

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

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## Abstract

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

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

This document was requested by the European Parliament's Committee on Legal Affairs.

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Original: EN

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Manuscript completed in March 2020

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## INTRODUCTORY REMARKS

This handbook aims at providing the Committee on Legal Affairs with a tool to simplify its tasks when verifying the credentials of the newly elected Members of the European Parliament (MEPs), when ruling on the validity of their mandate or when considering the requests for the waiver or defence of parliamentary immunity.

The first part of the handbook briefly recalls the EU legal framework governing the incompatibilities and the immunities of MEPs. In this context, it also incorporates the main parts of an in-depth analysis entitled **“The immunity of Members of the European Parliament”** previously provided by the Policy Department for Citizens' Rights and Constitutional Affairs<sup>1</sup>.

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

This handbook will be updated regularly. Please hold as reference the date of edition and check with the **Policy Department for Citizens' Rights and Constitutional Affairs** whether the version you are reading is the latest one.

## ACKNOWLEDGEMENTS

This handbook is the result of a successful cooperation between various services of the European Parliament and of national Parliaments. The updates to the national reports were received through the ECPRD (European Centre for Parliamentary Research & Documentation) network, with the help of the DG Presidency. In addition, both the secretariat of the Committee on Legal Affairs and the Legal Service provided very valuable contributions to the drafting and the revision of the handbook.

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<sup>1</sup> [The immunity of Members of the European Parliament=IPOL\\_IDA\(2014\)509981.](#)

European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2014. Authors: Rosa Raffaelli and Sarah Salome SY.



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

### 1. Parliamentary immunities – an overview

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

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

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

#### *Article 8*

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

#### *Article 9*

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

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

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

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

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

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

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

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

The Court of Justice of the European Union<sup>4</sup> has confirmed the need to distinguish between the immunity based on "Article 8 of the Protocol, which establishes absolute immunity, the content of which is determined solely by European law and which cannot be waived by the Parliament," and the one based on Article 9 of the Protocol, which "refers to the national rules of the Member State of origin of the Member of the Parliament as regards the terms and scope of the immunity established in favour of that Member" and which "can, if necessary, be waived by the Parliament."

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

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

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

<sup>2</sup> Please see [Rules of Procedure of the European Parliament, 9th parliamentary term](#).

<sup>3</sup> Please see [Rules of Procedure, Annex VI, Section XVI, point 10](#).

<sup>4</sup> Please see CJEU, *Bruno Gollnisch v. European Parliament*, T-346/11 and T-347/11, EU:T:2013:23, at para. 51.

<sup>5</sup> CJEU, *Alfonso Luigi Marra v. Eduardo De Gregorio and v Antonio Clemente*, C-200/07 and C-201/07, EU:C:2007:356 [hereinafter "*Marra case*"], para. 27.

<sup>6</sup> Ibid.

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

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

<sup>9</sup> CJEU, *Patriciello*, C-163/10, EU:C:2011:543 [hereinafter "*Patriciello case*"], para. 25.

Absolute immunity of Members of the European Parliament cannot be waived, nor can it be renounced by the Member concerned. Absolute immunity is, in essence, intended to apply to statements made by Members within the precincts of the European Parliament; however, it is not impossible that statements expressed outside the Parliament may also amount to an exercise of a Member's duties.<sup>10</sup> **In the latter case, doubts may sometimes arise as to whether the opinion was expressed “in the performance of their duties;” the case-law of the Court of Justice and the practice of the Legal Affairs Committee have therefore clarified how this sentence is to be interpreted, and whose is the power to make a final determination on this matter.**

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

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

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

As a general rule, relative immunity, when applicable, only protects Members as long as they are in office; its aim is to ensure that the exercise of their mandate is not hindered by politically motivated accusations or convictions. Relative immunity is not limited to acts committed in the exercise of the functions, but extends to any act committed by the Member. However, such immunity is temporary: once the Member no longer performs the function, he/she may be subjected to prosecution and detention even for acts committed while in office, from politically motivated prosecutions. Moreover, as is explicitly stated in the third paragraph of Article 9 of the PPI, and regardless of national laws, relative immunity never extends to cover cases in which a Member is caught in the act of committing the crime (*in flagrante delicto*), since in such cases the risk of a politically motivated prosecution is very limited if not absent. Additionally, the European Parliament has the right to waive the immunity in the

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<sup>10</sup> CJEU, *Patriciello* case, cited above, at paras 29-30.

<sup>11</sup> CJEU, *Ashley Neil Mote v. European Parliament*, T-345/05, EU:T:2008:440, para. 50.

<sup>12</sup> Please see Hardt, S., *Parliamentary immunity*, Intersentia, Cambridge, 2013.

cases Article 9, first paragraph, subparagraphs (a) and (b) of the PPI, and it generally does so save if, after examining the circumstances of the case, it finds that there are reasons to believe that the prosecution is politically motivated (so called *fumus persecutionis*: see below, at 4. 3).<sup>13</sup>

For the immunity under Article 9, second paragraph, the CJEU has in its judgment of 19 December 2019 in Case *Oriol Junqueras Vies* (C-502/19) stated that a person whose election to Parliament has been officially proclaimed by the competent authority of the Member State in which the election took place, acquires the status of Member of Parliament from that moment, and consequently enjoys the immunities outlined in the PPI from the moment of the official announcement of the results<sup>14</sup>.

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

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

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

### 1.4. Immunities and fundamental rights: finding the right balance

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

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

<sup>14</sup> [Judgment of 19 December 2019, Oriol Junqueras Vies, C-502/19, ECLI:EU:C:2019:1115, paragraph 94.](#)

<sup>15</sup> CJEU, Judgment in the *Mote* case, cited above, para. 47.

<sup>16</sup> *Ibid.*, at para. 49.

<sup>17</sup> Please see also CJEU, *Rt. Hon. Lord Bruce of Donington v. Eric Gordon Aspdon*, Case 208/80, EU:C:1981:194, at para. 14, arguing that the effect of Article 7(1) of the PPI "is to prohibit Member States from imposing *inter alia* by their practices in matters of taxation administrative restrictions on the free movement of Members of the Parliament."

In *Castells vs. Spain*<sup>18</sup> and *Jerusalem vs. Austria*<sup>19</sup>, two cases concerning freedom of expression under Article 10 of the ECHR, the European Court of Human Rights (ECtHR) recalled that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament call for the closest scrutiny on the part of the Court (*Castells v Spain*, para. 42).

*A. vs. United Kingdom*<sup>20</sup>, the first case brought before the ECtHR on the conflict between Article 6 (right to a fair trial) of the ECHR and parliamentary immunity, can also be regarded as an important confirmation of the principle of freedom of speech and political debate. The Court concluded that the parliamentary immunity enjoyed by the MP in this case pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. **The ECtHR stated that, “in all the circumstances of this case, the application of a rule of absolute Parliamentary immunity cannot be said to exceed the margin of appreciation allowed to States in limiting an individual's right of access to a court (para. 87).” The Court emphasised, however,** that in the UK no immunity attaches to statements made outside of Parliament<sup>21</sup> or to an MP's press statements, even if their contents are repeated subsequently in the parliamentary debate itself. The Court also stressed that, in the UK, victims of defamation do not remain completely without redress, since deliberately misleading statements may be punishable by Parliament as contempt.

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

The question whether parliamentary privilege extends to the press was further examined by the Strasbourg Court in *Belpietro v Italy*.<sup>24</sup> The case concerned the obligation of an editor of a newspaper to control what is published, in order to prevent the publication of defamatory articles in particular. This duty does not disappear when it concerns an article written by a member of parliament, as otherwise,

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

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

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

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

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

<sup>23</sup> Judgement of 6 September 2011, *Patriciello C-163/10*, ECLI:EU:C:2011:543, paragraph 35.

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

according to the Court, this would amount to an absolute freedom of the press to publish any statement of members of parliament in the exercise of their parliamentary mandate, regardless of its defamatory or insulting character.

Moreover, the European Commission for democracy through law (the so-called Venice Commission), an advisory body to the Council of Europe, recently adopted a report on the scope and lifting of parliamentary immunity.<sup>25</sup> The Venice Commission reviewed the existing national rules on absolute and relative immunity of Members of Parliaments, assessing them in the light of the need to protect the rule of law, and proposed several guidelines and criteria for regulating and lifting parliamentary immunity. Accordingly, it argued that, while national rules on absolute immunity are, as a general rule, well-justified, at least as long as they do not extend to private statements of Members of Parliament, existing domestic rules on relative immunity might need to be reformed so as to limit chances of misuse which might infringe the rule of law, obstruct the course of justice and undermine democracy. Interestingly, the Venice Commission suggested that the rules on immunity applicable in the European Parliament, as well as in the Parliamentary Assembly of the Council of Europe, could be a source of inspiration for national reforms, since they reflect a common European consensus on the issue.<sup>26</sup>

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<sup>25</sup> Venice Commission, Report on the scope and lifting of parliamentary immunities, Strasbourg 14 May 2014, CDL-AD(2014)011-e, available online at <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29011-e>.

<sup>26</sup> Ibid., para. 201.

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

According to Article 8 of the PPI:

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

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

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

### 2.1. Duration of the non-liability

According to European Parliament’s reports, absolute immunity begins from the time of publication of the results of the elections to the European Parliament; thus, MEPs are granted this form of protection regardless of whether their credentials have (yet) been verified.<sup>30</sup> However, this interpretation was previously not unanimously shared by scholars, as some argued that absolute immunity begins after the opening of the first session following the election.<sup>31</sup> For the immunity under Article 9(2), this issue

<sup>27</sup> See CJEU, Judgment, *Marra* case, para. 26.

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

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

<sup>30</sup> See report on the request for upholding of the immunity and privileges of Mr Francesco Musotto, 20 June 2003, A5-0248/2003. Mr Musotto had been elected as an MEP in the elections of 10 to 13 June 1999, and charges had been brought against him with reference to an opinion expressed on 16 June 1999. Also see Bruno, A., di Gesù, J., “Lo status del parlamentare europeo,” in Caretti, P., Morisi, M. and Tarli Barbieri, G. (ed.), *Lo status di membro del Parlamento in prospettiva comparata*, 2012, at page 4, available at: [http://www.consiglio.regione.campania.it/cms/CM\\_PORTALE\\_CRC/servlet/Docs?dir=docs\\_biblio&file=BiblioContenuto\\_2745.pdf](http://www.consiglio.regione.campania.it/cms/CM_PORTALE_CRC/servlet/Docs?dir=docs_biblio&file=BiblioContenuto_2745.pdf).

<sup>31</sup> Article 3 of the 1976 Act states that the term of office of each representative begins and ends at the same time as the five-year period for which he is elected (paragraph 3) and that that period begins ‘at the opening of the first session following each election’ (paragraph 2). It could thus be concluded that, with respect to elected representatives who were not Members of the previous Parliament, parliamentary



has been solved by the Court of justice in its landmark judgment of 19 December 2019 in Case *Oriol Junqueras Vies* (C-502/19). The Court of Justice of the European Union stated that a person whose election to the European Parliament has been officially proclaimed by the competent authority of the Member State in which the election took place, acquires the status of Member of Parliament from that moment, and consequently enjoys the immunities outlined in the PPI from the moment of the official announcement of the results<sup>32</sup>. However, Article 8 remains only applicable after the first (constitutive) plenary session of the newly elected Parliament has taken place. Indeed, the parliamentary mandate of newly elected MEPS which may give rise to **“opinions” or “votes” within the meaning of Article 8 PPI** only starts at that moment.<sup>33</sup>

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

## 2.2. Scope of the non-liability

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

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

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immunity is effective from the date of opening of the first session following their election. See Caverio Gómez, M., “La inmunidad de los diputados en el Parlamento Europeo,” *Revista de las Cortes Generales*, Separata No 20, 1990, pp. 16 and 17.

<sup>32</sup> [Judgment of 19 December 2019, Oriol Junqueras Vies, C-502/19, ECLI:EU:C:2019:1115, paragraph 94.](#)

<sup>33</sup> See Article 5(3) of the Electoral Act.

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

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



### 2.2.1. *A spatial criterion...*

Initially, scholars **tended to agree that, while MEPs' absolute immunity covered opinions expressed in the precincts of the Parliament, be it during plenaries or in meetings of parliamentary bodies (such as committees or political groups), it did not extend to opinions expressed outside the context of Parliament and its bodies.** Thus, for instance, it was usually argued that speeches at party congresses or in election campaigns would not be covered by any immunity.<sup>36</sup> In practice, this resulted in the immunity being limited to the opinions expressed within the precincts of the European Parliament, in accordance with the constitutional traditions of several Member States.<sup>37</sup>

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

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

<sup>36</sup> See European Parliament, Policy Department C, [Parliamentary immunity in the European Parliament](#), 2007, PE, page 8; also see Senén Hernández, M., "Inviolabilidad e inmunidad en el Parlamento Europeo", in *Revista de las Cortes Generales*, 1986, vol. 9, 319-333, at 322.

<sup>37</sup> Passaglia, P., "Introduzione," in Passaglia, P. (ed.), *L'insindacabilità delle opinioni espresse dai parlamentari*, available at [http://www.cortecostituzionale.it/documenti/convegni\\_seminari/CC\\_SS\\_Insindacabilita\\_032014.pdf](http://www.cortecostituzionale.it/documenti/convegni_seminari/CC_SS_Insindacabilita_032014.pdf). Also see, for a comparison of the constitutional traditions of the Member States, Policy Department C, *Handbook on the incompatibilities and immunity of the MEPs*, cited above.

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

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

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

to identify the criterion to be used to ascertain whether a statement made by an MEP outside the European Parliament is covered by absolute immunity.

### 2.2.2. ... and an analysis of the “nature and contents” of the speech

It should now be clear that opinions expressed by MEPs beyond the precincts of the European Parliament may, in some cases, be considered as an exercise of parliamentary duties, and therefore be covered by absolute immunity. The criterion to be used to determine whether such opinions are covered by absolute immunity is one based on their character and content:<sup>41</sup> it is therefore essential to examine the content of the opinion in order to evaluate whether it was expressed “in the performance of duties.”

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

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

Secondly, a distinction must be drawn between factual allegations against particular individuals and opinions. Article 8 of the Protocol **expressly refers to “opinions”, i.e., value judgments, which cannot be proven right or wrong:** thus, when an MEP makes a value judgment about an issue of general importance, no matter how upsetting or offensive some people may find it, this should fall within the scope of application of the absolute immunity principle. On the contrary, Article 8 cannot cover factual allegations against other individuals: the person about whom the statement was made must be able

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<sup>41</sup> CJEU, Judgment in the *Patriciello* case, cited above, para. 30.

<sup>42</sup> See Opinion of Advocate General Poiares Maduro, cited above, para. 37.

to take recourse to courts to clear his name and the speaker should be called upon to prove the truth of his allegations, irrespective of whether he is a Member of Parliament.<sup>43</sup>

Since the Court of Justice did not address this point in its decision in the *Marra* case, the issue arose again in the *Patriciello* case. Advocate General Jääskinen, in his Opinion, while moving from an analysis of the two criteria identified above (the distinction between factual allegations and value judgments, and the notion of genuine public interest), proposed a slightly different approach, suggesting the need to use an "organic" rather than "functional" link.<sup>44</sup> Indeed, after criticising the "functional" link and arguing that the concept of "opinion" should also include statements of facts, the Advocate General proposed that the Court should introduce a criterion specific to the nature of the duties of an MEP, on the basis of the case-law of the European Court of Human Rights and of the nature of the immunity, which is granted to allow the performance of the tasks of the Union (Article 343 TFEU). This criterion would link substantive immunity not to the content of a **Member's comments, but rather to the relationship between the context in which those comments** were made and the parliamentary work of the Parliament: thus, immunity would cover the activities of a MEP, not when he deals with matters which are of concern only to a national politician but when he carries out activities as a European parliamentarian.<sup>45</sup>

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

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

<sup>44</sup> See Opinion of Advocate General Jääskinen, cited above, at para. 74.

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

<sup>46</sup> CJEU, Judgment, *Patriciello* case, conclusions.

<sup>47</sup> CJEU, Judgment, *Patriciello* case, at para. 32.

<sup>48</sup> CJEU, Judgment, *Patriciello* case, paras 33 to 36. According to Hardt, the CJEU thus endorsed the "organic" criterion proposed by Advocate General Jääskinen, thus ensuring full compatibility of its interpretation of absolute immunity with the case-law of the ECtHR: see Hardt, S., cited above, at 53. However, others have held that the Court actually followed the Opinion of Advocate General Poiares Maduro (see e.g. Passaglia, P., cited above, at 106) and, indeed, the criteria identified by the Court seem to have much more in common with his

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

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

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

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

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

In the same case, the Court also clarified the interpretation and modes of application of the Rules of Procedure of the European Parliament, and in particular, the relevance of the procedure laid down for

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interpretation. The judgment of the Court has been criticised as creating "a real danger that the European "public space" should become one not of vibrant discussion and competing narratives, but one in which expression is chilled for fears of civil or criminal prosecution just as any other individual would be:" see Mehta, R. S., "Sir Thomas' blushes: protecting parliamentary immunity in modern parliamentary democracies," in *European Human Rights Law Review*, 2012, 3, 309-318, at 318.

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

<sup>50</sup> CJEU, judgment, *Marra* case, cited above, paras 32-35.

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

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

<sup>52</sup> Ibid., paras 41-43.

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

According to Article 9 of the PPI:

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

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

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

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

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

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

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

member state.<sup>53</sup> In any event, as said, this immunity can also be waived as that of Article 9(1)(a), except if the Member is found in the act of committing an offence (*in flagrante delicto*).

This regime remained unchanged even after Parliament became a directly elected institution. Parliament has been calling for an amendment of the regime of immunities of MEPs, through the adoption of a common Statute for MEPs, already since 1983.<sup>54</sup> Subsequent calls for reform of the PPI, while numerous, have not led to any changes,<sup>55</sup> notwithstanding a decision taken by Council in 2005 to look into this issue.<sup>56</sup> The current regime of immunities still relies on national laws, thus leading to significant disparities between Members of the European Parliament<sup>57</sup> and to difficulties for the European Parliament itself, whenever it needs to adopt a decision on the waiver of parliamentary immunity.

