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*Committee on Constitutional Affairs*

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## **WORKING DOCUMENT**

on voting by secret ballot in the Member State parliaments

Committee on Constitutional Affairs

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## INTRODUCTION

The President has asked the Committee on Constitutional Affairs for an interpretation of Rule 162(2) of the Rules of Procedure, Voting by secret ballot. The point at issue is whether the submission of a request that the vote on certain parts of a text should be taken by secret ballot must automatically lead to such a vote, or whether the President and/or Parliament has some discretion on this matter.

Given that, in such circumstances, the Rules of Procedure offer the committee responsible the choice between giving an interpretation and submitting a proposal for an amendment to the Rules of Procedure, your rapporteur proposes to take a more comprehensive approach to the subject and to submit to the members of the committee, initially, a working document on voting by secret ballot in the Member State parliaments.

Voting by secret ballot (secret ballots) on decisions concerning appointments are universally accepted as standard practice in most Member State parliaments. Not all constitutions and parliamentary rules of procedure provide for such votes on substantive proposals - their admissibility is legally and politically controversial.

This working document will initially give a survey of the views set out in the German specialist literature, where this topic has hitherto been dealt with in the greatest detail. Section II then describes the arrangements in individual Member States.

### **I. Views of the issue**

#### **Arguments in favour of secret ballots**

##### ***Secret ballots enable MPs to defy the whip.***

This viewpoint is partly substantiated by the argument that secret ballots are necessary, at least in exceptional cases, 'in order to ensure that MPs can take an objective decision consistent with their consciences in the face of pressure from interest groups, public opinion and, in particular, in defiance of the party whip'<sup>1</sup>.

##### ***Like primary electors, MPs must enjoy decision-making freedom.***

A voter who enters a polling station is not a private individual; since not everyone votes or is eligible to vote, he or she is acting on the basis of a public responsibility and is taking a decision geared to the interests of society as a whole.

##### ***Secret ballots are a guarantee of the freedom to exercise a political mandate.***

It is secret ballots which enable MPs to cast votes which constitute a departure from the party line. They represent the only means of ensuring that MPs can take decisions consistent with their consciences and their genuine convictions<sup>2</sup>.

Just as secret voting in elections is essential for democracy, secret ballots in parliament

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<sup>1</sup> Zinn/Stein, Constitution of the Land Hesse, Loseblattkommentar, Vol. 2, Bad Homburg, remark 4 to Article 88.

<sup>2</sup> Röper, Parlamentarier und Parlamente - Konflikte in modernen Volksvertretungen, Berlin 1998, p. 126.

represent a guarantee of the freedom to exercise a political mandate<sup>1</sup>.

***Voting behaviour is not covered by the principle of the public nature of proceedings.***

The political currency in plenary sittings of 'debating parliaments' is public argument and counter-argument, not the disclosure of MPs' voting behaviour. The principle of the public nature of proceedings requires freedom of access for every individual, but no special rights to information, for example in connection with a vote: how has a given MP voted<sup>2</sup>?

***Secret ballots have evolved from parliamentary routine.***

Although secret ballots are perhaps not conducive to an understanding of the way parliaments work, they have evolved from parliamentary routine.

**Arguments against secret ballots**

***Public voting is consistent with the nature of parliamentary democracy.***

Even if MPs are required only to obey their consciences, they are nevertheless still representatives of the people and the voters must be informed about the views and actions of the persons elected to represent them.

***The principle of democracy requires that the people should be able to scrutinise the actions of all decision-makers.***

Only on grounds of workability has representative democracy been chosen as a makeshift form of pure democracy, since in a large state direct democracy is made unfeasible by the complex nature of the political decisions to be taken. In other words, as a matter of principle any element of secrecy in the exercise of a political mandate cannot be reconciled with the concept of democracy<sup>3</sup>.

***In many cases, an MP's true attitudes are revealed to the public only through his or her voting behaviour.***

Given that many parliaments are nothing more than talking shops, an MP's true attitudes are often revealed to the public only through his or her voting behaviour.

***The right example to set is that of an MP who stands by his or her convictions.***

An MP who is answerable only to his or her conscience is no 'moral coward and fellow traveller', but rather somebody who - when necessary - stands by his or her convictions and is prepared to face the political consequences<sup>4</sup>.

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<sup>1</sup> Stern, Das Staatsrecht der Bundesrepublik Deutschland, Vol. I, Munich, 1984, p. 1077.

<sup>2</sup> Mangoldt/Klein, Das Bonner Grundgesetz, Berlin, 1964, remarks IV4(a) - (e) and 5 to Article 42 of the Basic Law.

<sup>3</sup> Buschmann/Ostendorf, Mehr geheime Abstimmungen im Parlament - Postulat oder Relikt?, Zeitschrift für Rechtspolitik 1977, p. 155.

<sup>4</sup> Buschmann/Ostendorf, ibid.

***Secret ballots may even strengthen the whip.***

It is not even clear whether the proposed means serve the ends they are actually designed to achieve. The whip may be so strong that a secret ballot offers MPs an ideal way of obeying the party line safe in the knowledge that they will not be required to disclose the true nature of their actions to the public<sup>1</sup>.

***Unlike primary electors, MPs act as responsible representatives of the people.***

The comparison with the so-called primary election can likewise not be accepted as an argument against public voting. Primary electors are responsible to no-one but themselves. They exercise their original, non-derived rights as citizens. The political responsibility to act in a manner conducive to the common good, a responsibility borne by everyone, cannot be equated with the responsibility borne by elected representatives of the people<sup>2</sup>.

