Post- och Inrikes Tidningar*, when new members and substitutes have been appointed in accordance with Sections 18–20 and 24.

For those who have been appointed as a member of the European Parliament or as a substitute, the election authority immediately issues a certificate to that effect. Such a certificate shall also, according to Chapter 14, article 29 of the Election Act, be sent to the Parliament.

The Election Review Board may examine certificates for a member of the European Parliament and substitutes for such members that are appointed during an ongoing period of the election as a result of the member having resigned or substitute being appointed.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

#### **1.1. Constitution**

In Sweden the parliamentary immunities are granted to the members of the national parliament by Chapter 4, article 8 of the Instrument of Government which reads as follows:

#### **"Chapter 4, article 8**

No person may take legal action against a person who holds a mandate as a member of the *Riksdag*, or who has held such a mandate, deprive him of liberty, or restrict his movements within the *Realm* on account of an act or statement made in the exercise of his mandate, unless the *Riksdag* has given its consent thereto in a decision in which at least five sixths of those voting concur.

If, in any other case, a member of the *Riksdag* is suspected of having committed a criminal act, the relevant rules of law concerning arrest, detention or remand are applied only if he admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years"<sup>245</sup>.

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<sup>244</sup> Vallag (2005:837), English version available on [http://www.val.se/pdf/2005\\_elections\\_act.pdf](http://www.val.se/pdf/2005_elections_act.pdf)

<sup>245</sup> "Ingen får väcka talan mot den som utövar eller har utövat uppdrag som riksdagsledamot eller beröva honom friheten eller hindra honom att resa inom riket på grund av hans yttranden eller gärningar under utövandet av uppdraget, utan att riksdagen har medgivit det genom beslut om vilket minst fem sjättedelar av de röstande har förenat sig. Misstänkes riksdagsledamot för brott i annat fall, skall bestämmelser i lag om gripande, anhållande eller häktning tillämpas endast om han erkänner

## 1.2. Implementing provisions

The implementing rules of Chapter 4, article 8 of the Instrument of Government are contained in Chapter 3, Article 16 *Riksdag* Act (Rules of Procedure)<sup>246</sup>.

## 2. Scope and content of national parliamentary immunities

### 2.1. Non-liability principle (Chapter 4, article 8, first sentence of the Instrument of Government)

Pursuant to Chapter 4, article 8, first sentence of the Instrument of Government legal action can not be brought against any person who holds office, or has held office, as a member of the *Riksdag*, deprive him of his liberty, or prevent him from travelling within the country, on account of his actions or statements made in the performance of his duties<sup>247</sup>, unless the *Riksdag* has given its consent by means of a decision in which no fewer than five sixths of those present and voting have concurred.

### 2.2. Immunity (Chapter 4, article 8, second sentence of the Instrument of Government)

If a member of the *Riksdag* is suspected of having committed a criminal act, outside of their duties as Member of Parliament, the relevant rules of law concerning arrest, detention or remand are applied only if he admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years.

## 3. National authority entitled to request the immunity of a Swedish 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 Swedish members of the European Parliament. The provisions governing the requests for waiver of immunity of the members of the national Parliament should therefore apply *mutatis mutandis*.

Pursuant to Chapter 3, Article 16 of the *Riksdag* Act<sup>248</sup>, a written application demanding consent to prosecution or deprivation of liberty of a national Member of Parliament can be made by the prosecutor (*Åklagarmyndigheten*), or any other person, to the Speaker of the Parliament.

According to an official letter<sup>249</sup> sent to the President of the European Parliament by the Permanent Representation of Sweden to the European Union "*Les magistrats du ministère public (parquet, autorité de lutte contre la criminalité économique et agents habilités par une loi ad hoc, notamment les médiateurs du parlement national et le procureur général de la Couronne)*"

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brottet eller har tagits på bar gärning eller fråga är om brott för vilket ej är föreskrivet lindrigare straff än fängelse i två år".