### 3.1. Duration of the immunity

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

The precise meaning of the expression “during the sessions of the European Parliament” has been further defined in two judgments of the CJEU from which it can be concluded that Parliament holds an annual session lasting 12 months during which its Members enjoy the immunity defined in the PPI, even in the periods between part-sessions<sup>59</sup>.

Since the immunity foreseen by Article 9, first paragraph, is a “personal” immunity, i.e. a form of inviolability of the person of Members of the European Parliament to ensure the normal functioning of the institution, Parliament has interpreted it as also covering actions committed by the Member before his/her election.<sup>60</sup> Thus, this immunity shields MEPs from being tried, during their mandate, even for facts committed before its beginning – but only as long as they are MEPs. Once a person ceases to be a Member of the European Parliament, this type of immunity ceases to apply and he may be tried

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

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

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

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

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

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

<sup>59</sup> Judgment of 12 May 1964, *Wafner v. Fohrmann and Krier*, Case 101/63, ECJ [1964] p. 397, and Judgment of 10 July 1986, *Wybor v. Faure*, Case 149/85, ECJ [1986], p. 2391. See also [Parliamentary immunity in the Member States of the European Union and in the European Parliament, Working Paper, Legal Affairs Series W 8 / rev.](#), European Parliament, Directorate-General for Research, 1999.

<sup>60</sup> See Policy Department C, *Parliamentary immunity*, cited above, p. 6. Also see, in the Annex to the same publication, the Table summarising the requests for waiver of parliamentary immunity of Members of the European Parliament decided on since the first parliamentary term.



for any action committed before or during the mandate, save of course for votes cast and opinions expressed in the exercise of his functions (to which Article 8 of the PPI continues to apply).

For Article 9, second paragraph, as mentioned before, the CJEU has stated that a person whose election to Parliament has been officially proclaimed by the competent authority of the Member State in which the election took place, acquires the status of Member of Parliament from that moment, and consequently enjoys the immunities outlined in the PPI from the moment of the official announcement of the results<sup>61</sup>.

### 3.2. Scope of the immunity

Article 9, first paragraph, of the PPI, provides for an immunity covering any action not falling under the scope of Article 8, that is: votes cast and opinions expressed not in the exercise of the MEP's **functions**; and any action which cannot be considered as an opinion or a vote. As clarified by the Court of Justice, Article 9 concerns immunity in legal proceedings relating to acts other than those referred to in Article 8.<sup>62</sup> Consequently, a Member cannot claim to benefit, under Article 9, of national provisions on absolute immunity, as this type of immunity is already exclusively covered by Article 8.<sup>63</sup>

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

Whenever the applicable immunity is that deriving from Article 9, first paragraph, subparagraph (a), the European Parliament is conferred powers in accordance with national law. Thus, if national law confers on the national Parliament the power to request suspension of a prosecution against one of its Members, the same power is also granted to the European Parliament with regard to MEPs<sup>65</sup>.

One question that has arisen in the past is whether the immunity provided for in Article 9, first paragraph, subparagraph (a) only covers criminal proceedings or also extends to civil proceedings.

<sup>61</sup> [Judgment of 19 December 2019, Oriol Junqueras Vies, C-502/19, ECLI:EU:C:2019:1115, paragraph 94.](#)

<sup>62</sup> See CJEU, Judgment in the *Marra* case, cited above, para. 45.

<sup>63</sup> Also see Committee on Legal Affairs, *Stocktaking of parliamentary committee activities during the 7th legislature*, at p. 97.

<sup>64</sup> In the words of the CJEU: "the extent and scope of the immunity enjoyed by Members of the Parliament in the territory of their own State are to be determined by the various national laws to which that provision refers." See CJEU, *Bruno Gollnisch v European Parliament*, T-42/06, EU:T:2010:102.

<sup>65</sup> See, for example, CJEU, *Bruno Gollnisch* case, EU:T:2013:23, cited above, paras 51 ff.



Initially, it was argued that, since none of the six founding Member States of the European Communities granted their national parliamentarians immunity from civil proceedings, it could be inferred that they did not intend to grant a broader relative immunity to Members of the European Parliament. This interpretation was also supported by the practice of the European Parliament itself.<sup>66</sup> However, in September 2003, Parliament adopted a decision defending one of its Members from civil proceedings; in the Explanatory Statement to the Report adopted by the Committee on Legal Affairs and the Internal Market, it was clarified that, in the case at hand, the level of damages claimed (roughly EUR 150 000) was clearly intended to be punitive, and therefore to have a deterrent effect similar to a criminal charge.<sup>67</sup> Consequently, it must be held that relative immunity may also extend to civil proceedings.

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

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

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<sup>66</sup> See [Parliamentary immunity in the European Parliament](#), Policy Department C, cited above, p. 12.

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

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

## 4. Procedures and general principles

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

### 4.1. Defence of privilege and immunities

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

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

This procedure has been introduced following concerns voiced by Italian MEPs after the reform of national rules concerning parliamentary immunity; indeed, in 1993, the relevant constitutional rules were amended<sup>69</sup> and no longer require the waiver of the immunity to initiate criminal proceedings, MEPs were concerned that they could be charged and tried without the Parliament even being aware

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<sup>69</sup> Constitutional law 29 October 1993, n. 3, *Modifica dell'articolo 68 della Costituzione*.

of the trial, in particular in cases regarding their absolute immunity for opinions and votes. The procedure is drawn from the practice created by the Italian Constitutional Court in its judgment 1150/88, and allows Members to request Parliament to decide on the applicability of the immunity in any given case.<sup>70</sup>

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

As regards the application of the procedure for defence of the immunity in cases of relative immunity under Article 9 of the PPI, the CJEU clarified in the *Gollnisch* case<sup>71</sup> that, since a MEP can be deprived of his immunity only if the Parliament has waived it, defence of immunity is conceivable where, in the **absence of a request for waiver of a Member's immunity, immunity is endangered by the action of the police or judicial authorities**. Consequently, a decision of the Parliament in response to a request to defend the immunity of an MEP is conceivable only where no request for waiver of that immunity has been submitted to the Parliament by the competent national authorities.<sup>72</sup>

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

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

<sup>71</sup> See CJEU, *Bruno Gollnisch* case, EU:T:2013:23, cited above, paras 51 ff.

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

<sup>73</sup> See judgment in the *Marra* case, cited above, at 37.

<sup>74</sup> *Ibid.*, paras 38-39.

<sup>75</sup> *Nigel Paul Farage v European Parliament*, T-564/11, EU:T:2012:403, at para. 27.

for defence of the immunity and the competent national court is informed of the fact, it must stay the judicial proceedings until Parliament has issued its opinion.<sup>76</sup>

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

## 4.2. Immunity procedures

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

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

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

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

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

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<sup>76</sup> Ibid., paras 41-43.

#### 4.2.2. Urgent procedure

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

#### 4.3. General principles

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

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

Other general criteria to which the Committee on Legal Affairs has frequently made reference in its reports on cases of immunity, as a guidance in order to take its decisions, are the particularly serious nature of the charges and whether the laws of Member States other than the State of origin of the MEP

<sup>77</sup> See Committee on Legal Affairs, *Stocktaking*, cited above, at page 98. Please see also case T-241/18 Briois v EP at par. 66.

<sup>78</sup> See Committee report A7-0047/2011; European Parliament decision of 8 March 2011 on the request for waiver of the immunity and privileges of Elmar Brok.

<sup>79</sup> See Committee report A7-0195/2013; European Parliament decision of 11 June 2013 on the request for defence of the immunity and **privileges of Malgorzata Handzlik**.

<sup>80</sup> See Committee report A7-0030/2009; European Parliament decision of 20 October 2009 on the request for waiver of the immunity of Marek Siwiec.

<sup>81</sup> Please see Committee report A8-0333/2018; European Parliament decision of 23 October 2018 on the request for waiver of the immunity of Manolis Kefalogiannis.

concerned lay down less severe penalties for the act in question, or do not even regard it as a criminal offence.<sup>82</sup> Decisions to waive the immunity of an MEP have been taken following to allegations of corruption or other serious criminal activities (such as fraud or membership of the Camorra), but also in cases concerning minor and clearly non-political crimes (such as road traffic offences).<sup>83</sup> Moreover, in a case concerning opinions expressed by an MEP, the Committee held that immunity should not be defended when the statements concerned are contrary to Article 21 of the EU Charter of Fundamental Rights and could have attracted penalties under (then) Rule 153 RoP. In that case, the Committee clarified that Article 8 of the PPI serves to ensure that MEPs enjoy freedom of speech, but that this freedom does not authorise slander, libel, incitement to hatred, questioning the honour of others, or any utterance contrary to Article 21 of the Charter of fundamental rights of the European Union.<sup>84</sup>

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<sup>82</sup> See for instance *ibid.*; also see Policy Department C, *op. ult. cited above*, p. 23.

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

<sup>84</sup> See Committee Report A7-0245/2014; European Parliament decision of 2 April 2014 on the request for defence of the immunity and privileges of Mario Borghezio. Also see Committee on Legal Affairs, *Stocktaking*, cited above, at page 104.

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

Under the terms of Article 12 of the Act of 20 September 1976 concerning the election of the Members of the European Parliament by direct universal suffrage, as amended by Council Decision 93/81/Euratom, by Council decision 2002/772/EC and most recently by Council Decision (EU, Euratom) 2018/99485 (1976 Act), the European Parliament (Parliament) is required to verify the credentials of its Members (MEPs). For this purpose, it takes note of the results declared officially by the Member States and rules on any disputes that may arise out of the provisions of the 1976 Act, with the exclusion of those arising out of the national provisions to which the Act refers.

The credentials of newly elected MEPs are verified on the basis of both the declaration of non-incompatibility and the declaration of financial interests, the latter being provided for by Rules 3 and Rule 11 of and Annex 1 to Rules of Procedure of the European Parliament<sup>85</sup>. Article 7(1) and (2) of the 1976 Act lays down the list of incompatible offices which include, inter alia, the office of "member of the Government of a Member State" and that of "member of a national parliament". In accordance with Rule 3(2) of Rules of Procedure, "where it is established from facts verifiable from sources available to the public that a Member of the European Parliament holds an incompatible office within the meaning of Article 7(1) and (2) of the 1976 Act, Parliament [...] shall establish that there is a vacancy."

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

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

In addition, MEPs whose election has been notified to Parliament are required to declare in writing, before taking their seat in Parliament, that they do not hold any office incompatible with that of MEP within the meaning of Article 7(1) or (2) of the 1976 Act. The confirmation of the validity of their mandate is conditional upon the declaration of financial interests provided for by Rule 3 and Rule 11 of and Annex 1 to Rules of Procedure (Rule 3(3)). Nevertheless, until such time as Members' credentials have been verified or a ruling has been given on any dispute, and provided that Members have previously signed the declaration of non-incompatibility, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto (Rule 3(2)). The reason for this rule is that,

<sup>85</sup> Please see the latest consolidated version, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574329503550&uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574329503550&uri=CELEX:01976X1008(01)-20020923).

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

even if Parliament shall verify credentials without delay (Rule 3(1)), the verification process can take several months, during which it would be unacceptable to impede MEPs from exercising their mandate.

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

By virtue of Article 12 of the Electoral Act, only the disputes relating to the provisions of the said Act, other than the national provisions to which the act refers, can be decided by Parliament. Disputes arising from national provisions or from EU law provisions different from those of the Electoral Act do not fall within the competence of Parliament and must therefore be relinquished to national authorities and, on a possible application from the European Commission, to the Court of Justice of the European Union<sup>87</sup>.

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

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<sup>87</sup> Please see judgements in Cases [Le Pen v Parliament, C-208/03, paragraphs 50 and 51](#); and [Italy and Donnici v Parliament, joint cases C-393/07 and C-9/08, paragraphs 55, 56 and 57](#).



## PART II - NATIONAL REPORTS

Table 1: Official names of countries

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

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

## BELGIUM

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

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

##### 1.1.1 *Legal provisions on the composition of the Belgian federal government*

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

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

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

##### 1.1.2 *Denomination of the members of the Belgian federal government*

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

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

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<sup>88</sup> For an English translation of the Belgian Constitution please see the following website: [https://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK.pdf](https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf).

<sup>89</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>90</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".

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

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

## 1.2. Member of a national parliament

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

#### *Constitution*

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

#### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the House of Representatives and of the Senate are contained in their respective Rules of Procedure<sup>95</sup>. Additional provisions concerning the election of representatives and the appointment of senators are contained in the Electoral Law ("Code électoral" / "Kieswetboek" / "Wahlgesetzbuch").<sup>96</sup>

### 1.2.2. *Denomination of the members of the Belgian Federal Parliament*

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

<sup>91</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/). Also see Article 96, paragraph 2 2 of the Constitution, according to which, in the case of a vote of no confidence, the successor to the prime minister takes office when the new Federal Government is sworn in.

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

<sup>93</sup> "La Chambre des représentants compte cent cinquante membres"; "De Kamer van volksvertegenwoordigers telt honderdvijftig leden"; "Die Abgeordnetenkammer zählt hundertfünfzig Mitglieder."

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

<sup>95</sup> The texts of the Rules of Procedure of the House of Representatives and the Senate are available at: [https://www.senate.be/doc/Reglement\\_2019\\_F.pdf](https://www.senate.be/doc/Reglement_2019_F.pdf) and [https://www.senate.be/doc/Reglement\\_2019\\_N.pdf](https://www.senate.be/doc/Reglement_2019_N.pdf) (in French or Dutch only); and [https://www.dekamer.be/kvvcr/pdf\\_sections/publications/reglement/reglement\\_UK.pdf](https://www.dekamer.be/kvvcr/pdf_sections/publications/reglement/reglement_UK.pdf)

<sup>96</sup> The text of the Electoral Law (in French) is available at: [https://verkiezingen.fgov.be/sites/default/files/documents/CodeElectoral\\_Kieswetboek.pdf](https://verkiezingen.fgov.be/sites/default/files/documents/CodeElectoral_Kieswetboek.pdf)

- *Membre de la Chambre des représentants, lid van de Kamer van volksvertegenwoordigers, Mitglied der Abgeordnetenversammlung (Member of the House of Representatives); Membres de la Chambre des représentants, leden van de Kamer van volksvertegenwoordigers, Mitglieder der Abgeordnetenversammlung (Members of the House of Representatives),*
- *Sénateur/Sénatrice, senator, Senator (Senator); Sénateurs, senatoren, Senatoren (Senators).*

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

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

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

#### House of Representatives

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

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

#### Senate

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

<sup>97</sup> However, in practice Parliamentarians have been considered as having taken up their mandate (and therefore as covered by the parliamentary immunity) regardless of the oath, once the results of the elections have been published on the resolutive condition of a declaration of non-validity of their election after the verification of the credentials by the assembly. See [http://www.lachambre.be/kvvcr/pdf\\_sections/jurid/violF.pdf](http://www.lachambre.be/kvvcr/pdf_sections/jurid/violF.pdf), p. 22-23.

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

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

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

Pursuant to Federal Law of 23 March 1989<sup>100</sup> on the election of the European Parliament, most recently amended by the Federal Law of March 19<sup>th</sup>, 2019, 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 représentants"; "de griffier van de Kamer van volksvertegenwoordigers" (Secretary-general of the House of Representatives)<sup>101</sup>.

According to Article 37, paragraph 2 of the above-mentioned Federal Law: "At the end of the procedure described in Article 43, the Secretary-general of the House of Representatives shall send the European Parliament the records, accompanied by a joint list of persons elected and the documents necessary to verify their credentials".<sup>102</sup>

Article 43 reads as follows: "The House of Representatives shall rule on the validity of electoral proceedings with regard to both full elected members and their substitutes. It shall rule on complaints lodged on the basis of the provisions of this law. Any complaint against the election must be made in writing and lodged with the Secretary-general of the House of Representatives within ten days following the election. The decision taken by the House of Representatives on the complaint shall be attached to the documents referred to in Article 37, paragraph 2."<sup>103</sup>

<sup>100</sup> [https://verkiezingen.fgov.be/sites/default/files/documents/Loi\\_Wet\\_23.03.1989-ParlementEuropeen\\_EuropeesParlement.pdf](https://verkiezingen.fgov.be/sites/default/files/documents/Loi_Wet_23.03.1989-ParlementEuropeen_EuropeesParlement.pdf)

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

<sup>102</sup> Au terme de la procédure prévue à l'article 43, le greffier de la Chambre des Représentants adresse au Parlement européen les procès-verbaux, accompagnés d'une liste commune des élus ainsi que les documents nécessaires à la vérification de leurs pouvoirs."; "Na de beëindiging van de in artikel 43 voorziene procedure zendt de griffier van de Kamer van Volksvertegenwoordigers de processen-verbaal met een gezamenlijke lijst van de gekozenen, alsmede de nodige bescheiden voor het onderzoek van de geloofsbrieven van de gekozenen aan het Europese Parlement."

<sup>103</sup> "La Chambre des Représentants statue sur la validité des opérations électorales en ce qui concerne tant les élus effectifs que leurs suppléants. Elle statue sur les réclamations introduites sur la base des dispositions de la présente loi. Toute réclamation contre l'élection doit être formulée par écrit et introduite auprès du greffier de la Chambre des Représentants dans les dix jours de l'élection. La décision prise par la Chambre des Représentants sur la réclamation est jointe aux documents prévus à l'article 37, alinéa 2."; "De Kamer van Volksvertegenwoordigers doet uitspraak over de geldigheid van de kiesverrichtingen, zowel wat de gekozenen als hun opvolgers betreft. Zij beslist over de bezwaren die worden ingebracht op grond van de bepalingen van deze wet. Elk bezwaar tegen de verkiezing moet binnen de tien dagen te rekenen van de dag van de verkiezing, schriftelijk worden ingediend bij de griffier van de Kamer van Volksvertegenwoordigers. De door de Kamer van Volksvertegenwoordigers getroffen beslissing in verband met het bezwaar wordt gevoegd bij de stukken bedoeld bij artikel 37, tweede lid."

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

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

#### 2.1.1. *Constitution*

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

##### Article 58

No member of either House can be prosecuted or be the subject of any investigation with regard to opinions expressed and votes cast by him in the exercise of his duties<sup>104</sup>.