**II. The relevant rules in the Member States**

Of the 20 Member State parliaments which took part in a survey carried out at the request of the secretariat of the Committee on Constitutional Affairs by the European Centre for Parliamentary Research and Documentation (ECPRD), 10, i.e. those in Austria, Belgium, the Czech Republic, Hungary, Italy, Latvia, Slovakia, Slovenia and Spain, make provision for secret ballots except where decisions involving persons, such as elections, appointments, etc., are concerned. Conversely, the parliaments of the 10 other Member States, i.e. those in Denmark, Estonia, Finland, France, Germany, Greece, Lithuania, Poland, Portugal, Sweden and the United Kingdom, may not employ secret ballots in similar circumstances.

*(No information could be found for Ireland, Cyprus, Luxembourg, Malta or The Netherlands)*

**Belgium**

In Belgium, the appointments and nominations which the Chambers are required to make must be adopted by secret ballot.

The **Chamber** and the **Senate** employ secret ballots in other circumstances as well: decisions by the Chamber granting naturalisation, proposals by the Senate to exclude a committee member who has violated the confidentiality principle.

**Czech Republic**

In the **Chamber of Deputies** secret voting shall be used for elections; secret voting shall (also) be used in other cases stipulated by special legislation, or in the event that the Chamber of Deputies so resolved.

In the **Senate**, the secret ballot is used for elections. In other cases, the laws and resolutions of the Senate too can define, when secret ballot is used.

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<sup>1</sup> Leibholz, Parteienstaat und Repräsentative Demokratie, Deutsches Verwaltungsblatt 1951, p. 1(7).

<sup>2</sup> Buschmann/Ostendorf, loc. cit.

## **Denmark**

Sittings of the **Folketing** shall be public. However, the President, or such number of members as may be provided for by the Rules of Procedure, or a Minister, shall be entitled to demand the removal of all unauthorised persons, whereupon it shall be decided without debate whether the matter shall be debated at a public or a secret session. The principle of public sittings implies that votings (even votings connected to a matter debated under a secret session) cannot be performed in secret. (It is reported that the latest secret session was in 1924).

## **Germany**

The secret ballot exists in the **Bundestag** only for elections (Rule 49 of the Rules of Procedure). The **Bundesrat's** Rules of Procedure do not provide for secret votes.

## **Estonia**

The secret vote exists in the **Riigikogu** only in elections and appointments to office.

## **Greece**

Secret ballots are employed for elections and decisions on whether or not to authorise the opening of criminal proceedings against MPs.

## **Spain**

Voting shall be secret if so requested by fifty Senators at a Plenary Sitting or by one-third of the members of a committee.

## **France**

Secret ballots are employed for appointments (election of the Presidents of the Chambers and of the Bureau).

## **Italy**

The Rules of Procedure of both the **Chamber of Deputies** and the **Senate** limit secret ballots to votes on persons and on amendments to these Rules. More generally, they may be requested where votes touch upon the fundamental rights and liberties enshrined in the Constitution, the Senate extending this right to the rights of the family and of the person.

## **Latvia**

Voting at the **Saeima** sittings shall be open. Ten or more members of the Saeima may propose that voting should be secret. A vote of confidence or non-confidence concerning the Cabinet, Prime Minister, Deputy Prime Minister, Minister or Minister of State shall be open.

## **Lithuania**

Open ballot voting is conducted on issues debated in the **Seimas** sittings, except from issues concerning elections; decision on non-confidence in any officer of the Seimas or dismissal of the head of a State institution appointed by the Seimas, as well as formulations of the charge during the impeachment proceedings shall be voted on only by secret ballot. On the decision of the Seimas, other personal issues may also be voted on by secret ballot.

## **Hungary**

Parliament shall decide - apart from the exceptions defined in the Constitution, in an Act, or in the Standing Orders - with open voting in each matter. In the cases defined in the Constitution, in any other Act, or in the Standing Orders, a secret ballot shall be held.

## **Austria**

The **National Council** can decide on a secret ballot only if voting by name has not been demanded by 20 members; the **Federal Council** may do so only if neither on demand of five members or by order of the President the votes are to be taken by name.

## **Poland**

According to the Standing Orders of the **Sejm**, voting in the Sejm is open. In the **Senate** votes by secret ballots are held in personal matters.

## **Portugal**

Secret ballots shall be held for elections and such decisions as the Rules of Procedure or the Statute of Members require to be taken in this form. These are:

- plenary decision on a member's mandate that has been impugned or is called into question;
- in the event that criminal proceedings are brought against any member of the government, the assembly shall decide by secret ballot whether or not he or she is to be suspended.

## **Slovenia**

The **National Assembly** can decide on the use of secret ballots, except where open voting is specified in the Constitution, a statute or in a standing order. It can also be proposed in cases such as the impeachment of the President or a vote of confidence in the government.

Secret ballots shall be used by the **National Council** to elect the President and Vice President and where, on the President's proposal, it is prescribed by a majority of national councillors present or at least eight from one interest group.

## **Slovakia**

Secret voting shall be taken in cases set out by the Constitution (Articles 89, 90 and 92 concerning elections), or by law, when electing or discharging officers, or when so resolved by the **National Council** without debate.

## **Finland**

The secret vote exists in **Eduskunta** only in elections.

### **Sweden**

The secret ballot exists in the **Riksdag** only for elections.

### **United Kingdom**

The Standing Orders contain no provision for vote by secret ballot in divisions of the House. In the House of Commons, with the exception of provisions for the election of the Speaker of the House, when there is more than one candidate, there are no provisions for secret ballots.