<sup>246</sup> An English translation of the Rules of Procedure is available on the following website:

[http://www.riksdagen.se/templates/R\\_PageExtended\\_\\_\\_6420.aspx](http://www.riksdagen.se/templates/R_PageExtended___6420.aspx)

<sup>247</sup> In the report by the Commission on Constitutional affairs (*Konstitutionsutskottets betänkande 200/01:KU11*) the notion of "*made in the performance of his duties*" has been given a restrictive interpretation and should only be confined to Members' work-related activities in the *Riksdag*.

<sup>248</sup> "If a prosecutor calls for the consent of the *Riksdag* under Chapter 4, Article 8, paragraph one of the Instrument of Government to take legal action against a member of the *Riksdag* or deprive him of his personal liberty, the prosecutor shall make a written application to the Speaker to this effect. The same procedure shall apply if **any other person** seeks the consent of the *Riksdag* to the prosecution of a member of the *Riksdag* on grounds of his actions."

<sup>249</sup> See table in Annex 2.

are the national competent authorities to request the immunity of a Swedish member of the European Parliament to be waived.

## UNITED KINGDOM

### I. 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. Member of the Government of a Member State

##### 1.1. Legal provisions on the composition of the United Kingdom government

###### 1.1.1. Constitution

The United Kingdom doesn't have a single, written constitution. But this doesn't mean that the UK has an 'unwritten constitution'. In fact, it is mostly written – but instead of being one formal document, the British constitution is formed from various sources including statute law, case law made by judges, and international treaties. There are also some unwritten sources, including parliamentary conventions and royal prerogatives.

The UK is a parliamentary democracy with a constitutional monarch. A king or queen is the head of state, and a prime minister is the head of government. By strict convention, the monarch will ask the leader of the dominant party in the House of Commons to form a government, and if there is no dominant party, the leader most likely to be able to form a coalition government. The Prime Minister then selects the other Ministers which make up the Government and act as political heads of the various government departments. About twenty of the most senior government ministers make up the Cabinet, and the government is composed of approximately 100 ministers in total.

##### 1.2. Denomination of the members of the United Kingdom government

Members of the United Kingdom government (sometimes also referred to as Her Majesty's Government or HMG) are the following:

- the *Prime Minister*, who heads the UK government.
- *Cabinet Ministers are the highest-ranking ministers in the government, and most government departments have one Cabinet minister (or more). Most Cabinet ministers are titled 'Secretary of State' – although some have traditional titles, such as the Chancellor of the Exchequer, the Leader of the House of Commons, or the Leader of the House of Lords. Certain ministers also attend cabinet, and a further category of ministers attends cabinet only when their ministerial responsibilities are on the agenda.*
- further titles of members of the UK government include: *Minister of State, Attorney General, Parliamentary under-Secretary of State and Parliamentary Secretary.*

The UK being a parliamentary democracy, members of the government are also members of one of the two Houses of Parliament (the House of Commons and the House of Lords) – although there are rare exceptions to this rule.

The House of Commons publishes an [updated list](#) of members of the UK government online. The Cabinet Office also publishes a list of ministerial responsibilities<sup>250</sup>.

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<sup>250</sup> The (outdated as of 18 June 2009) version for 2009 can be found here:  
<http://www.cabinetoffice.gov.uk/media/212617/lmr2009.pdf>.

### **1.3. Date of the beginning of the term of office**

The appointment of the prime minister is a royal prerogative exercised by the monarch.

By tradition, before a new Prime Minister can enter his official residence (10 Downing Street) for the first time as its occupant, he is required to announce to the country and the world that he has kissed hands with the reigning monarch, and thus has become Prime Minister. This is usually done by saying words to the effect of: "Her Majesty the Queen has asked me to form a government and I have accepted."

The term of office of a minister takes effect from the date of nomination by the Prime Minister.