##### Article 59

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

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

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

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

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

Detention of a member of either House or his prosecution before a court is suspended during the session if the House of which he is a member so requests".<sup>105</sup>

##### Article 120

Within the federal constellation, the organisation of the Regions and the Communities that are part of the Belgian state structure is also described in the Constitution. In particular, the parliaments of the

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<sup>104</sup> Translation of Article 58 of the Belgian Constitution.

For the French official version of the Belgian Constitution please consult the following website:

[https://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetFR.pdf](https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetFR.pdf)

For the Dutch official version of the Belgian Constitution please consult the following website:

[https://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetNL.pdf](https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetNL.pdf)

<sup>105</sup> Translation of Article 59 of the Belgian Constitution.

For the French and the Dutch official version of the Belgian Constitution please consult the above mentioned websites.

Regions and the Communities are organised by virtue of Articles 115 to 120 of the Constitution. The immunities of the Members of the Regional and Community Parliaments are extended by a reference **to those of the Members of the Federal parliament. Article 120 of the Constitution holds that "all members of Community and Regional Parliaments benefit from the immunities described in Articles 58 and 59."** Therefore, Members of those Parliaments enjoy the same immunities as their federal counterparts.

### 2.1.2. *Implementing provisions*

The implementing rules of Article 59 of the Constitution are contained in the Rules of Procedure of the House of Representatives, in Article 160. No similar provision can be found in the Rules of Procedure of the Senate.<sup>106</sup>

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

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

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

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

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

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

Pursuant to Article 59 of the Constitution, Members of Parliament in session cannot be arrested nor referred to a court of law without the permission of the assembly they belong to. This protection does not apply when the Member of Parliament is caught *in flagrante delicto*. Since 1997, the assembly only

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<sup>106</sup> For an analysis of the Belgian rules on non-liability, see Chambre des représentants, L'irresponsabilité parlementaire, March 2007, available at [https://www.lachambre.be/kvvcr/pdf\\_sections/jurid/responsaF.pdf](https://www.lachambre.be/kvvcr/pdf_sections/jurid/responsaF.pdf)



needs to give its permission for the arrest and the referral to a court of law, not for the investigation itself anymore.<sup>107</sup> The immunity is only valid during the term of office<sup>108</sup>.

Moreover, in accordance with Article 59 (5) of the Constitution, Members of Parliament may always request the assembly to ask for suspension of their prosecution: such a decision is to be taken by a two thirds majority of votes cast. The assembly may also decide, of its own initiative, to request such suspension, or suspension of the Member's detention: in this case, the decision is taken by simple majority, in accordance with Article 59 (6) of the Constitution.

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

According to an official letter<sup>109</sup> sent to the President of the European Parliament by the Permanent Representation of Belgium to the European Union, the Belgian authority entitled to request the waiver of the immunity is the Minister of Justice (Ministre de la Justice/ Minister van Justitie /Minister der Justiz), but the request should be transmitted via the Permanent Representation of Belgium to the European Union.

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<sup>107</sup> There are, however, additional guarantees: in particular, the acts of the investigation that require the presence of a judge (coercive measures) may only be carried out against a Member of the Parliament if authorized by the First President of the Court of Appeals, and after informing the President of the House. Additionally, the President (or his/her representative) must be present during searches or seizures against Parliamentarians.

<sup>108</sup> For an analysis of the Belgian rules on parliamentary immunity see: [http://www.lachambre.be/kvwcr/pdf\\_sections/jurid/violF.pdf](http://www.lachambre.be/kvwcr/pdf_sections/jurid/violF.pdf).

<sup>109</sup> See letter dated 29 April 2013.

## BULGARIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Bulgarian government*

### *Constitution*

The composition of the Bulgarian government is established by Article 108 (1) of the Constitution which reads as follows: "The Council of Ministers shall consist of a Prime Minister, Deputy Prime Ministers and ministers."<sup>110</sup>

### *Implementing provisions*

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: Rules on the organization of the Council of Ministers and its administration, adopted by Government Decree No 229 of 23 September 2009<sup>111</sup>, in particular Article 5.

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

1.1.2. *Denomination of the members of the Bulgarian government*

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

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

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

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

<sup>110</sup> The text in Bulgarian reads "Чл. 108. (1) Министерският съвет се състои от министър-председател, заместник министър-председатели и министри."

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

<sup>111</sup> Promulgated in State Gazette (SG) No 78 of 02.10.2009, last amendments promulgated in SG No 57 of 19.07.2019. The title in Bulgarian is: "Устройствен правилник на Министерския Съвет и на неговата администрация, приет с Постановление на Министерския Съвет No 229 от 23.09.2009г." See <http://lex.bg/bg/laws/ldoc/2135646627> (for a consolidated version in Bulgarian).

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

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

In its Decision No 1 of 16 January 1992<sup>112</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>113</sup>.

## 1.2. Member of a national parliament

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

#### *Constitution*

The composition of the Bulgarian Parliament is established by Article 63 of the Constitution which reads: "The National Assembly shall consist of 240 members."<sup>114</sup> Bulgarian Parliament has one chamber **with the official denomination: Народно събрание (National Assembly)**.

#### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the National Assembly are contained in its Rules of Procedure: Rules of organisation and procedure of the National Assembly<sup>115</sup>.

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

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

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

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

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

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<sup>112</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>113</sup> The case before the Constitutional Court concerned the mandate of members of Parliament but the Court held that the decision shall apply by analogy to President, Vice President and the members of the Council of Ministers, who are required to take the same oath.

<sup>114</sup> **Article 63 of the Constitution reads: "Народното събрание се състои от 240 народни представители".**

<sup>115</sup> Promulgated in State Gazette No. 35/02.05.2017, amended and supplemented, SG No. 34/20.04.2018. See <https://www.parliament.bg/bg/rulesoftheorganisations> (for a consolidated version in Bulgarian) and <https://www.parliament.bg/en/rulesoftheorganisations> (for a consolidated version in English).

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

The Constitutional Court held in Decision No. 1 of 16 January 1992 that "taking the oath provided for in Article 76 (2) of the Constitution determines the start of the exercising of their [Members of Parliament] duties".<sup>116</sup>

In a later case, involving the interpretation of a provision of the Constitution<sup>117</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<sup>118</sup>).

According to Article 15 (1) of the financial rules on the implementation of the budget of the National Assembly,<sup>119</sup> the remuneration of the Members of Parliament is paid as of the election day.

The term of office of a Member of Parliament who fills in a vacancy starts on the date of the adoption of the decision of the Central Electoral Commission with which the new Member of Parliament is declared elected, in accordance with Article 302 (1) of the Election Code.<sup>120</sup>

### 1.3. 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 388 of the Election Code, "after the official announcement of the election results, the Chairperson of the National Assembly shall notify the President of the European Parliament about the elected Members of the European Parliament from Republic of Bulgaria".

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

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<sup>116</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>117</sup> Article 64 (1) reads: "The National Assembly shall be elected for a term of four years".

<sup>118</sup> Constitutional Court Decision No 5 of 22.03.2001 on constitutional case No 5 of 2001 (State Gazette No 30/2001).

<sup>119</sup> Annex to the Rules of Organisation and procedure of the National Assembly.

<sup>120</sup> *Изборен кодекс*, available at: <http://www.lex.bg/bg/laws/ldoc/2135182336>.

According to national law, the Constitutional Court is competent to establish the ineligibility or incompatibility of Members of the National Assembly (Article 72, para. 2 of the Constitution), a possibility that is not limited in time and can be undertaken throughout the mandate. However, in the case of Members of the European Parliament, the Constitutional Court is only competent to rule on the legality of the elections within two months of the receipt of the claim (Article 395 (2) of the Election Code).

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

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

#### 2.1.1. Constitution

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

##### Article 69

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

##### Article 70

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

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

#### 2.1.2. Implementing provisions

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

##### Article 138

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

(2) No permission for detention shall be required in the case *flagrante delicto*, in which case the National Assembly, or, when the Assembly is not in session (Article 45, paragraph 2), its Chairperson, shall be notified immediately.

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

(4) Permission to initiate criminal proceedings shall not be required in case there is a written consent of the Member of the National Assembly. The Member of the National Assembly shall give his/her written consent to the Chairperson of the National Assembly in person who shall notify forthwith the Prosecutor General and inform the National Assembly at the first plenary sitting upon the receipt of the consent. The given written consent cannot be withdrawn by the Member of the National Assembly.

(5) In cases other than those under paragraph 4, the request of the Prosecutor General and the data therewith shall be considered by the National Assembly, which shall pronounce by a resolution not earlier than 5 days after the request has been filed. On request and appearance in person, the Member of the National Assembly shall be heard by the National Assembly.

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

(7) When the criminal prosecution is finalized with a conviction, by which has been imposed the **punishment “imprisonment” for a deliberate crime or when the execution of the “imprisonment” is not postponed**, the National Assembly shall decide on the ahead of term termination of the mandate of the Member of the National Assembly.

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

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

## 2.2. Scope and content of national parliamentary immunities

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

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

Pursuant to Article 69 of the Constitution, members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their functions. Members of Parliament are therefore exempted from any criminal liability which could stem from opinions expressed or votes cast when carrying out their parliamentary activities. This exemption continues to apply after the end of their term of office and also covers opinions expressed outside the parliamentary premises, as long as they are made while performing their duties as Members of Parliament (Constitutional Court Decision № 10 of 27 July 1992<sup>121</sup>).

### 2.2.2. *Immunity (Article 70 of the Constitution)*

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

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<sup>121</sup> See Constitutional Court Decision No 10 of 27.07.1992 on constitutional case No 13 of 1992 (State Gazette No 63/1992). The Chairperson of the National Assembly may take disciplinary measures against Members of Parliament who violate the rules on Parliamentary conduct, in accordance with Article 156 of the Rules of organisation and procedure of the National Assembly.

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

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

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

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

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

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. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*. According to Article 138(3) of the Rules of organisation and procedure of the **National Assembly, the Главен прокурор (Prosecutor General) shall direct a substantiated request for permission to institute criminal proceedings.**

According to an official letter<sup>122</sup> sent to the President of the European Parliament by the Permanent Representation of Bulgaria to the European Union, the Bulgarian authority entitled to request the waiver of the immunity of Members of the European Parliament is the Prosecutor General of the Republic of Bulgaria.

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<sup>122</sup> See letter dated 3 April 2013.



## CZECH REPUBLIC

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

1.1. Member of the Government of a Member State

1.1.1 *Legal provisions on the composition of the Czech government*

### *Constitution*

The composition of the Czech government is established by the second paragraph of Article 67 of the Constitution, which reads as follows: "The Government shall consist of the Prime Minister, Deputy Prime Ministers and Ministers".<sup>123</sup>

### *Implementing provisions*

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

1.1.2. *Denomination of the members of the Czech government*

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

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

<sup>123</sup> "Vláda se skládá z předsedy vlády, místopředsedů vlády a ministrů". An English translation of the Constitution is available at: [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/AJ/Ustava\\_EN\\_ve\\_zneni\\_zak\\_c.\\_98-2013.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Ustava_EN_ve_zneni_zak_c._98-2013.pdf)

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

In accordance with Art. 68(2) of the Constitution, the Prime Minister and Ministers are appointed by the President. Under the terms of Article 69 of the Constitution<sup>124</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.

## 1.2. Member of a national parliament

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

#### *Constitution*

The composition of the Czech Parliament is established by the second paragraph of Article 15 of the Constitution, which reads as follows: "The Parliament shall have two chambers which shall be the Chamber of Deputies and the Senate".<sup>125</sup>

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

#### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the Chamber of Deputies and of the Senate are contained in their respective Rules of Procedure which are adopted in the form of law (*zákon*).<sup>126</sup>

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

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

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

<sup>124</sup> In accordance with Art. 68(2) of the Constitution, the Prime Minister and Ministers are appointed by the President. Normally, they take the oath on the day of appointment. Article 69 of the Czech Constitution reads as follows: (1) Each Member of Government shall take an oath of office administered by the President of the Republic. (2) The oath taken by a Member of the Government shall read: "I hereby swear allegiance to the Czech Republic. I swear to uphold its Constitution and laws and to implement them. I swear upon my honour that I shall conscientiously perform my office and shall not misuse my position".

<sup>125</sup> "Parlament je tvořen dvěma komorami, a to Poslaneckou sněmovnou a Senátem."

<sup>126</sup> The texts of the Rules of Procedure of the Chamber of Deputies and the Senate are available at (respectively): [http://www.psp.cz/docs/laws/1995/90\\_index.html](http://www.psp.cz/docs/laws/1995/90_index.html); and [http://www.senat.cz/informace/zakon106/zakony/zak107.php?ke\\_dni=14.12.2012&O=9](http://www.senat.cz/informace/zakon106/zakony/zak107.php?ke_dni=14.12.2012&O=9).

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

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

#### Chamber of Deputies

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

At the first sitting following elections, Deputies take the following oath, as provided by Article 23(3) of the Constitution: "I hereby swear my allegiance to the Czech Republic. I swear to uphold its Constitution and its laws. I swear on my honour that I shall discharge my office in the interest of all the people, and to the best of my belief." <sup>127</sup> Refusing to take this oath, or taking it with reservations, results in the loss of mandate.

#### Senate

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

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

#### Article 25 of the Constitution

A Deputy or Senator's mandate shall lapse:

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

<sup>127</sup> 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.

(f) when an incompatibility of offices under Article 22 arises.

#### Article 26 of the Constitution

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

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

The Czech authority competent to communicate cases of incompatibility to the European Parliament is the "Státní volební komise" (State Election Commission).<sup>128</sup>

Please see (Czech version only):

<https://www.mvcr.cz/clanek/statni-volebni-komise-93402.aspx?q=Y2hudW09Mg%3d%3d>

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<sup>128</sup> Please see (Czech version only): <https://www.mvcr.cz/clanek/statni-volebni-komise-93402.aspx?q=Y2hudW09Mg%3d%3d>

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

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

#### 2.1.1. Constitution

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

Current text of the Constitution (see Subsection 4):

“Article 27

(1) There shall be no legal recourse against Deputies or Senators for their votes in the Chamber of Deputies or Senate respectively, or in the bodies thereof.

(2) Deputies and Senators may not be criminally prosecuted for speeches in the Chamber of Deputies or the Senate respectively, or in the bodies thereof. Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are a member.

(3) In respect of administrative offenses, Deputies and Senators are subject only to the disciplinary authority of the chamber of which they are a member, unless a statute provides otherwise.

(4) Deputies and Senators may not be criminally prosecuted except with the consent of the chamber of which they are a member. If that chamber withholds its consent, such criminal prosecution shall be foreclosed for the duration of their mandate.

(5) Deputies and Senators may be arrested only if they are apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately announce such an arrest to the President of the chamber of which the detained member of Parliament is a member; if, within twenty-four hours of the arrest, the President of the chamber does not grant consent with the handing over of the detainee to a court, the arresting authority shall be obliged to release him. At the very next meeting of that chamber, the chamber shall take a final decision as to whether such a member may be prosecuted.”<sup>129</sup>

<sup>129</sup> The Czech wording of this Article is the following: “The Czech wording of this Article is the following:

“Článek 27

(1) Poslanec ani senátor nelze postihnout pro hlasování v Poslanecké sněmovně nebo Senátu nebo jejich orgánech.

(2) Za projevy učiněné v Poslanecké sněmovně nebo Senátu nebo v jejich orgánech nelze poslance nebo senátora trestně stíhat. Poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem.

(3) Za přestupky poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem, pokud zákon nestanoví jinak.

(4) Poslanec ani senátor nelze trestně stíhat bez souhlasu komory, jejímž je členem. Odepře-li komora souhlas, je trestní stíhání po dobu trvání mandátu vyloučeno.

(5) Poslanec nebo senátor lze zadržet, jen byl-li dopaden při páčání trestného činu nebo bezprostředně poté. Příslušný orgán je povinen zadržení ihned oznámit předsedovi komory, jejímž je zadržený členem; nedá-li předseda komory do 24 hodin od zadržení souhlas k odevzdání zadrženého soudu, je příslušný orgán povinen ho propustit. Na své první následující schůzi komora rozhodne o přípustnosti stíhání s konečnou platností.”

### 2.1.2. *Implementing provisions*

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

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

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

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

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

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

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

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

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

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. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

Pursuant to Section 12(1)<sup>130</sup> 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 been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Czech Republic to the European Union<sup>131</sup>.

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<sup>130</sup> To be read in combination with the Rules of Procedure of the respective chambers of Parliament.

<sup>131</sup> See letter dated 20 March 2013.

## DENMARK

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Danish government*

### *Constitution*

Pursuant to Article 14 of the Constitutional Act of Denmark,<sup>132</sup> "The King<sup>133</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."

### *Implementing provisions*

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

1.1.2. *Denomination of the members of the Danish government*

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

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

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

Pursuant to Article 14 of the Constitutional Act, the King (currently the Queen) appoints and dismisses the Prime Minister and the other Ministers. He determines their number and the division of competences between them. This is done by a royal decree.<sup>134</sup>

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

<sup>132</sup> An English translation of the Danish Constitution is available at: [http://www.stm.dk/p\\_10992.html](http://www.stm.dk/p_10992.html). The Constitution has not been amended since 1953.

<sup>133</sup> Read "Queen" since the denomination "King" covers the current monarch. The Folketing has published an English version of the Constitution with explanations and in the explanations to Article 14 it is stated: "The Queen has no real influence on who will be a Minister or who will be dismissed. The Queen appoints the Ministers recommended by the Prime Minister. When a new Prime Minister is to be appointed, the current Prime Minister and the Queen decide which politician will be able to put together a majority of the Members of Parliament. The person in question may never have a majority against him or her. The Queen then appoints that person to be the new Prime Minister." [https://www.ft.dk/-/media/pdf/publikationer/english/my\\_constitutional\\_act\\_with\\_explanations.ashx](https://www.ft.dk/-/media/pdf/publikationer/english/my_constitutional_act_with_explanations.ashx)

<sup>134</sup> The composition of the current Government is available at: [http://www.stm.dk/Index/mainstart.asp/a\\_2819.html](http://www.stm.dk/Index/mainstart.asp/a_2819.html).