## **2. Member of a national Parliament**

### **2.1. Legal provisions on the composition of the United Kingdom Parliament**

There are many rules about how the UK Parliament runs. Some of these are written down and are called Standing Orders. Other rules are set out in resolutions of both Houses. However, much of how Parliament does its business is not determined by rules but has become established through continued use over the centuries - this is sometimes known as "custom and practice".<sup>251</sup>

Whereas all (currently 646) members of the House of Commons are elected, the House of Lords is currently composed of four different categories of members: Life Peers (about 600), 12 Law Lords (until October 2009<sup>252</sup>), 26 Archbishops and Bishops, and 92 "Elected hereditary Members"<sup>253</sup>.

### **2.2. Denomination of the members of the United Kingdom parliament**

From its appearance in the fourteenth century, Parliament has been a bicameral legislature consisting of the House of Commons and the House of Lords.

A Member of the House of Commons is referred to as a *Member of Parliament* (MP for short)

A Member of the House of Lords is referred to by his title: "*The Lord (...) of (...)*", or more formally "*The Baron (...) of (...)*", or "*The Earl (...)*" or "*The Viscount (...)*" or "*The Duke of (...)*"; or "*The Lady (...)*" or "*The Baroness (...)*".

### **2.3. Date of the beginning of the term of office**

#### **2.3.1. House of Commons**

At the beginning of the new Parliament, the Clerk of the Crown in Chancery will deliver a Return Book to the Clerk of the House of Commons (the most senior official of that house); in practice the Return Book is handed to the Clerk Assistant below the Bar of the House. This book contains the names of Members returned to serve in the Parliament and is sufficient evidence that a Member won a constituency seat at the General Election, and has the right to

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<sup>251</sup> <http://www.parliament.uk/about/how/role/customs.cfm>.

<sup>252</sup> See *Constitutional Reform Act 2005* setting up a new independent supreme court.

<sup>253</sup> See *inter alia* *Peerages Act 1963*, amended and repealed in part by the *House of Lords Act 1999*.



represent that constituency in Parliament. The delivery of this book is recorded in Hansard (the Official Report), which is the edited verbatim report of proceedings in both Houses<sup>254</sup>.

After the Speaker has been duly elected by the House and taken the Oath, Members (led by the Government and Opposition Front Benches) approach the Table of the House. Here they swear the Oath or take the Affirmation and sign the Test Roll. After signing the Test Roll, Members are introduced to the Speaker by the Clerk of the House. Once the majority of Members have been sworn in (this usually takes a few days), the House is properly constituted and ready to process to the House of Lords and hear the Queen's Speech.<sup>255</sup>

### **2.3.2. House of Lords**

Membership of the House of Lords is effective once a series traditional formalities is completed.

The Announcement is made by No. 10 Downing Street—and, since 2000, by the [Appointments Commission](#)—that certain people are to become Members of the House. Before anyone becomes a Member, a title has to be agreed, and documents—the Writ of Summons and Letters Patent—prepared. This takes several weeks.

Letters Patent are issued by the Queen under the royal prerogative. They create a life peerage. Recipients become Members of the House automatically when Letters Patent are received. However, they cannot sit or vote until their Introduction.

The Writ of Summons is the document which calls the Member to the House and then acts as their 'entry ticket'. A new writ is issued for every Member at the beginning of each Parliament. A writ accompanies the Letters Patent to a new Member.

The Introduction is a short ceremony lasting about five minutes which takes place at the beginning of business.

The Oath of Allegiance must be taken or solemn affirmation made by all Members before they can sit and vote in the House. Members need to take the Oath on Introduction, in every new Parliament and on the death of a monarch.

### **2.4. Derogation applicable to the UK**

Article 7(2) of the 1976 Act provides for a derogation from the general rule that the office of member of the European Parliament is incompatible with that of member of a national Parliament. Indeed, until the 2009 European Parliament election dual membership of the UK Parliament and the European Parliament remained possible.

### **2.5. Temporary disqualification from the House of Lords**

A further specificity lies in the *European Parliament (House of Lords Disqualification) Regulations 2008*<sup>256</sup> which make provision for a life peer who is elected to the office of member of the

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<sup>254</sup> See for example Hansard, Wednesday 11 May 2005, column 1, opening of the 54th Parliament of the United Kingdom. See also House of Commons Factsheet M7 on Parliamentary Elections (revised September 2008).