## 1.2. Member of a national parliament

### 1.2.1. Legal provisions on the composition of the Danish Parliament

#### Constitution

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

#### Implementing provisions

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

### 1.2.2. Denomination of the members of the Danish Parliament

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

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

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

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

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

<sup>135</sup> An English translation of the Parliamentary Elections Act (consolidated act no. 137 of 7 February 2019) is available at the website of the Ministry of Social Affairs and the Interior: <https://elections.oim.dk/media/21968/folketing-parliamentary-elections-act-2019.pdf>

<sup>136</sup> <https://www.ft.dk/da/dokumenter/bestil-publikationer/publikationer/forretningsorden/forretningsorden-for-folketinget>. An English translation of the Standing Orders (as of 2016) is available at: [https://www.thedanishparliament.dk/~media/pdf/publikationer/english/standing\\_orders\\_of\\_the\\_danish\\_parliament.ashx](https://www.thedanishparliament.dk/~media/pdf/publikationer/english/standing_orders_of_the_danish_parliament.ashx)



provision of the Standing Orders of the Parliament as well as Article 32 (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.

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

Pursuant to Sections 40 and 41 of the Members of the European Parliament Elections Act,<sup>137</sup> the Folketing informs the European Parliament about the result of the elections in order for the European Parliament to verify the Member's credentials. The *Folketing* decides on the validity of the election of a candidate; moreover, if the question of validity arises during the election period or if the person loses his/her eligibility, it may take a decision on this.

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<sup>137</sup> An English translation of the Members of the European Parliament Elections Act (consolidated act no. 140 of 7 February 2019) is available at the website of the Ministry of Social Affairs and the Interior here: <https://elections.sim.dk/media/21969/members-of-the-european-parliament-elections-act-2019.pdf>

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

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

#### 2.1.1. Constitution

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

#### **Article 57**

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

#### 2.1.2. Implementing provisions

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

### 2.2. Scope and content of national parliamentary immunities

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

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

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

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

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

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

criminal prosecution and applies neither to investigation, interrogation and fines, nor to civil actions or criminal cases resulting from private prosecutions.<sup>138</sup>

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

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

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

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) which ensures the necessary further action to be taken. This has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Kingdom of Denmark to the European Union.<sup>139</sup>

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<sup>138</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 Administration of Justice Act (*Retsplejeloven*), consolidated act no. 938 of 10 September 2019, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=209542>. 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.

<sup>139</sup> See letter received on 12 February 2014.

## GERMANY

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

1.1 Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the German government*

### *Constitution*

The composition of the German government is established by Article 62 of the Basic Law for the Federal Republic of Germany<sup>140</sup>, which reads as follows: "The Federal Government shall consist of the Federal Chancellor and the Federal Ministers."

### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the German government are contained in Articles 62 to 69 of the Basic Law, in the Rules of Procedure of the Government (*GOBReg/ Geschäftsordnung der Bundesregierung*<sup>141</sup>) and in the Rules of Procedure of the Federal Ministries (*GGO/ Gemeinsame Geschäftsordnung der Bundesministerien*<sup>142</sup>).

1.1.2. *Denomination of the members of the German government*

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

- *Bundeskanzler/Bundeskanzlerin (Federal Chancellor),*
- *Bundesminister (Federal Minister).*

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

Under the terms of the second paragraph of Article 64 of the Basic Law, on taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in Article 56 before the *Bundestag* (Parliament).<sup>143</sup> It follows that the act of taking the oath and the taking of the office must be kept apart.<sup>144</sup> The notion of "taking of the office" (*Amtsübernahme*) is not specified in the Basic Law or other legislative acts. The taking of the office takes place after the swearing of the oath, as each Minister

<sup>140</sup> The "Basic Law" (*Grundgesetz*) is the constitution of the Federal Republic of Germany. Its text is available at: <https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/grundgesetz>.

An English translation is available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

<sup>141</sup> <http://www.bundesregierung.de/Content/DE/StatistischeSeiten/Breg/regierung-und-verfassung-geschaeftsordnung-der-bundesregierung.html>.

<sup>142</sup> <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/ministerium/ggo.html>.

<sup>143</sup> A list of the current members of the Federal Government can be found here:

<http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/Bundeskabinett/bundeskabinett.html>

<sup>144</sup> See in particular Maunz/Dürig, *Grundgesetz-Kommentar* (2019), Rnr. 35 ff.

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

It is necessary to distinguish the taking of the office from the beginning of the official relationship under public law. According to § 2(2) of the Federal Ministers Act (*Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung*, or *BMinG*<sup>145</sup>), the latter begins, in principle, when the President delivers the certificate of appointment, or, if the swearing of the oath took place beforehand, at the moment of the swearing in.

## 1.2. Member of a national parliament

### 1.2.1. Legal provisions on the composition of the German Parliament

#### *Constitution*

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

The Bundesrat consists of members of the governments of the federal states (*Länder*). Article 50 of the **Basic Law stipulates: “The Länder shall participate through the Bundesrat in the legislation and administration of the Federation and in matters concerning the European Union.”** Although, according to the jurisprudence of the Federal Constitutional Court, the Bundesrat is not to be regarded as the **“second chamber of a single legislative body, which would participate in the legislative procedure on an equal footing with the first chamber”**,<sup>146</sup> the Bundestag and the Bundesrat form a two-chamber system in the context of European Union law<sup>147</sup>.

#### *Implementing provisions*

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

<sup>145</sup> <http://www.gesetze-im-internet.de/bming/index.html>.

<sup>146</sup> Federal Constitutional Court (BVerfG), Ruling of 25.06.1974, 2BvF 2, 3/73, paragraph 76.

<sup>147</sup> See Infobrief der Unterabteilung Europa des Deutschen Bundestages, Fachbereich Europa PE 6 - 3010 - 055/19, p. 11 f., <https://www.bundestag.de/resource/blob/658878/79674149f103c8ce447b108afd7eb626/Deutsche-EU-Ratspraesidentschaft-1-Juli-31-Dezember-data.pdf> (consulted on 2.10.2019).

<sup>148</sup> [http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/go\\_btg/index.html](http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/go_btg/index.html). An English translation is available at: <https://www.btg-bestellservice.de/pdf/80060000.pdf>.

<sup>149</sup> <https://www.bundesrat.de/DE/aufgaben/recht/go/go-node.html>.

### 1.2.2. Denomination of the members of the German Parliament

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

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

The designation for the Bundesrat is:

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

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

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

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

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

The conditions to lose membership in the European Parliament are listed in § 22(2) No. 1 - 15 of the Law on the Election of Members of the European Parliament from the Federal Republic of Germany (*Gesetz über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland*, or *EuWG*<sup>152</sup>). Pursuant to § 23(5) of the *EuWG*, the President of the German Bundestag (Präsident des Deutschen Bundestages) informs the President of the European Parliament immediately of the reasons and exact moment of the loss of membership in the European Parliament, once it has been decided during the procedure for the scrutiny of elections<sup>153</sup> or by the Council of Elders or the President of the German Bundestag.<sup>154</sup>

<sup>150</sup> [https://www.bundestag.de/resource/blob/189210/21ad25fd4ff79aaa1f8ada9239f7d302/bwahlg\\_pdf-data.pdf](https://www.bundestag.de/resource/blob/189210/21ad25fd4ff79aaa1f8ada9239f7d302/bwahlg_pdf-data.pdf).

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

<sup>152</sup> <http://www.gesetze-im-internet.de/bundesrecht/euwig/gesamt.pdf>.

<sup>153</sup> According to the Election Scrutiny Law (*Wahlprüfungsgesetz* or *WPrüfG*), available at:

<http://www.bundeswahlleiter.de/de/bundestagswahlen/downloads/rechtsgrundlagen/wahlpruefungsgesetz.pdf>.

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

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

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

#### 2.1.1. Constitution

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

##### Article 46

(1) At no time may a Member be subjected to court proceedings or disciplinary action or otherwise called to account outside the Bundestag for a vote cast or a remark made by him in the Bundestag or in any of its committees. This provision shall not apply to defamatory insults.

(2) A Member may not be called to account or arrested for a punishable offence without permission of the Bundestag unless he is apprehended while committing the offence or in the course of the following day.

(3) The permission of the Bundestag **shall also be required for any other restriction of a Member's freedom of the person or for the initiation of proceedings against a Member under Article 18.**

(4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag."<sup>155</sup>

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

#### 2.1.2. Implementing provisions

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

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

<sup>156</sup> An unofficial consolidated version of the Guidelines is available at:  
[http://www.verwaltungsvorschriften-im-internet.de/bsvwwybund\\_01011977\\_420821R5902002.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwwybund_01011977_420821R5902002.htm).

## 2.2. Scope and content of national parliamentary immunities

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

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

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

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

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

- *prosecution or arrest for a punishable offence,*
- *any restriction of personal freedom,*
- *the opening of proceedings against a member under Article 18 of the Basic Law<sup>157</sup> (Forfeiture of basic rights).*

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

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

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

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

The Act on the Legal Status of Members of the European Parliament (§ 5, EuAbgG<sup>158</sup>) provides that the indemnity and immunity of Members of the European Parliament shall be determined in accordance with Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities.

<sup>157</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>158</sup> <https://www.gesetze-im-internet.de/euabgg/BJNR004130979.html>.



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

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

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

In several cases, requests for the waiver of immunity have been referred to the European Parliament by the "*Bundesministerium für Justiz*" (Federal Ministry of Justice). This practice has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Federal Republic of Germany to the European Union<sup>160</sup>.

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

<sup>160</sup> See letter dated 22 March 2013.

## ESTONIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Estonian government*

### *Constitution*

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

### *Implementing provisions*

Article 12 (2-1) of the Government of the Republic Act<sup>162</sup> stipulates that a minister shall be deemed to have submitted a letter of resignation upon his or her election as a Member of the European Parliament if he or she fails to inform the National Electoral Committee within ten days as of the day on which the election results are announced that he or she wishes to continue in his or her current office and decline the mandate of a Member of the European Parliament.

1.1.2. *Denomination of the members of the Estonian government*

Members of the Estonian government are the following:

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

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

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

<sup>161</sup> The text of the Constitution is available at: <https://www.riigiteataja.ee/akt/115052015002>  
An official English translation is available at: <https://www.riigiteataja.ee/en/eli/ee/521052015001/consolide/current>.

<sup>162</sup> The text of the Government of the Republic Act is available at: <https://www.riigiteataja.ee/akt/112122018008>  
An English translation is available at: <https://www.riigiteataja.ee/en/eli/503012019005/consolide>.

## 1.2. Member of a national parliament

### 1.2.1. *Legal provisions on the composition of the Estonian Parliament*

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

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

According to point 1 of Article 75 of the European Parliament Election Act<sup>163</sup> and Article 25 of the Status of the members of the *Riigikogu* Act<sup>164</sup>, the member of the *Riigikogu* may not be a member of the European Parliament. Under Article 9(6) of the Status of the members of the *Riigikogu* Act, a member of the *Riigikogu* is deemed to have submitted a letter of resignation if, within ten days as of the day on which the results of the election to the European Parliament are announced, he or she fails to inform the National Electoral Committee that he or she wishes to continue in his or her current office and to decline the mandate of a member of the European Parliament.

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

Members of the *Riigikogu* are:

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

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

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

<sup>163</sup> The text of the European Parliament Election Act is available at: <https://www.riigiteataja.ee/akt/103012020008>.  
The English translation is available at: <https://www.riigiteataja.ee/en/eli/513012020006/consolide>.

<sup>164</sup> The text of the Status of Members of the *Riigikogu* Act is available at: <https://www.riigiteataja.ee/akt/121062016022>.  
The English translation is available at: <https://www.riigiteataja.ee/en/eli/523082017002/consolide>.

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

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

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

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

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

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

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

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

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

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

#### 2.1.1. *Constitution*

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

##### Article 62

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

##### **Article 76**

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

### 2.1.2. *Implementing provisions*

The implementing provisions can be found in Article 18 and in Articles 18<sup>1</sup>–18<sup>5</sup> of the Status of Member of Riigikogu Act.<sup>166</sup> Additionally, more specific implementing rules of Article 76 of the Constitution are contained in Chapter 14<sup>1</sup> of the Code of Criminal Procedure.<sup>167</sup>

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#### § 18. Immunity

- (1) Members of the Riigikogu are exempt from legal liability for votes cast or political statements made by them in the Riigikogu or in any of its bodies.
- (2) Members of the Riigikogu are inviolable. No member of the Riigikogu may be obstructed in the performance of his or her duties.
- (3) Members of the Riigikogu may not invoke their immunity in connection with acts that are not related to the exercise of free mandate, or to escape legal liability.
- (4) Members of the Riigikogu cannot waive their immunity. They may, by communicating to the President of the Tallinn Court of Appeal, to the Committee of Constitutional Affairs or to the Chancellor of Justice the corresponding declaration of consent in a format that allows reproduction in writing, agree to the performance of isolated procedural acts provided in subsections 1, 3 and 4 of section 382<sup>2</sup> of the Code of Criminal Procedure and covered by immunity.
- (5) Where this obstructs the performance of his or her duties, a member of the Riigikogu may not be ordered to participate in administrative or civil court proceedings or in misdemeanour proceedings, or compelled to attend any such proceedings, unless the member of the Riigikogu has consented to that in a format that allows reproduction in writing.
- (6) The preparation of the statement of charges regarding a member of the Riigikogu and the performance of any procedural acts of which the subject is a member of the Riigikogu is subject to the provisions of Chapter 14<sup>1</sup> of the Code of Criminal Procedure.

#### § 18<sup>1</sup>. Limitation period

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

#### § 18<sup>2</sup>. Special rules concerning the immunity of members of the Riigikogu in relation to misdemeanour proceedings

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

#### § 18<sup>3</sup>. Special rules concerning the immunity of members of the Riigikogu in relation to the application of special state supervision measures provided in the Law Enforcement Act

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

#### § 18<sup>4</sup>. Protection of postal items and of messages transmitted through an electronic communication network by or to a member of the Riigikogu

- (1) The seizure and examination, under s. 89 of the Code of Criminal Procedure, of a postal item sent by or to a member of the Riigikogu may be performed in respect of the member of the Riigikogu only where this is necessary to prove an offence that he or she is considered to have committed.
- (2) Any work-related messages that a member of the Riigikogu sends or receives through an electronic communication network are protected by immunity. This does not apply when procedural acts under ss. 382<sup>2</sup>(1) and 382<sup>2</sup>(4) of the Code of Criminal Procedure are performed in respect of the member of the Riigikogu with the approval of the President of the Tallinn Court of Appeal or the Chancellor of Justice.

#### § 18<sup>5</sup>. Application to withdraw the immunity of a member of the Riigikogu

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

<sup>166</sup> Available at: <https://www.riigiteataja.ee/akt/121122012010?leiaKehtiv>

The official English translation is available at: <https://www.riigiteataja.ee/en/eli/507012020008/consolide>

## 2.2. Scope and content of national parliamentary immunities

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

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

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

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

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

In criminal procedure, the immunity of members of the *Riigikogu* is regulated by Chapter 14<sup>1</sup> of the *Code of Criminal Procedure*, the current version of which also entered into force on 1 January 2015.

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

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

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

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

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

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

During the second stage (complete waiver of immunity), the Chancellor of Justice, at the request of the Prosecutor General, asks the plenary assembly of the *Riigikogu* to allow for a preparation of a statement

of charges against a member of the *Riigikogu*. This can only be done after receiving the consent of the majority of the parliament.

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

Pursuant to Article 1(3<sup>1</sup>) of the Chancellor of Justice Act,<sup>168</sup> "The Chancellor of Justice makes proposals to the President of the European Parliament to waive immunity prescribed by the Protocol on the privileges and immunities of the European Communities [now European Union] from Members of the European Parliament elected from Estonia." It follows that the *Õiguskantsler* (Chancellor of Justice) is the national authority competent to request waiver of the immunity of an Estonian Member of the European Parliament, as confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Estonia to the European Union<sup>169</sup>.

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<sup>168</sup> Available at: <https://www.riigiteataja.ee/akt/129122012038?leiaKehtiv>. The official English translation of the Chancellor of Justice Act is available at: <https://www.riigiteataja.ee/en/eli/522122019008/consolide>

<sup>169</sup> See letter dated 29 April 2013.



## IRELAND

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Irish government*

### *Constitution*

The composition of the Irish government is established by Article 28(1) of the Irish Constitution<sup>170</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) and (6) of the Constitution, the Government is headed by a prime minister called the *Taoiseach*, and a deputy prime minister called the *Tánaiste*. The *Taoiseach* is appointed by the President after being designated by *Dáil Éireann* (the lower house of Parliament), in accordance with Article 13(1) of the Constitution. The deputy Prime Minister (*Tánaiste*) is appointed by the President of Ireland upon the nomination of the Prime Minister (*Taoiseach*). The President appoints all ministers after they have been chosen by the *Taoiseach* and approved by the *Dáil*, in accordance with Article 13(2) of the Constitution.

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

### *Implementing provisions*

The above-mentioned provisions of the Constitution are further supplemented by the following act of secondary law: the Ministers and Secretaries Act, 1924<sup>171</sup> and its amendments, which contain the detailed provisions regarding the functions of the Government in general.

According to Section 4 of the Ministers and Secretaries (Amendment) (No. 2) Act, 1977<sup>172</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.

<sup>170</sup> An official English version of the Irish Constitution is available at: <http://www.irishstatutebook.ie/eli/cons/en>.

<sup>171</sup> <http://www.irishstatutebook.ie/1924/en/act/pub/0016/index.html>.

<sup>172</sup> <http://www.irishstatutebook.ie/1977/en/act/pub/0028/sec0004.html#zza28y1977s4>.

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.

### 1.1.2. *Denomination of the members of the Irish government*

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

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

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

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

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

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

## 1.2. *Member of a national parliament*

### 1.2.1. *Legal provisions on the composition of the Irish Parliament*

#### *Constitution*

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

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

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

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

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

### Implementing provisions

More detailed provisions concerning the composition and the organization of the Chamber of Deputies and the Senate are contained in their respective Standing Orders<sup>173</sup>.

#### 1.2.2. Denomination of the members of the Irish Parliament

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

- *Teachta Dála (Deputy); Teachtaí Dála (Deputies).*<sup>174</sup>
- *Pursuant to the provisions mentioned in paragraph 2.1., members of the Senate (Seanad Éireann) are the following:*
- *Seanadóir (Senator); Seanadóirí (Senators).*

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

##### House of Representatives - *Dáil Éireann*

The term of office of a member of *Dáil Éireann* commences when that person is deemed to stand elected. Section 126 of the Electoral Act 1992<sup>175</sup> provides that: **"On the completion of the counting of the votes the returning officer shall determine and declare the result of the poll and the candidates deemed to be elected shall thereupon stand elected."** Section 118 of the Electoral Act 1992 sets out the **meaning of the term 'deemed to be elected' in the following manner:** **"deemed to be elected' means deemed to be elected for the purpose of the counting of the votes but without prejudice to the declaration of the result of the poll."**

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

##### Senate - *Seanad Éireann*

The rules governing the election of Senators are set out in several pieces of legislation, depending on whether one is referring to the election of Panel Members or University Members. According to Section

<sup>173</sup> The texts of the *Dáil* and of the *Seanad* Standing Orders are available at: <http://www.oireachtas.ie/parliament/about/publications/standingorders/>.

<sup>174</sup> The abbreviations TD for singular and TDs for plural are normally used.

<sup>175</sup> Available at: <http://www.irishstatutebook.ie/1992/en/act/pub/0023/index.html>.

53 of the *Seanad* Electoral (Panel Members) Act, 1947,<sup>176</sup> the *Seanad* returning 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,<sup>177</sup> provides for a similar arrangement with respect to University Members: “As soon as conveniently may be after the close of the poll at an election in a university constituency, the returning officer at such election shall, in the presence of such candidates and their respective agents as may be **in attendance, ascertain the result of the election ... and shall declare to be elected the candidates who are so ascertained to be elected.**” Therefore, the term of office of the Panel and University Members commences when, following the ascertainment of the result of the election, the returning officer declares to be elected those candidates ascertained to be elected. Therefore, this is the date upon which they begin to enjoy the privileges and immunities associated with being a member of Parliament.

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

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

The European Parliament Elections Act 1997 (as amended)<sup>178</sup> sets out cases of incompatibility with membership of the European Parliament,<sup>179</sup> but it does not entrust any national authority with the task of communicating cases of incompatibility to the European Parliament. However, the 1997 European Parliament Elections Act states that the Clerk of the *Dáil* (House of Representatives) informs the European Parliament about newly elected Members of the European Parliament following an election to the European Parliament and also when a vacancy in the Irish group of Members of the European Parliament has been filled from the list of replacement candidates.

<sup>176</sup> Available at: <http://www.irishstatutebook.ie/eli/1947/act/42/enacted/en/html>

<sup>177</sup> Available at: <http://www.irishstatutebook.ie/eli/1937/act/30/enacted/en/html>

<sup>178</sup> The legislation is available at: <http://acts.oireachtas.ie/en.act.1997.0002.1.html> and <http://www.oireachtas.ie/documents/bills28/acts/2004/a204.pdf> (amending Act).

<sup>179</sup> According to the law, persons who are holding offices incompatible with Membership of the European Parliament cease to hold such offices on election to the European Parliament, while Members of the European Parliament who are subsequently appointed to an office that is incompatible with membership of the European Parliament, or who are otherwise disqualified from being a Member of the European Parliament, cease to be Members of the European Parliament.

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

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

#### 2.1.1. Constitution

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

#### Article 15

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

[...]

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

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

#### 2.1.2. Implementing provisions

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

There is no formal procedure for waiving parliamentary immunity, although the Standing Orders of *Dáil Éireann*<sup>180</sup> (n. 59) provide for a manner of complaint by persons who are named or identified by a member of the House or a Committee in the course of proceedings in a way which adversely affects their reputation or invades their privacy.

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<sup>180</sup> [http://www.oireachtas.ie/documents/proceduraldocuments/Standorders2011\\_revised.pdf](http://www.oireachtas.ie/documents/proceduraldocuments/Standorders2011_revised.pdf)

Additionally, Article 17 of the 2009 Defamation Act<sup>181</sup> has extended absolute privilege to statements made in the European Parliament by members of that Parliament, and to all witnesses appearing before both *Oireachtas* and European Parliament committees. Article 2 of the same Act updated the definition of 'utterances' to include oral or written statements, images, sounds, gestures and any other method of signifying meaning.

## 2.2. Scope and content of national parliamentary immunities

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

### 2.2.1. Non-liability principle

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

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

### 2.2.2. Immunity

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

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

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

The Minister for Foreign Affairs and Trade is the Minister domestically responsible for the Diplomatic Relations and Immunities Act 1967 (which implements the Vienna Convention on Diplomatic Immunity of 1961). Therefore the Department of Foreign Affairs and Trade is the relevant National Authority entitled to request waiver of immunity of Members of the European Parliament.

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<sup>181</sup> Available at: <http://www.irishstatutebook.ie/2009/en/act/pub/0031/index.html>.

## GREECE

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

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

##### 1.1.1. *Legal provisions on the composition of the Greek Government*

##### *Constitution*

By virtue of Article 81(1) of the Hellenic Constitution,<sup>182</sup> "The Cabinet, which shall be composed of the Prime Minister and the Ministers, constitutes the Government. The composition and functioning of the Cabinet shall be specified by law. One or more Ministers may be appointed Vice Presidents of the Cabinet, by decree initiated by the Prime Minister. A statute shall regulate the status of Deputy Ministers, Ministers without portfolio and Undersecretaries who may be members of the Cabinet, as well as the status of permanent Undersecretaries."

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

##### *Implementing provisions*

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

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

The Constitution<sup>183</sup> states that any professional activity whatsoever of members of the Government and Undersecretaries shall be in abeyance during the discharge of their duties. Under Article 70 of Law 4622/2019, this provision is extended to any posts held in any capacity in a public sector legal entity. Additional incompatibilities (such as undertaking state contracts) are also provided for in the same article.

##### 1.1.2. *Denomination of members of the Greek Government*

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

- *Πρωθυπουργός* (Prime Minister),

<sup>182</sup> As revised by the parliamentary resolution of November 25 2019 of the IX Revisionary Parliament.

<sup>183</sup> Article 81(3).

- *Αντιπρόεδρος της Κυβέρνησης (Vice President of the Government),*
- *Υπουργός (Minister); Υπουργοί (Ministers),*
- *Υπουργός Επικρατείας (Minister of State); Υπουργοί Επικρατείας (Ministers of State),*
- *Αναπληρωτής Υπουργός (masculine), Αναπληρώτρια Υπουργός (feminine) (Deputy Minister); Αναπληρωτές Υπουργοί (Deputy Ministers).*

As mentioned above, relevant legislation specifies that undersecretaries<sup>184</sup> are not part of the government. However, this possibility exists, as provided for by the Constitution (Article 81).<sup>185</sup>

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

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

## 1.2. Member of a national parliament

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

#### *Constitution*

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

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

#### *Implementing provisions*

The electoral law currently in force<sup>186</sup> establishes that the number of Members of Parliament shall be 300 and lays down electoral methods and procedures.

<sup>184</sup> *Υφυπουργός* (Undersecretary), *Υφυπουργοί* (Undersecretaries) are sometimes designated in French by the terms '*ministre adjoint*' or '*secrétaire d'État*'; in English the term generally used is 'Deputy Minister'.

<sup>185</sup> However, Article 85 of the Constitution specifies that the members of the Cabinet and Undersecretaries are collectively responsible for the policy of the government, and each of them is severally responsible for the actions or omissions within his/her powers, according to the provisions of statutes on the liability of Ministers.

<sup>186</sup> Codified by Presidential Decree 96/2007, re-amended early in 2008 and re-codified by Presidential Decree 26/2012, recently amended by Law 4406/2016, and again by Law 4654/2020.



### 1.2.2. Denomination of Greek Members of Parliament

The Members of the Hellenic Parliament are designated as follows:

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

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

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

Article 53 of the Constitution states that Members of the Parliament are elected for a term of four consecutive years, commencing on the day of the general elections<sup>187</sup>.

Moreover, with regard to the incompatibilities of Members of the Greek Parliament<sup>188</sup>, Article 57 of the Constitution states that 'Members of Parliament must, within eight days of the day in which their election becomes final, select between their parliamentary office and the above-stated job or **capacities.**' **If they fail to make** such a statement within the deadline, they forfeit their parliamentary office *ipso jure*.

Members of Parliament proclaimed as such by the competent tribunals and whose election is contested before the Special Highest Court<sup>189</sup> continue to discharge their duties (and benefit from parliamentary immunity) pending the publication of the final judgment of the latter Court.

Members of the Hellenic Parliament forfeit their office in the circumstances specified by the Constitution,<sup>190</sup> as well as by other Constitutional provisions regarding their financing (such as exceeding electoral expenditure or infringement of certain provisions regarding the electoral campaign<sup>191</sup>).

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

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

The European Parliament is informed by the Minister of the Interior of the names of Members elected and, where relevant, those replacing them. This is generally done through the Permanent Representative of the Hellenic Republic to the European Union.

<sup>187</sup> It must be noted that, when in 2007 a number of Members of the European Parliament were elected to the Greek Parliament, the European Parliament established that their seats in the European Parliament were vacant from the day of the inaugural sitting of the Greek Parliament, during which the Members present were required to take the oath of office (26 September 2007).

<sup>188</sup> This is applicable also to the Greek MEPs.

<sup>189</sup> Set up under Article 100 of the Constitution and functioning in accordance with Law 345/1976.

<sup>190</sup> Articles 55 to 58 (failure to state their choice between their parliamentary office and duties incompatible with it within eight days of their election, loss of civic rights, and subsequent engagement in activities incompatible with their duties). Forfeiture of office falls within the jurisdiction of the Special Highest Court.

<sup>191</sup> Article 29(2) of the Constitution and Law 3023/2002 on the funding of political parties (as subsequently amended).

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

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

#### 2.1.1. Constitution

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

##### Article 61

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

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

This paragraph shall be applicable as of the next parliamentary session<sup>192</sup>.

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

##### Article 62

During the parliamentary term the Members of Parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. Likewise, a member of a dissolved Parliament shall not be prosecuted for political crimes during the period between the dissolution of Parliament and the declaration of the election of the members of the new Parliament. Leave shall be deemed not granted if Parliament does not decide within three months of the date the request for prosecution by the public prosecutor was transmitted to the Speaker. The three month limit is suspended during the Parliament's recess. No leave is required when Members of Parliament are caught in the act of committing a felony.<sup>193</sup>

#### 2.1.2. Implementing provisions

The rules applicable to Members of the Hellenic Parliament<sup>194</sup> **state that requests by the Prosecutor's Office for authorisation to institute criminal proceedings against a Member of Parliament shall be submitted to the Parliament by the Minister for Justice after they have been examined by the Attorney**

<sup>192</sup> This sentence has been contained in the text of the Constitution since its adoption in 1975.

<sup>193</sup> Here, the Constitution uses **the technical term 'felony' (κακούργημα)** as opposed to the (wider) notion of 'offence'.

<sup>194</sup> Article 83 of the Standing Orders of the Greek Parliament.

of the Hellenic Supreme Civil and Criminal Court. Article 83 of the Standing Orders of the Hellenic Parliament<sup>195</sup> **specifies the procedure applicable to requests from the Public Prosecutor's Office for the waiver of immunity.** The Speaker of the House forwards these requests to the Committee on Parliamentary Ethics<sup>196</sup>, which invites the affected Member of the Parliament for a hearing, in order to examine whether the request for waiver is related to the political or parliamentary activity of the Member in question, or whether it entails a biased intent. The Committee prepares a reasoned report, without examining the foundations of the accusation, and forwards it to the Plenary that decides upon the waiver.

## 2.2. Scope and content of national parliamentary immunities

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

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

Any liability generated on the occasion of a vote cast or an opinion expressed by a Member of the Parliament during the discharge of his duties, be it criminal or civil<sup>197</sup>, falls within the scope of Article 61 of the Constitution. For example, non-liability covers opinion or vote in an inquiry committee, but not opinions expressed in private or political party meetings, even if they take place in the Parliament chambers, neither it covers passive bribery or violation of the road traffic code neither insult or defamation during participation in a television broadcast. It does not cover manslaughter, personal injury or destruction of another person's property, which do not constitute expression of opinion or vote.

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

### 2.2.2. Immunity (Article 62 of the Constitution)

No Member of the Parliament may be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by the Parliament. This prohibition only covers criminal prosecution and does not apply when Members of the Parliament are caught in the act of committing a felony. The Constitution **employs the technical term 'felony' (κακούργημα)**, under Articles 18 and 52 of the Penal Code, felonies incur prison sentences of at least five years<sup>198</sup>.

<sup>195</sup> The text is available at: <https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/Kanonismos-tis-Voulis/> (English translation).

<sup>196</sup> Article 43A of the Standing Orders.

<sup>197</sup> Or even disciplinary, according to the prevailing view.

<sup>198</sup> The "flagrant" (= "caught in the act") is in the Greek text an adjective to "felony", so the remark about the distinction is only about felonies as opposed to the wider concept of offences, not about the "flagrant" nature.

Under the Code of Criminal Procedure, even in cases where authorisation is necessary for a prosecution to take place, this does not prevent investigations being carried out even before authorisation is given. However such investigative actions are not allowed against the person whose prosecution is subject to authorization (Article 56<sup>199</sup>).

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

According to an official letter addressed by the Permanent Representation of the Hellenic Republic to the European Union to the President of the European Parliament,<sup>200</sup> the competent authority to request waiver of the immunity of Members of the European Parliament is the competent public prosecutor; this request is to be transmitted via the office of the Prosecutor at the Supreme Court of Civil and Penal Law (Εισαγγελία του Αρείου Πάγου).

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<sup>199</sup> As amended by Law 4620/2019.

<sup>200</sup> See letter dated 10 April 2013.

## SPAIN

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Spanish government*

### *Constitution*

The composition of the government in Spain is established by Article 98, first paragraph of the Constitution which reads as follows: "The Government consists of the President, Vice-Presidents, when applicable, Ministers and other members as may be created by law"<sup>201</sup>.

### *Implementing provisions*

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

1.1.2. *Denomination of the members of the Spanish government*

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

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

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

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

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<sup>201</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.congreso.es/constitucion/ficheros/c78/cons\\_ingl.pdf](http://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf)

## 1.2. Member of a national parliament

### 1.2.1. Legal provisions on the composition of the Spanish Parliament

#### Constitution

The composition of the Parliament in Spain is established by Article 66, first paragraph of the Constitution which reads as follows: "The *Cortes Generales* represent the Spanish people and consist of the Congress of Deputies, and the Senate"<sup>202</sup>.

The following Article 68 of the Constitution fixes the number of the Deputies which must be between three hundred minimum and four hundred maximum. Article 162 of the Representation of the People Institutional Act 5/1985 (Ley Orgánica del Régimen Electoral General, LOREG<sup>203</sup>) specifies that the Congress of Deputies is composed of three hundred fifty members, distributed with imperfect proportionality among the 50 provinces and Ceuta and Melilla.

As far as the Senate is concerned, Article 69 of the Constitution establishes the number of directly-elected senators: "In each province, four Senators shall be elected by the voters thereof by universal, free, equal, direct and secret suffrage, under the terms established by an organic law"<sup>204</sup>. Pursuant to Article 69(4) and 69(5) of the Constitution: "The cities of Ceuta and Melilla shall each elect two Senators." In addition, the assemblies of the Autonomous Communities shall nominate one Senator and a further Senator for each million inhabitants in their respective territories<sup>205</sup>. These Senators (*senadores por designación autonómica*) enjoy the same status as directly-elected senators, except as regards their term of office, which is linked to the mandate of the regional assemblies. The number of Senators is not fixed by law, as it depends on the fluctuations in population of the regions. At the moment (in the thirteenth term), there are 265 Senators.

Although in general each House functions separately, in some circumstances they can sit jointly in a common session (*Cortes Generales en sesión conjunta*). This joint session concerns the functions as regards the crown (Article 74(1) of the Constitution).

#### Implementing provisions

More detailed provisions concerning the structure and the organisation of the Congress of Deputies and of the Senate are contained in their respective Standing Orders: *Reglamento del Congreso de los Diputados 10 de febrero de 1982*,<sup>206</sup> *Reglamento del Senado de 3 de mayo de 1994*.<sup>207</sup>

<sup>202</sup> "Las Cortes Generales representan al pueblo español y están formadas por el Congreso de los diputados y el Senado."

<sup>203</sup> A Spanish version is available at: <http://www.boe.es/buscar/doc.php?id=BOE-A-1985-11672>

An English translation is also available at: [http://www.juntaelectoralcentral.es/cs/jec/documentos/LOREG\\_ENG](http://www.juntaelectoralcentral.es/cs/jec/documentos/LOREG_ENG)

<sup>204</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>205</sup> "Las poblaciones de Ceuta y Melilla elegirán cada una de ellas dos Senadores"; "Las Comunidades Autónomas designaran además un Senador y otro mas por cada millón de habitantes de su respectivo territorio."

<sup>206</sup> A Spanish version of the Standing Orders is available at:

[http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist\\_Normas/Norm/reglam\\_congreso.pdf](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/reglam_congreso.pdf)

An English translation is also available, at:

[http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist\\_Normas/Norm/standing\\_orders\\_02.pdf](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/standing_orders_02.pdf).

<sup>207</sup> Available at: <http://www.senado.es/legis5/publicaciones/pdf/senado/bocg/I0119.PDF>.

### 1.2.2. *Denomination of the members of the Spanish Parliament*

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

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

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

#### *Congress of Deputies*

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

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

According to Section 20(3) of the Standing Orders, the recognition of the condition of MP shall have retroactive effects to the proclamation of the results as concerns the rights and prerogatives of the parliamentarian.

#### *Senate*

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

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

Under the terms of Section 220 of the Representation of the People Institutional Act (LOREG), the Central Electoral Commission shall have jurisdiction for all operations contemplated in Part, I, Chapter VI, 2nd Subdivision, of this present Act regarding presentation and proclamation of candidates for elections to European Parliament.<sup>208</sup>

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

<sup>208</sup> "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".