<sup>255</sup> House of Commons Factsheet M 7, "Parliamentary elections", September 2008, p.4.

<sup>256</sup> Statutory instrument 2008 No. 1647, date of entry into force: 15 July 2008. Available here (last checked: 17.6.2009): [http://www.opsi.gov.uk/si/si2008/uksi\\_20081647\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20081647_en_1).

European Parliament to be disqualified from sitting and voting in the House of Lords for the duration of their membership of the European Parliament.

The explanatory note to the Regulations state that, taking effect from the 2009 European Parliamentary elections, they will allow a life peer to be elected and serve as a member of the European Parliament, without breaching the prohibition on dual mandates. The Regulations have the effect of disqualifying the life peer at any time during which he remains an MEP from sitting or voting in the House of Lords and, from sitting or voting in a committee of the House of Lords or a joint committee of both Houses of Parliament.

### **3. National authority competent to communicate cases of incompatibility to the European Parliament**

For the House of Commons, the competent authority would appear to be the *Clerk of the House*, the most senior official of that chamber.

For the House of Lords, the competent authority would appear to be the *Clerk of the Parliaments*, the most senior official of that chamber.

## **II. NATIONAL IMMUNITIES AS REFERRED TO BY ARTICLE 10(A) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES**

### **1. Legal provisions on the national parliamentary immunities**

Same comment as above (1.1.1.). The legal provisions derive from a mixture of written and unwritten sources, and a combinations of statute, common law and convention.

### **2. Scope and content of national parliamentary immunity**

#### **2.1. Parliamentary Privilege**

Parliamentary privilege, which comprises Parliament's constitutional rights and immunities, has two main components:

- *Freedom of speech*, which is guaranteed by Article 9 of the *Bill of Rights 1689*<sup>257</sup>, and
- The exercise by Parliament of control over its own affairs.

Being derived from centuries of practice and custom, parliamentary privilege is inevitably "a mirror of the times when (it) was gained"<sup>258</sup>.

The public interest in the freedom of speech in the proceedings of Parliament, and the maintenance of the separation of powers between the legislature and the judiciary are both considered to be of a high order. The privilege of freedom of speech protects what is said in debate in either House. Article 9 of the *Bill of Rights 1689* states that:

"The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

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<sup>257</sup> There are also several other statutory privileges which are not covered here as they are considered obsolete (eg. immunity from arrest in civil cases).

<sup>258</sup> Australian Select Committee on parliamentary privilege (1984).

The word "proceedings" is interpreted widely to mean what is said and done in the formal proceedings of either House or their committees, together with conversations, letters and other documentation directly connected with those proceedings.

However, parliamentary privilege does not apply to things said outside Parliament - for example, in carrying out constituency duties or in communicating with government. Likewise, no immunity attaches to statements made outside Parliament, even if they amount to a repetition of statements made during the course of Parliamentary debates on matters of public interest. Nor does any immunity attach to a member's press statements published prior to parliamentary debates, even if their contents are repeated subsequently in the debate itself.

The effect of this privilege was described by Lord Chief Justice Cockburn in *Ex parte Watson* (1869)<sup>259</sup>:

"It is clear that statements made by Members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third party."

The Joint Committee on Parliamentary Privilege set out the modern interpretation of Article 9 in 1999, as follows:

"The modern interpretation is now well established: that Article 9 and the constitutional principle it encapsulates protect members of both Houses from being subjected to any penalty, civil or criminal, in any court or tribunal for what they have said in the course of proceedings in Parliament"<sup>260</sup>.

The degree of protection afforded by Article 9 is absolute. It applies notwithstanding the presence of malice or fraudulent purpose. Abuse of parliamentary freedom of speech is a matter for internal self-regulation by Parliament, not a matter for investigation and regulation by the courts.

A specific procedure for waiver of this privilege by individual members in defamation cases was introduced by statute in 1996<sup>261</sup> - until then there was no provision for disapplying or waiving a statutory privilege such freedom of speech.