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

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

#### 2.1.1. Constitution

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

#### Article 71

Members of Congress and Senators shall enjoy freedom of speech for opinions expressed in the exercise of their functions. During their term of office, Members of Congress and Senators shall likewise enjoy freedom from arrest and may be arrested only in the event of *flagrante delicto*. They may be neither indicted nor tried without prior authorization of their respective House.<sup>209</sup>

#### 2.1.2. Implementing provisions

The implementing rules of Article 71 of the Constitution are contained in the Standing Orders of the Congress 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*.

### 2.2. Scope and content of national parliamentary immunities

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

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

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

#### 2.2.2. Immunity (Article 71.2 of the Constitution)

Pursuant to Article 71, second paragraph of the Constitution, the authorisation of the Chamber to which the member belongs is needed in order to subject the member to judicial measures, except if

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<sup>209</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."



he/she is caught in the act of committing the crime (*in flagrante delicto*). Thus, both Members of Congress and Senators may only be indicted or subjected to trial with the authorization of their Chamber. According to Section 11 of the Standing Orders of the Congress of Deputies, "During the period of their mandate, Members shall also enjoy immunity and may only be arrested in cases of *flagrante delicto*. They may not be indicted or prosecuted without previous leave of Congress."<sup>210</sup> According to Section 22(1) of the Standing Orders of the Senate: "During the period of their mandate, the Senators shall enjoy parliamentary immunity and may only be detained or arrested in cases of *flagrante delicto*. The detention or arrest shall be immediately communicated to the Presidency of the Senate. Senators may not be charged or tried without the previous authorization of the Senate, required through the corresponding request. Such authorization shall also be necessary in the proceedings brought against persons who become Senators while being tried or prosecuted."<sup>211</sup>

### 2.3. National authority entitled to request the immunity of a Spanish 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 Spanish members of the European Parliament. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

According to Article 5 of the *Act of February 9, 1912 (Ley de 9 de febrero de 1912)*, and in compliance with Article 71(3) of the Constitution, which establishes that the Criminal Section of the Supreme Court (*Tribunal Supremo*) is competent to try Senators and Deputies, the Supreme Court is competent to request the authorization to subject a Deputy or a Senator to trial. In practice, the request for waiver is signed by the President of the Supreme Court (*Presidente del Tribunal Supremo*) and is transmitted by the Minister of Justice, in accordance with article 756 of the *Criminal Procedure Act (Ley de Enjuiciamiento Criminal)*. Consequently, the competent authority to request waiver of the immunity of Members of the European Parliament is the President of the Supreme Court (*Presidente del Tribunal Supremo*), as confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Spain to the European Union.<sup>212</sup>

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<sup>210</sup> "Durante el período de su mandato, los Diputados gozarán asimismo de inmunidad y sólo podrán ser detenidos en caso de flagrante delito. No podrán ser inculcados ni procesados sin la previa autorización del Congreso."

<sup>211</sup> "Durante el período de su mandato, los Senadores gozarán de inmunidad y no podrán ser retenidos ni detenidos salvo en caso de flagrante delito. La retención o detención será comunicada inmediatamente a la Presidencia del Senado.

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

<sup>212</sup> See letter dated 17 June 2014.

## FRANCE

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the French government*

### *Constitution*

Pursuant to the provisions of Article 8 of the French Constitution, the President of the French Republic appoints the Prime Minister and the members of the French government, on the recommendation of the Prime Minister.<sup>213</sup>

### *Implementing provisions*

The composition of the French Government is set out in a Decree adopted by the President of the Republic.<sup>214</sup>

1.1.2. *Denomination of the members of the French government*

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

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

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

The date of the beginning of the term of office of the members of the government shall be considered the date indicated in the decree, or by default, the day following the day of publication of the decree establishing their appointment by the President of the French Republic.<sup>215</sup>

<sup>213</sup> The text of the Constitution is available at: <http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly>.

<sup>214</sup> The text of the relevant decree, adopted on 21 June 2017, is available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034982862&categorieLien=id>

<sup>215</sup> Article 1 of the French Civil Code states that legislative texts come into force the day following their publication in the Official Journal.

## 1.2. Member of a national parliament

### 1.2.1. *Legal provisions on the composition of the French Parliament*

#### *Constitution*

The composition of the French Parliament is established by Article 24 of the Constitution. This article reads as follows: "[...] It shall comprise the National Assembly and the Senate. Members of the National Assembly, whose number must not exceed five hundred and seventy-seven, shall be elected by direct suffrage. The Senate, whose members must not exceed three hundred and forty-eight, shall be elected by indirect suffrage. The Senate shall ensure the representation of the territorial communities of the Republic. [...]"<sup>216</sup>

#### *Implementing provisions*

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

It shall likewise determine the manner of election of those persons called upon to replace Members of the National Assembly or Senators whose seats have become vacant, until the general or partial renewal by election of the House in which they sat, or have been temporarily replaced on account of having accepted a position in Government."<sup>217</sup>

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

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

More detailed provisions concerning the composition and the organisation of the National Assembly and of the Senate are contained in their respective Rules of Procedure<sup>218</sup>.

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<sup>216</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, sont élus au suffrage direct. Le Sénat, dont le nombre de membres ne peut excéder trois cent quarante-huit, est élu au suffrage indirect. Il assure la représentation des collectivités territoriales de la République. [...]"

<sup>217</sup> "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 ou leur remplacement temporaire en cas d'acceptation par eux de fonctions gouvernementales."

<sup>218</sup> The texts of the Rules of Procedure of both the National assembly and the Senate are available at: <http://www.assemblee-nationale.fr/connaissance/reglement.pdf> and at: <http://www.senat.fr/reglement/reglement.html> (in French); and at: [http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly#node\\_9440](http://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly#node_9440) and [http://www.senat.fr/ing/en/reglement\\_anglais/reglement\\_anglais.html](http://www.senat.fr/ing/en/reglement_anglais/reglement_anglais.html) (in English).

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

### 1.2.2. *Denomination of the members of the French Parliament*

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

Members of the National Assembly are:

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

Members of the Senate are:

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

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

#### *Assemblée nationale*

Article LO 121 of the electoral Code reads as follows: "*Les pouvoirs de l'Assemblée nationale expirent le troisième mardi de juin de la cinquième année qui suit son élection.*"<sup>219</sup> There is no provision indicating the beginning of the term of office but one can suppose, by analogy with the provisions applicable to the senators below, that it begins the day the term of office of their predecessors expires.

#### *Sénat*

Article LO 277 of the French electoral code reads as follows: "Dans chaque série, le mandat des sénateurs commence à l'ouverture de la session ordinaire qui suit leur élection, date à laquelle expire le mandat des sénateurs antérieurement en fonctions".<sup>220</sup>

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

No information found.<sup>221</sup>

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<sup>219</sup> "The powers of the National Assembly expire on the third Tuesday of June of the fifth year after its election."

<sup>220</sup> "In every series, the mandate of the senators begins with the opening of the ordinary session following their election. On the same date the mandate of previously elected senators expires."

<sup>221</sup> However, the national authority competent to communicate the names of newly elected Members of the European Parliament is the Minister for Foreign Affairs (*Ministère des Affaires étrangères*).

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

### 2.1. Legal provisions on the national Parliamentary immunities

#### 2.1.1. Constitution

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

#### Article 26

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

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

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

The House concerned shall meet as of right for additional sittings in order to permit the application of the foregoing paragraph should circumstances so require.<sup>222</sup>

#### 2.1.2. Implementing provisions

The implementing provisions are contained in the "*Ordonnance n° 58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires*" (Article 9 *bis*)<sup>223</sup>; the Rules of Procedure of the National Assembly (Article 80); the Rules of Procedure of the Senate (Article 105); the "*Instruction générale du Bureau de l'Assemblée Nationale*" (Article 16);<sup>224</sup> and the "*Instruction générale du Bureau du Sénat*" (Article III *bis*).<sup>225</sup>

<sup>222</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 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>223</sup> Article created by Law n°96-62 of 29 January 1996. The Order is available at: [https://www.legifrance.gouv.fr/affichTexteArticle.do?sessionId=131B2D3152CBE19CDE00DE2F30B625DD.tplgfr24s\\_1?idArticle=LEGIA RTI000006530070&cidTexte=LEGITEXT000006069203&dateTexte=20190916](https://www.legifrance.gouv.fr/affichTexteArticle.do?sessionId=131B2D3152CBE19CDE00DE2F30B625DD.tplgfr24s_1?idArticle=LEGIA RTI000006530070&cidTexte=LEGITEXT000006069203&dateTexte=20190916)

<sup>224</sup> Available at: <http://www.assemblee-nationale.fr/connaissance/instruction.asp>.

<sup>225</sup> Available at: <http://www.senat.fr/reglement/reglement68.html#toc307>.

## 2.2. Scope and content of national parliamentary immunities

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

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

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

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

Members of Parliament may be arrested or otherwise deprived of their freedom, or face restrictions thereof, only with the permission of the Bureau of their Assembly. There are limitations to this immunity: the authorisation of the Bureau is not needed in the case of flagrant crime or in the case of a final conviction by a court of law. This exemption only applies during the Member's term of office.<sup>226</sup>

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

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

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. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.<sup>227</sup>

**According to an official letter** sent to the President of the European Parliament by the Permanent Representation of the Republic of France to the European Union<sup>228</sup>, requests for waiver of the immunity coming from the judicial authorities will be forwarded by the Minister for Foreign Affairs (*Ministère des Affaires étrangères*).

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<sup>226</sup> For an analysis of the French provisions on non-liability and immunity, also see: <http://www.assemblee-nationale.fr/connaissance/immunit.asp>. Until 1995, authorization was also required in order to open investigations against a Member of Parliament.

<sup>227</sup> According to Article 9 bis of the "Ordonnance n°58-1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires", 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 and sent to the Minister of Justice, who transmits them to the President of the relevant assembly. They must specify the measures whose application is envisaged and the reasons therefore. The Bureau of the competent Chamber examines the requests and rules on them; any authorization granted by the Bureau is only valid for the facts mentioned in the request.

<sup>228</sup> See letter dated 5 April 2013.

## CROATIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Croatian government*

### *Constitution*

According to Article 108 of the Croatian Constitution, "The Government of the Republic of Croatia shall consist of a Prime Minister, one or more Deputy Prime Ministers, and Ministers."<sup>229</sup>

### *Implementing provisions*

The provisions of the Constitution are implemented by the Croatian Government Act.<sup>230</sup> Article 2 of the Act provides as follows:

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

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

1.1.2. *Denomination of the members of the Croatian government*

Members of the Croatian government are the following:

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

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

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

<sup>229</sup> The consolidated text of the Constitution of the Republic of Croatia (as published in Croatia's Official Gazette, *Narodne novine*, no. 56/90, 135/97, 113/00, 28/01, 76/10 and 05/14) is available at <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske>. An English translation of the Croatian constitution is available from: [https://www.usud.hr/sites/default/files/dokumenti/The consolidated text of the Constitution of the Republic of Croatia as of 1 5 January 2014.pdf](https://www.usud.hr/sites/default/files/dokumenti/The%20consolidated%20text%20of%20the%20Constitution%20of%20the%20Republic%20of%20Croatia%20as%20of%201%205%20January%202014.pdf)

<sup>230</sup> As published in Croatia's Official Gazette, *Narodne novine*, no. 150/2011, 119/14, 93/16, 116/18. The Act is available at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2011\\_12\\_150\\_3084.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_150_3084.html).

Parliament. In accordance with Article 109 of the Constitution, "Members of the Government shall be proposed by the person to whom the President of the Republic has entrusted the mandate to form a Government. Immediately upon forming the Government, or 30 days after accepting the mandate at the latest, the Prime Minister-Designate shall present the Government and its policies to the Croatian Parliament and seek a vote of confidence. The Government shall assume office when a vote of confidence is passed by a majority of all Members of the Croatian Parliament. The Prime Minister and the members of the Government shall swear a solemn oath before the Croatian Parliament. The text of the oath shall be specified by law. Pursuant to the decision of the Croatian Parliament on confidence in the Government of the Republic of Croatia, the President of the Republic shall adopt a decision on the appointment of the Prime Minister, which decision shall be co-signed by the Speaker of the Croatian Parliament, while the Prime Minister shall adopt a decision on the appointment of the members of the Government, which decision shall be co-signed by the Speaker of the Croatian Parliament." Moreover, Article 4(1) of the Croatian Government Act provides that "The Prime Minister and Members of the Government shall assume office when they pass a vote of confidence by a majority of all Members of the Croatian Parliament."

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

## 1.2. Member of a national Parliament

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

#### *Constitution*

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

#### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the Parliament are contained in the Act on Election of Representatives to the Croatian Parliament,<sup>231</sup> which governs for instance incompatibilities, and in the Standing Orders of the Croatian Parliament, adopted in June 2013 and amended in 2016, 2017 and 2018.<sup>232</sup>

### 1.2.2. *Denomination of the members of the Croatian Parliament*

Members of the Parliament are the following:

- *predsjednik / predsjednica Hrvatskoga sabora (Speaker of the Croatian Parliament),*

<sup>231</sup> An English version is available at: <http://www.sabor.hr/Default.aspx?art=2447>.

<sup>232</sup> An English version is available at: <http://www.sabor.hr/fgs.axd?id=26416>.



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

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

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

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

According to Article 9 of the Standing Orders, "Members of Parliament shall begin performing their duties as of the date of the constituent session of Parliament, and until the end of their term of office, they shall have all rights and obligations of Members of Parliament as stipulated by the Constitution, laws and these Standing Orders. The substitute Members of Parliament shall begin performing their duties as of the date when Parliament establishes, by a decision, the legal prerequisites for the application of the institute of substitution." The date of the beginning of the term of office of the Members of the Parliament is thus the date of the constituent session of Parliament, or, in case of

substitute Members of Parliament, the date when Parliament establishes the legal prerequisites for the application of the institute of substitution.

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

Under the terms of Article 12(2) of the Act on the Election of Members to the European Parliament from the Republic of Croatia,<sup>233</sup> "The Speaker of the Croatian Parliament shall be obliged to notify the President of the European Parliament on the cessation of the term of office of a Member of the European Parliament and shall be obliged to forward information on his/her substitute. The substitute Member shall commence performance of duties after the Croatian Parliament ascertains the onset of the legal conditions for application of the institute of replacement."

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<sup>233</sup> An English version of the said Act from 2010 is available at: <http://www.sabor.hr/Default.aspx?sec=3243>.

The Act on Amendments to the Act on the Election of Members to the European Parliament from the Republic of Croatia (Official Gazette *Narodne novine*, no. 23/2013) is available (only in the Croatian language) at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_02\\_23\\_382.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_23_382.html), and the Act on Amendments to the Act on the Election of Members to the European Parliament from the Republic of Croatia (Official Gazette *Narodne novine*, no. 143/2013) is available (also only in the Croatian language) at: [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_143\\_3071.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_143_3071.html).

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

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

#### 2.1.1. *Constitution*

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

##### Article 75

Members of the Croatian Parliament shall enjoy immunity.

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

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

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

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

#### 2.1.2. *Implementing provisions*

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

### 2.2. Scope and content of national parliamentary immunities

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

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

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

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

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

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

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

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

In its interpretation of Article 17(1) of the Criminal Procedure Act,<sup>234</sup> which stipulated that criminal proceedings begin upon confirmation of an indictment<sup>235</sup>, the Credentials and Privileges Commission **assumed that "decision-making on the immunity of a Member of Parliament is not possible prior to a**

<sup>234</sup> Published in *Narodne novine*, no. 152/2008, 76/2009, 80/2011, 121/2011 – consolidated text, 91/2012 – Decision of Constitutional Court of the Republic of Croatia, number: U-I-448/2009 of 19 July 2012, 143/2012, 56/2013.

<sup>235</sup> The Act on Amendments to the Criminal Procedure Act (Official Gazette *Narodne novine*, no. 145/2013) in Article 17 paragraph 1 item 1 has been amended so as to read as follows: "1) by final decision on conducting an investigation", after item 1, a new item 2 has been added which reads: "by confirmation of indictment in the case no investigation has been conducted" *afaut*, and previous items 2 and 3 have become items 3 and 4.

decision made by the Public Prosecution on submission of an indictment to the court.” Consequently, it held that the Public Prosecution of the Republic of Croatia “may issue an order on conduct of an investigation and other investigative action without revocation of a Member of Parliament’s immunity”.<sup>236</sup>

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

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

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

With regard to Members of the Croatian Parliament, the request for approval of pre-trial detention (remand) or for initiation of criminal proceedings against them may be made by any authorized state body (i.e., municipal and county court, and via the Public Prosecution of the Republic of Croatia, the municipal public prosecutors, county public prosecutors or the Anti-corruption and Organized Crime Office), the injured party as plaintiff, or a private plaintiff.<sup>237</sup>

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<sup>236</sup> See the Report of the Credentials and Privileges Commission, available at: <http://www.sabor.hr/Default.aspx?art=29528>.

<sup>237</sup> This has been confirmed in a letter received on 19 February 2014.

## ITALY

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Italian government*

### *Constitution*

The composition of the Italian government is established by the first paragraph of Article 92 of the Constitution, which reads as follows: "The government of the Republic is made up of the President of the Council and the ministers who together form the Council of Ministers."<sup>238</sup>

### *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<sup>239</sup>), in particular Articles 1, 8, 9 and 10.

1.1.2. *Denomination of the members of the Italian government*

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

- *Presidente del Consiglio dei ministri (President of the Council of Ministers),*
- *Ministro/a (Minister<sup>240</sup>); Ministri (Ministers),*
- *Sottosegretario/a di Stato (Undersecretary of State); Sottosegretari di Stato (Undersecretaries of State),*
- *Viceministro/a (Deputy-Minister); Viceministri (Deputy-Ministers).*
- *Vicepresidente del Consiglio dei Ministri (Deputy-President of the Council of Ministers); Vicepresidenti del Consiglio dei Ministri (Deputy-Presidents of the Council of Ministers) if the President of the Council of Ministers proposes his/her/their appointment.*

<sup>238</sup> "Il Governo della Repubblica è composto del Presidente del Consiglio e dei Ministri, che costituiscono insieme il Consiglio dei Ministri". The text of the Constitution is available at: <http://www.senato.it/documenti/repository/istituzione/costituzione.pdf> (in Italian) and [http://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf) (in English).

<sup>239</sup> The updated text of the law is available (in Italian) at: [http://www.governo.it/Presidenza/normativa/allegati/L\\_19880823\\_400.pdf](http://www.governo.it/Presidenza/normativa/allegati/L_19880823_400.pdf). The internal rules of the Council of Ministers are enshrined in a specific regulation adopted by decree of the President of the Council of Ministers.

<sup>240</sup> In the Italian government, ministers may be with or without a portfolio.

Current members of the government are appointed by a Decree of the President of the Republic.<sup>241</sup>

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

Under the terms of Article 93 of the Constitution<sup>242</sup> and of Articles 1 and 10 of Law No 400/1988, the date of the beginning of the term of office of the members of the government shall be considered the date they are sworn in by the President of the Republic.

## *1.2. Member of a national parliament*

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

#### *Constitution*

The composition of the Italian Parliament is established by the first paragraph of Article 55 of the Constitution, which reads as follows: "Parliament consists of the Chamber of Deputies and the Senate of the Republic."<sup>243</sup>

The following Articles 56-59 of the Constitution fix the number of the Deputies and of the elected Senators, which respectively amounts to six hundred thirty and three hundred fifteen.<sup>244</sup> Whereas all members of the Chamber of Deputies are elected, the Senate also includes non-elected Members. In particular, former Presidents of the Republic are Senators by right and for life unless they renounce the office (Art. 59 of the Constitution). The same article provides that the President of the Republic may appoint five citizens who have contributed to the honour of the country through their outstanding achievements in social, scientific, artistic and literary fields as Senators for life.

#### *Implementing provisions*

More detailed provisions concerning the structure and the organisation of the Chamber of Deputies and of the Senate are contained in their respective Rules of Procedure<sup>245</sup>.

### *1.2.2. Denomination of the members of the Italian Parliament*

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

<sup>241</sup> The current composition of the Italian government is available at: [http://www.governo.it/Governo/Ministeri/ministri\\_gov.html](http://www.governo.it/Governo/Ministeri/ministri_gov.html).

<sup>242</sup> Article 93 of the Italian Constitution reads as follows: "Il Presidente del Consiglio dei Ministri e i Ministri, prima di assumere le funzioni, prestano giuramento nelle mani del Presidente della Repubblica" (before taking office, the President of the Council of Ministers and the Ministers shall be sworn in by the President of the Republic).

<sup>243</sup> "Il Parlamento si compone della Camera dei deputati e del Senato della Repubblica."

<sup>244</sup> A proposal for a constitutional law modifying Articles 56, 57 and 59 of the Constitution concerning the reduction of the number of members of parliament has been granted definitive approval by the Chamber of deputies on October 8, 2019. Text in the OJ available [here](#); text as approved by the Chamber of deputies available [here](#). According to the proposal, the adjusted number of Deputies and elected Senators, would respectively amount to 400 and 200. The proposal should undergo on March 29, 2020 a popular referendum according to Article 138 of the Constitution.

<sup>245</sup> The English texts of the Rules of Procedure of both the Chamber of Deputies and the Senate are available at: [http://en.camera.it/4?scheda\\_informazioni=31](http://en.camera.it/4?scheda_informazioni=31) and <http://www.senato.it/3807>.

- *Deputato/a (Deputy); Deputati/e (Deputies),*
- *Senatore/Senatrice (Senator); Senatori/Senatrici (Senators).*

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

#### *Chamber of Deputies*

Under the terms of Article 1 of the Rules of Procedure of the Chamber, Deputies officially begin their term of office from the date of their proclamation. Proclamation is carried out by the chairman of the "*ufficio centrale circoscrizionale*" (electoral district central office) as a result of the counting of votes and the distribution of the seats; in the case of Deputies who take over from Deputies who have been elected in more than one electoral district, proclamation takes place at the opening of the first sitting of the Chamber following the elections.<sup>246</sup> Once the Deputies have been proclaimed elected, the newly formed *Giunta delle elezioni* (Committee for the elections) proceeds to verify their credentials and the results of the elections; this procedure can take up to 18 months.<sup>247</sup>

#### *Senate*

Under the terms of Article 1 of the Rules of Procedure of the Senate, Senators officially begin their term of office from the date of their proclamation if they have been elected or from the date of the communication of their appointment if they have been appointed. The proclamation is carried out by the chairman of the "*ufficio elettorale regionale*" (regional electoral office) following the counting of votes and the distribution of the seats<sup>248</sup>. Once the Senators have been proclaimed elected, the newly formed *Giunta delle elezioni e delle immunità parlamentari* (Committee for the elections and for parliamentary immunities) proceeds to verify their credentials and the results of the elections; this procedure can take up to 18 months.<sup>249</sup>

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<sup>246</sup> See Articles 2 and 3 of the Rules of Procedure of the Chamber of Deputies and Article 84 of the Decree of the President of the Republic No 361, of 30 March 1957, as modified by Law No 270/2005 and Law No 121/2006.

Also see Camera dei Deputati, *Manuale elettorale*, p. 35, available at:

[https://www.camera.it/application/xmanager/projects/leg18/attachments/documenti/file\\_allegatos/000/000/044/MANUALE\\_ELETTORALE\\_2018\\_26gennaio.def.pdf](https://www.camera.it/application/xmanager/projects/leg18/attachments/documenti/file_allegatos/000/000/044/MANUALE_ELETTORALE_2018_26gennaio.def.pdf)

<sup>247</sup> See Article 17 of the Rules of Procedure of the Chamber.

<sup>248</sup> See Articles 2 and 3 of the Rules of Procedure of the Senate and Article 17 of Legislative Decree No 533, of 20 December 1993, as modified in particular by Law No 270/2005. Also see *Manuale elettorale*, op. cit., p. 41.

<sup>249</sup> See Article 19 of the Rules of Procedure of the Senate and Article 20 of the "*Regolamento per la verifica dei poteri*" (available at: <http://www.senato.it/1055>).



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

Pursuant to Article 46 of Law No 18, of 24 January 1979,<sup>250</sup> on the election of the Italian members at the European Parliament (as amended), the Italian authority competent to communicate cases of incompatibility to the European Parliament is the "ufficio elettorale nazionale" (national electoral office) established within the "Corte di Cassazione" (Court of Cassation). In case of any disputes concerning the alleged existence of cases of incompatibility, the communication by the national electoral office is based on an irrevocable judgment of the national judicial authority.<sup>251</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.

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<sup>250</sup> Available at: <http://www.parlamento.it/parlam/leggi/79018l.htm>. Article 46 provides that "L'Ufficio elettorale nazionale comunica alla segreteria del Parlamento europeo le surrogazioni disposte in base alle sentenze che abbiano deciso irrevocabilmente le controversie sulla incompatibilità ed ineleggibilità degli eletti. L'Ufficio predetto, preso atto delle sentenze che abbiano deciso irrevocabilmente le contestazioni sulle operazioni elettorali, corregge il risultato delle elezioni e sostituisce ai candidati illegittimamente proclamati coloro che hanno diritto di esserlo, dandone comunicazione agli interessati ed alla segreteria del Parlamento europeo." (The national electoral office informs the secretariat of the European Parliament of any replacement decided by a final judgment on the incompatibility and ineligibility of elected Members. The same office, taking notice of final judgments deciding on contested elections, corrects the results of the elections and replaces the candidates irregularly proclaimed to have been elected with the candidates who have the right to be proclaimed elected, notifying the persons concerned and the secretariat of the European Parliament).

<sup>251</sup> The competent judicial authorities are established by Articles 42 to 45 of Law No 18/1979 (Italian text available at: <http://www.parlamento.it/parlam/leggi/79018l.htm>). In case of alleged breaches of the electoral procedural rules, the competent judicial authority of first instance is the "tribunale amministrativo regionale del Lazio" (administrative tribunal of the region of Lazio), whereas the judicial authority of last instance is the "Consiglio di Stato" (Council of State). In case of disputes on the conditions of eligibility and on alleged incompatibilities, the competent judicial authority of first instance is the "Corte di appello" (Court of appeal), whereas the judicial authority of last instance is the "Corte di Cassazione" (Court of Cassation).

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

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

#### 2.1.1. Constitution

In Italy the parliamentary immunities are granted to the members of the national Parliament by Article 68 of the Constitution which reads as follows:

#### Article 68

Members of Parliament may not be held accountable for any opinions expressed or votes cast in the performance of their functions.

Without the authorization of his House, no member of Parliament may be subjected to a personal or home search, nor may he be arrested or otherwise deprived of personal freedom, or held in detention, except to enforce a final court judgment, or if caught in the act of committing a crime for which arrest is mandatory.

Such an authorization shall also be required in order to monitor a Member of Parliament's **conversations or communications, or to seize such member's mail.**<sup>252</sup>

#### 2.1.2. Implementing provisions

The implementing rules of Article 68 of the Constitution are contained in Law No 140 of 20 June 2003.<sup>253</sup>

### 2.2. Scope and content of national parliamentary immunities

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

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

Pursuant to Article 68, first paragraph, of the Constitution, members of Parliament bear no liability for any opinions expressed or votes cast in the exercise of their functions. Deputies and Senators are therefore exempted from any civil, criminal, administrative or disciplinary liability which could stem

<sup>252</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>253</sup> Available at: <http://www.camera.it/parlam/leggi/03140l.htm>.

from an opinion expressed or vote cast when carrying out their parliamentary activities.<sup>254</sup> This exemption continues to apply after the end of their term of office.

Article 3 of Law No 140/2003 contains the following list of activities falling within the scope of the non-liability principle:

- *tabling legislative proposals, amendments, agendas, motions and resolutions, parliamentary oral or written questions;*
- *interventions in the sittings of the Chamber of Deputies or of the Senate and in the other parliamentary bodies of either Chamber;*
- *any vote regardless of its form;*
- *any other parliamentary act and any other activity of inquiry, divulgation, political criticism and denunciation linked to the exercise of the parliamentary mandate, taking place inside or outside the Parliament.*

### 2.2.2. Immunity (Article 68, second and third paragraphs, of the Constitution)

Pursuant to Article 68, second and third paragraphs, of the Constitution, the authorisation of the Chamber to which the person belongs is needed in order to subject the member to the following measures:

- *personal or home search,*
- *arrest, deprivation of personal freedom, or detention, except in the case of enforcement of a final conviction or unless the Member is caught in the act of committing a crime for which arrest in flagrante delicto is mandatory,*
- *monitoring, by any means, of conversations or communications,*
- *mail seizure.*

Following an amendment to the Constitution approved in 1993,<sup>255</sup> no previous authorisation of the competent Chamber is necessary in order to subject a member of the Parliament to criminal proceedings.

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<sup>254</sup> In its decisions No 10 and 11 of 2000, the Constitutional Court adopted a restrictive interpretation with regard to non-liability for the opinions expressed outside the parliamentary premises, by requiring the existence of a "*nesso funzionale*" (functional link) between those opinions and the exercise of the parliamentary functions. More precisely, in order to be covered by the immunity, a declaration made by a Member outside the parliamentary premises has to be itself an expression of the parliamentary activity. In particular, declarations that reproduce the content of opinions previously expressed in the course of parliamentary activities are covered by the immunity, if the contentious expressions take place within a reasonable time from such parliamentary acts. The same approach (requiring a functional link with the exercise of the mandate) has been followed by the Constitutional Court in its decision No 509/2002 as far as the opinions expressed inside the parliamentary premises are concerned, and confirmed even after the entry into force of Law No 140/2003 (see Constitutional Court, Judgment No 120/2004).

<sup>255</sup> Constitutional Law No 3, of 29 October 1993. See also Italian Code of Criminal Procedure, Articles 344, 345, 346 on authorisation to proceed.

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

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

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

As far as the non-liability principle established in Article 68(1) of the Constitution is concerned, this form of immunity may not be waived and continues to apply even after the end of the mandate as a Member of Parliament.

Law No 140/2003 sets out the procedure to be followed in order to determine whether an opinion expressed by a Member of Parliament is covered by Article 68. In particular, article 3(4) provides that, when the issue of the applicability of Article 68(1) of the Constitution arises in the course of criminal or civil proceedings, the judge,<sup>256</sup> if he/she believes that the immunity claim made by the defendant must be rejected, refers the matter to the Chamber to which the member in question belongs: the Chamber shall rule on the applicability of the non-liability principle. If the question arises in the framework of disciplinary proceedings, the disciplinary authority refers the matter to the competent Chamber. If a judge refers the case to the competent Chamber, he/she must also suspend the proceedings until the Chamber reaches its decision, but in any case for no longer than 90 days from the date when the Chamber receives the request. However, the competent Chamber may extend the deadline for an additional 30 days (Article 3(5)).<sup>257</sup>

Besides, any Member of Parliament who is subjected to judicial proceedings for facts that he or she believes to be covered by the non-liability principle is also empowered to request a decision of the competent Chamber (Article 3(7) of Law No 140/2003). In this case, the Chamber may request the judge to suspend the proceedings (the terms are the same as indicated above).

### 2.3.2. Immunity (Article 68, second and third paragraphs, of the Constitution)

With regard to the measures listed in Article 68, second and third paragraphs, of the Constitution, Article 4(2) of Law No 140/2003 provides that the authorisation to subject a member to those measures shall be requested to the Chamber to which the member belongs by the judicial authority that ordered the adoption of the measures. More specifically, since these judicial orders are usually adopted during the preliminary investigations of criminal proceedings, the judicial authority requiring the authorisation is typically the "giudice per le indagini preliminari" (preliminary investigation judge) or the

<sup>256</sup> Prosecutors do not have the power to transmit such requests, but they may only transmit the file to the competent judge: Article 3(6).

<sup>257</sup> According to Law No 140/2003, the decision of the competent Chamber that a fact is covered by the non-liability principle should lead to the dismissal of the case; however, the competent judge may always refer the case to the Constitutional Court (in what is called a "conflict of allocation of powers", pursuant to Article 134 of the Constitution). The final decision as to whether a statement is covered by the non-liability principle is then to be taken by the Constitutional Court, which, as mentioned above, has adopted a restrictive interpretation (requesting the existence of a "functional link" between the statement and the office of Member of Parliament). The national procedure for the enforcement of immunities has also been the object of rulings on the part of the European Court of Human Rights: see for instance the decision in *Onorato v. Italy*, 24 May 2011.

"pubblico ministero" (prosecutor). Additionally, Article 29 of Law n. 69/2005, concerning the European Arrest Warrant, also foresees that, if the person concerned benefits from immunity, the judicial authority may request its waiver to the competent foreign or international authority.

This has been confirmed by an official letter<sup>258</sup> sent to the President of the European Parliament by the Permanent Representation of Italy to the European Union, according to which the national authorities competent to request waiver of the immunity of a Member of the European Parliament are the "giudici e pubblici ministeri procedenti" (competent judges and public prosecutors).<sup>259</sup>

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<sup>258</sup> See letter dated 8 May 2013.

<sup>259</sup> This represents a change from previous practice: in the past, in several cases requests for the waiver of immunity have been referred to the European Parliament by the "*Ministro della Giustizia*" (Minister of Justice), who had been indicated as the competent national authority in a letter from the Italian Permanent Representation in 2005.

## CYPRUS

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Cypriot government*

### *Constitution*

The composition of the Cypriot government is established, indirectly, by Articles 1, 36 and 54 of the Constitution<sup>260</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: [...]

### *Implementing provisions*

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

1.1.2. *Denomination of the members of the Cypriot government*

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

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<sup>260</sup> An English translation of the text of the Constitution of Cyprus is available at: [http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY\\_Constitution.pdf?open&element](http://www.presidency.gov.cy/presidency/presidency.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf?open&element).

The current composition of the Cypriot Council of Ministers is available at: [http://www.presidency.gov.cy/presidency/presidency.nsf/prc07\\_en/prc07\\_en?opendocument](http://www.presidency.gov.cy/presidency/presidency.nsf/prc07_en/prc07_en?opendocument).

- *Πρόεδρος της Δημοκρατίας (President of the Republic),*
- *Αντιπρόεδρος της Δημοκρατίας (Vice-President of the Republic),*
- *Υπουργικό Συμβούλιο (Council of Ministers)*<sup>261</sup>,

According to the Cypriot Constitution, the Vice-President of the Republic is a member of the Turkish Cypriot community. However, due to the abnormal situation prevailing in Cyprus following the withdrawal of the Turkish Cypriots from the government and the Parliament in 1963-64 and the *de facto* partition of the island in 1974, the position of Vice-President is vacant. This has been justified under the "*doctrine of necessity*", according to which the application of constitutional provisions related to the bi-communal character of the state are suspended for as long as the non-participation of the Turkish Cypriots renders the normal bi-communal functioning of the state impossible.<sup>262</sup>

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

Article 43 of the Constitution provides that "The President and the Vice-President of the Republic shall hold office for a period of five years commencing on the date of their investiture and shall continue to hold such office until the next elected President and Vice-President of the Republic are invested." Thus, the date of the beginning of the term of office of the President and Vice-President of the Republic is the date of their investiture; the office ends when the newly elected President and Vice-President are invested.

Under Article 46 of the Constitution the Ministers are designated by the President and the Vice-President of the Republic who shall appoint them by an instrument signed by them both. Articles 48 and 49 of the Constitution state that the President and the Vice – President may designate and terminate the appointment of Greek and Turkish Ministers respectively with no limit set as to the time of such designation and termination.<sup>263</sup>

## 1.2. Member of a national parliament

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

#### *Constitution*

According to Article 61 of the Constitution "The legislative power of the Republic shall be exercised by the House of Representatives in all matters except those expressly reserved to the Communal

<sup>261</sup> While the Constitution only mentions the Ministers, in practice the Government Spokesman and three deputy Ministers (Deputy Minister to the President, of Tourism and of Shipping) are generally considered as part of the executive. However, case law has clarified that the latter are not part of the Council of Ministers.

<sup>262</sup> For further analysis see the decision issued by the Supreme Court in *Attorney General of the Republic v. Mustafa Ibrahim (1964)*, CLR, at p. 195.

<sup>263</sup> According to Article 59(3) of the Constitution, The Ministers shall hold office in the case of the Greek Ministers until their appointment is terminated by the President of the Republic and in the case of the Turkish Ministers until their appointment is terminated by the Vice-President of the Republic.