A reform and codification of parliamentary privilege was proposed by a joint committee of both houses of Parliament in 1999, which called for a *Parliamentary Privileges Act*, but has not yet been put into practice.<sup>262</sup>

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<sup>259</sup> Queen's Bench Reports 573 at 576.

<sup>260</sup> Joint Committee on Parliamentary Privilege, *Report*, 9 April 1999, HC 214-I 1998-99, para 37. Available at: <http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4305.htm>.

<sup>261</sup> Article 9 caused difficulty when a member was defamed outside Parliament regarding the manner in which he carried out his parliamentary duties. The truth of the defamatory allegations could not be decided in court when this would involve examining parliamentary proceedings. Unlike any other citizen, the member was unable to clear his name. Section 13 of the *Defamation Act 1996* was passed to remedy this situation. This section enables a person to waive parliamentary privilege so far as he is concerned, for the purpose of defamation proceedings. The section has been subject to criticism on the grounds that parliamentary privilege belongs to the House as a whole and not to its individual members.

<sup>262</sup> *Ibid* 11, at paragraph 37.

The compatibility of parliamentary privilege with the Article 6(1) of the European Convention on Human Rights was examined by the European Court of Human Rights (hereinafter ECtHR) in 2003. It found that absolute privilege did not violate the Convention, and that the creation of exceptions to that principle would seriously undermine the legitimate aim of the doctrine<sup>263</sup>.

Statements made by MPs outside the Houses of Parliament are subject to the ordinary laws of defamation and breach of confidence, save where they are protected by the common law doctrine of qualified privilege.

## **2.2. Immunity**

Individual members of the UK Parliament do not have immunity from criminal or civil prosecution. The 1999 *Joint Committee on Parliamentary Privileges* summarised the applicable rules:

"If a member is charged with a criminal offence, no waiver of immunity is required. If [a member] is imprisoned and cannot attend the House, the two Houses expect only to be informed of the fact. The same principle applies to the premises in which Parliament meets. A criminal offence committed in the precincts is triable in the courts. A member may be arrested within the precincts."<sup>264</sup>

However, Article 9 of the *Bill of Rights 1689* prevents parliamentary proceedings from being used in evidence against Members when prosecutions are undertaken.

## **3. National authority entitled to request the immunity of a United Kingdom member of the European Parliament to be waived**

According to a letter of 22 June 2005 from the UK Permanent Representative to the President of the European Parliament, the following authorities are designated by the UK as the competent authority under Rule 6(2) of the European Parliament's rules of procedure:

- for Scotland: the *Lord Advocate*
- for Gibraltar: the *Attorney General of Gibraltar*
- for the rest of the UK: the *Attorney General*

Recent practice seems to have been that the Attorney General's request is submitted to the European Parliament by the United Kingdom's Permanent Representative to the European Union<sup>265</sup>.

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<sup>263</sup> Judgment of 17 December 2002, *A. v. United Kingdom*, at paragraph 88.

<sup>264</sup> *Ibid* 11, at paragraph 242.

<sup>265</sup> European Parliament resolution on the request for waiver of the immunity of Ashley Mote, 2005/2037(IMM).



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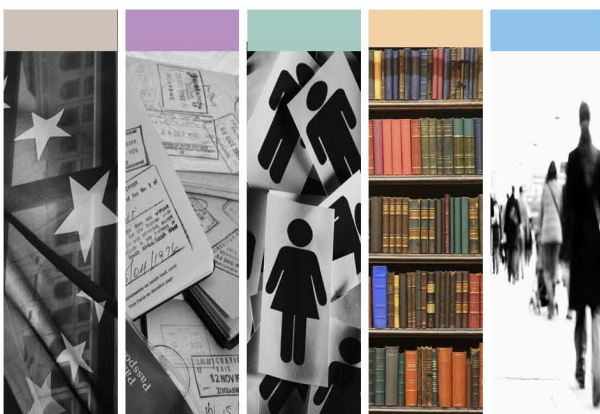
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