Chambers under this Constitution". Article 65 provides that "the term of office of the House of Representatives shall be for a period of five years."

The composition of the Cypriot Parliament is established by Article 62 of the Constitution, which states that the number of representatives shall be fifty. This number can be modified by a resolution of the House of Representatives, if carried by a majority comprising two-thirds of the Representatives elected 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>264</sup>

In 1985,<sup>265</sup> the number of representatives was increased to eighty due to the increasing responsibilities of the House of Representatives. In practice, only 56 of those seats are occupied, the remaining 24 being kept free for the representatives elected by the Turkish Cypriot community in case of reunification of the island.<sup>266</sup> This decision was taken invoking the "*doctrine of necessity*", since the Constitution requires separate majorities of Greek Cypriots and Turkish Cypriots to amend the provisions on the number of representatives.

### *Implementing provisions*

More detailed provisions concerning the structure and the organisation of the House of Representatives are contained in the Rules of Procedure.

#### *1.2.2. Denomination of the members of the House of Representatives*

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

- *Βουλευτές (Representatives).*

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

According to Article 5 of the Rules of Procedure of the House of Representatives: "The Representative presiding over the sitting referred to hereinbefore [that is, the first sitting of the opening ordinary session of the term of office of the House] shall declare the commencement of such sitting and shall invite the elected Representatives to make, before assuming duties as such in the House of Representatives, the affirmation provided in Article 69 of the Constitution. A Representative absent from the first sitting of the House or a Representative elected during the period of the term of office of the House, before assuming duties as such in the House, shall make the affirmation provided in Article 69 of the Constitution."

<sup>264</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 *de facto* division of the island since 1974.

<sup>265</sup> Decision 2060/1985 of the House of Representatives, taken in accordance to article 62(1) of the Constitution.

<sup>266</sup> A full list of the current Members of the House of Representatives is available at: <http://www.parliament.cy/easyconsole.cfm/id/186>.



On the basis of this provision, the term of office of a Member of Parliament commences once he is solemnly declared as Member of Parliament by the President of the House during the sitting following the affirmation referred to in Article 69 of the Constitution.<sup>267</sup>

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

The Central Election Service of the Ministry of the Interior is the competent body that handles all the election procedures. The General Registrar and the Election Service examine the applications of candidates and approve their eligibility to run in the elections.

The national incompatibilities with the office of MEP are set out in the Law on Election of Members of the European Parliament of 2004 (*O Peri tis Eklogis ton Melon tou Europaikou Koinovouliou*) and in Article 70 of the Cypriot Constitution, in combination with Article 71(6) of the Public Service Laws of 1990 – 2011 (*Oi Peri Demosias Ypiresias Nomoi*).

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<sup>267</sup> Article 69 of the Constitution provides that "Representative before assuming duties as such in the House of Representatives and at a public meeting thereof shall make the following affirmation:- 'I do solemnly affirm faith to, and respect for, the Constitution and the laws made thereunder, the preservation of the independence and the territorial integrity, of the Republic of Cyprus'."

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

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

#### 2.1.1. *Constitution*

The parliamentary immunities are granted to the members of the national Parliament by virtue of Article 83 of the Constitution which reads as follows:

#### Article 83

1. Representatives shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives.
2. A Representative cannot, without the leave of the Supreme Court, be prosecuted, arrested or imprisoned so long as he continues to be a Representative. Such leave is not required in the case of an offence punishable with imprisonment for five years or more in case the offender is taken in the act. In such a case the Supreme Court being notified forthwith by the competent authority decides whether it should grant or refuse leave for the continuation of the prosecution or detention so long as he continues to be a Representative.
3. If the Supreme Court refuses to grant leave for the prosecution of a Representative, the period during which the Representative cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question.
4. If the Supreme Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court, the enforcement of such sentence shall be postponed until he ceases to be a Representative.

#### 2.1.2. *Implementing provisions*

There are no additional provisions dealing with parliamentary immunity.

### 2.2. Scope and content of national parliamentary immunities

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

#### 2.2.1. *Non-liability principle (Article 83(1) of the Constitution)*

Pursuant to Article 83(1) of the Constitution, Members of Parliament shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives. Therefore, the non-liability is limited to votes and statements performed in the House itself.

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

Pursuant to Article 83(2)-(4) of the Constitution, the authorisation of the Supreme Court (not of the House of Representatives) is required in order to subject the member to prosecution, arrest or

imprisonment. The competent authority for requesting such authorization is the Attorney General of the Republic (*Γενικός Εισαγγελέας της Δημοκρατίας*).

Leave by the Supreme Court is not necessary in cases of offences punishable with imprisonment for five years or more in case the offender is caught in the act (*in flagrante delicto*). In such a case the Supreme Court is competent to authorize the continuation of the arrest or to order its discontinuation. This immunity ceases once the function of Member of Parliament is terminated.

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

The competent authority for requesting the waiver of the immunity of a member of the European Parliament is the Attorney-General of the Republic (*Γενικός Εισαγγελέας της Δημοκρατίας*), in accordance with its powers under Article 113 of the Constitution. This has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Cyprus to the European Union.<sup>268</sup>

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<sup>268</sup> See letter dated 30 April 2013.

## LATVIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Latvian government*

### *Constitution*

The composition of the government in Latvia is established by Article 55 of the Constitution (*Satversme*) which reads as follows: "The Cabinet shall be composed of the Prime Minister and the Ministers chosen by the Prime Minister"<sup>269</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>270</sup>

### *Implementing provisions*

The above-mentioned provisions of the Constitution are implemented and further specified by the following law: *Ministru kabineta iekārtas likums* (Law on the Structure of Cabinet)<sup>271</sup> adopted on 15 May 2008, in force from 1 July 2008 (LV, 28.05.2008, nr. 82).

1.1.2. *Denomination of the members of the Latvian government*

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

- *Ministru prezidents (Prime Minister),*
- *Ministrs (Minister); Ministri (Ministers),*
- *Ministru prezidenta biedrs (Deputy Prime Minister); Ministru prezidenta biedri (Deputy Prime Ministers),*
- *īpašu uzdevumu ministrs (minister for special assignments); īpašu uzdevumu ministri (ministers for special assignments).<sup>272</sup>*

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

Pursuant to Article 59 of the Constitution "[i]n order to fulfil their duties, the Prime Minister and other Ministers must have the confidence of the *Saeima* [Parliament] and they shall be accountable to the *Saeima* for their actions". Article 17 of the Law on the Structure of Cabinet further clarifies that the term

<sup>269</sup> "*Ministru kabinets sastāv no ministru prezidenta un viņa aicinātiem ministriem*". The Latvian Constitution is available, in English, at: <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>.

<sup>270</sup> "*Ministru kabineta sastāda persona, kuru uz to aicina Valsts Prezidents*".

<sup>271</sup> The text is available at: <https://likumi.lv/ta/en/en/id/175919-cabinet-structure-law>

<sup>272</sup> According to Article 5(2) of the Law on the Structure of Cabinet, ministers for special assignments may be members of the government.

of office of the government or an individual minister starts at the moment when the Saeima (Parliament) has expressed its confidence in the government or an individual minister.

## 1.2. Member of a national parliament

### 1.2.1. Legal provisions on the composition of the Latvian Parliament

#### *Constitution*

Article 5 of the Constitution determines the composition of Latvian Parliament (*Saeima*): "The *Saeima* shall be composed of one hundred representatives of the people."<sup>273</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.*

#### *Implementing provisions*

More detailed provisions concerning the structure and the organisation of the Parliament are contained in its Rules of Procedure (*Kārtības rullis*).<sup>274</sup>

### 1.2.2. Denomination of the members of the Latvian Parliament

Pursuant to the provisions mentioned in paragraph 2.1, a member of the Latvian Parliament is called:

- *Saeimas deputāts (member of the Parliament); Saeimas deputāti (members of the Parliament).*

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

Pursuant to Article 12 of the Constitution, the newly elected *Saeima* holds its first sitting on the first Tuesday in November, when the mandate of the previous *Saeima* expires.

Article 18 provides that a person elected to the *Saeima* acquires the mandate of a member of the *Saeima* by giving a solemn promise, the text of which is provided in the same article.

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

There is no specific procedure for communicating to the European Parliament the incompatibilities concerning situations covered by the first indent of Article 7(1) of the 1976 Act.

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<sup>273</sup> "Saeima sastāv no simts tautas priekšstāvjiem."

<sup>274</sup> Available at: <http://saeima.lv/en/legislative-process/rules-of-procedure> (in English).

Article 6(2) of the *Saeima* election law (*Saeimas vēlēšanu likums*)<sup>275</sup> provides that if an elected Member of the *Saeima* is a Member of the European Parliament, he/she shall lose membership of the European Parliament upon giving the solemn oath of a *Saeima* member. The Central Election Commission shall inform the European Parliament about the loss of the status as Member of the European Parliament within three working days.

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<sup>275</sup> The text in Latvian is available at: <http://likumi.lv/doc.php?id=35261>. Unofficial English translations are available at: <http://www.saeima.lv/en/about-saeima/saeimas-velesanas-1/saeimas-velesanu-likums-1>.

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

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

#### 2.1.1. Constitution

In Latvia, the parliamentary immunities are granted to the members of the *Saeima* by Articles 28 - 31 of the Constitution<sup>276</sup>.

##### 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

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<sup>276</sup> The Latvian Constitution is available, in English, at: <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>.

3) concerning such facts or information itself.<sup>277</sup>

### 2.1.2. *Implementing provisions*

The rules implementing Articles 28-31 of the Constitution are found in Article 120(1) of the Criminal Procedure Law and in Rules 17 and 179 the Rules of Procedure of the *Saeima*).

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

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

### 2.2.1. *Non-liability principle (Article 28 of the Constitution)*

Article 28 of the Constitution provides that members of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. However, this article provides for an exception, namely, that court proceedings may be brought against members of the *Saeima* if they, in the course of performing parliamentary duties, disseminate defamatory statements which they know to be false, or defamatory statements about private or family life.

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

Pursuant to Article 29 of the Constitution, arrest, search of premises and restriction of personal liberty cannot be performed against members of the *Saeima* without its consent. Moreover, according to Article 30 of the Constitution, the consent of the *Saeima* is also required in order to commence criminal prosecutions or to levy administrative fines against its members. However, consent for arrest is not necessary if a member is apprehended in the act of committing a crime; in such a case, the Presidium<sup>278</sup> must be notified within twenty-four hours of the arrest and the *Saeima* (or, if the *Saeima* is not in session, the Presidium itself) decides whether the member shall continue to be held in detention or be released.

<sup>277</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 kratīšanas, ne citādi aprobežot viņa personas brīvību, ja tam nepiekrīt Saeima. Saeimas locekli var apcietināt, ja to notver pie paša nozieguma pastrādāšanas. Par katru Saeimas locekļa apcietināšanu divdesmit četrus 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."

<sup>278</sup> According to Art. 16 of the constitution, the Presidium is elected by the Saeima and composed of a chairperson, two deputies and secretaries.



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

Latvian legislation does not expressly determine which national authorities are empowered to request the immunity of a Latvian member of the European Parliament to be waived. It might be assumed that the provisions governing the requests for waiver of immunity of the members of the national Parliament will apply, *mutatis mutandis*.

Article 120(6) of the Criminal procedure law<sup>279</sup> provides that it is for the public prosecutor (*prokurors*) to submit to the responsible authority a request to waive the immunity, in order to obtain its consent. Moreover, according to Article 179 of the Rules of procedure of the *Saeima*, the Mandate, Ethics and Submissions Committee shall examine requests to waive the immunity of a member of national Parliament **submitted by the Prosecutor General's Office**. This has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Latvia to the European Union.<sup>280</sup>

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<sup>279</sup> An English version, including the amendments adopted until 21.10.2010, is available at:

<https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>.

<sup>280</sup> See letter dated 12 June 2014.

## LITHUANIA

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

1.1 Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Lithuanian government*

### *Constitution*

The composition of the Lithuanian government is set in Article 91 of the Constitution, which reads as follows: "The Government of the Republic of Lithuania shall consist of the Prime Minister and Ministers".<sup>281</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".

### *Implementing provisions*

The above-mentioned provisions of the Constitution are implemented and further specified by the following act of secondary law: "1994 m. gegužės 19 d. Nr. I-464 Lietuvos Respublikos Vyriausybės įstatymas" (the Law on the Government No I-464 of 19 May 1994, as amended<sup>282</sup>).

1.1.2. *Denomination of the members of the Lithuanian government*

Pursuant to the provisions mentioned in Article 91 of the Constitution, members of the Lithuanian government are the following:

- *Ministras Pirmininkas/Ministrė Pirmininkė (Prime Minister),*
- *Ministras/ Ministrė (Minister); Ministrai/Ministrės (Ministers).*

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

According to Article 92(5) of the Constitution, "a new Government shall receive the powers to act after the Seimas gives assent to its programme by majority vote of the Members of the Seimas participating in the sitting."

Under the terms of Article 93 of the Constitution, upon taking the office, the member of the government shall make an oath at the Seimas to be faithful to the Republic of Lithuania, to observe the

<sup>281</sup> "Lietuvos Respublikos Vyriausybę sudaro Ministras Pirmininkas ir ministrai." An English translation of the Constitution of the Republic of Lithuania is available at: <http://www3.lrs.lt/home/Konstitucija/Constitution.htm>.

<sup>282</sup> An English translation of this Law (updated to the 2008 amendments) is available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/7b9dff8185bf11e8aa33fe8f0fea665f?jfwid=-g0zrz3kew>

Constitution and laws.<sup>283</sup> The Constitutional Court has interpreted this provision as meaning that without an oath a member of the government may not take the office supposing that he may not exercise any authority or prerogative of a member of the government established in the Constitution or the Laws.<sup>284</sup>

## 1.2. Member of a national parliament

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

#### *Constitution*

Chapter V of the Lithuanian Constitution (Articles 55 to 76) sets all the basic principles related to the Seimas (Lithuanian Parliament). Article 55(1) of the Constitution provides that "the Seimas shall consist of representatives of the Nation—141 members of the Seimas who shall be elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot."

#### *Implementing provisions*

More detailed provisions concerning the structure and the organisation of the *Seimas* are provided in the Seimas statute<sup>285</sup>.

### 1.2.2. *Denomination of the members of the Lithuanian Parliament*

Pursuant to Article 55 of the Constitution, members of the Lithuanian Parliament are the following:

- *Seimo narys / Seimo narė (member of the Seimas); Seimo nariai / Seimo narės (members of the Seimas); or*
- *Tautos atstovas; Tautos atstovai (representative(s) of the Nation).*

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

Under the provisions of Article 59 of the Constitution the term of office of Members of the *Seimas* shall begin from the day on which the newly-elected Seimas convenes for the first sitting. The term of office of the previously elected Members of the *Seimas* shall expire at the beginning of this sitting. Article 59 further provides that the elected Member of the *Seimas* shall acquire all the rights of a representative of the Nation only after taking at the *Seimas* an oath to be faithful to the Republic of Lithuania. The

<sup>283</sup> Article 93 states that "When taking office, the Prime Minister and the Ministers shall, at the Seimas, take an oath to be faithful to the Republic of Lithuania, to observe the Constitution and laws. The text of the oath shall be established by the Law on the Government." Article 7 of the Law on the Government reads as follows: "When assuming office, the Prime Minister and ministers shall swear an oath. [...] The Prime Minister and ministers shall swear an oath at the *Seimas* sitting. The President of the Republic shall be invited to attend this sitting. The oath shall be administered by the *Seimas* Chairman or, in his absence, by the Deputy *Seimas* Chairman acting for the *Seimas* Chairman. [...] The set text of the oath shall not be amended and changed. Non-compliance with this provision, refusal to swear an oath or to sign a nominal oath sheet, or signing the sheet with a stipulation shall mean that the Prime Minister or a minister has not sworn the oath and may not hold his office".

<sup>284</sup> The Decision of the Constitutional Court of 23 November 1999 in case No. 17/98, Title IV.

<sup>285</sup> Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d9766070c2f511e883c7a8f929bfc500?jfwid=39x432mh7> (in English).

Member of the *Seimas* who either does not take the oath according to the procedure established by law, or who takes a conditional oath, shall lose the mandate of a Member of the *Seimas*.

The Constitutional Court has developed an extensive doctrine regarding these provisions.<sup>286</sup>

### 1.3. 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>287</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, if a candidate elected to the European Parliament does not resign from a post incompatible with the function of member of the European Parliament within the set time limit,<sup>288</sup> the Central electoral commission, within 5 working days from the moment it becomes aware of the incompatibility, shall acknowledge, by a reasoned decision, that the person has lost the mandate of Member of the European Parliament and shall inform thereof the European Parliament, as well as announce it in the internet and in the Official journal "*Valstybės žinios*".

Complaints concerning the loss of the mandate of member of the European Parliament shall be brought, within 10 days from the publication of the announcement on the Official Journal, before the Supreme Administrative Court, which shall take a final decision within three days.

<sup>286</sup> See Decision of the Constitutional Court of 1 July 2004, case No. 04/04; Judgement of the Constitutional Court of 15 May 2009, joined cases No. 13/04-21/04-43/04; Conclusions of the Constitutional Court of 27 October 2010, joined cases No. 32/2010-33/2010, and Conclusions of the Constitutional Court of 3 June 2014 No KT20-11/2014, case No. 3/2014.

<sup>287</sup> Law No IX-1837 of 20 November 2003 (as amended); an English version is available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f2433de1601a11e99684a7f33a9827ac?jfwid=-1213mhx6lc>

<sup>288</sup> Such time limit, which is set for candidates holding incompatible offices and willing to resign from the office of Member of the European Parliament, is: no later than 15 days prior to the first sitting of a newly elected European Parliament; or not later than within 15 days from the date on which the Central Electoral Commission adopted a decision regarding the acknowledgement of the person's mandate, in case of candidates filling a vacant seat. See Article 94(2) of the Law on Elections to the European Parliament.

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

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

#### 2.1.1. Constitution

In the Republic of Lithuania, the parliamentary immunities are granted to the members of the national Parliament by Article 62 of the Constitution which reads as follows:

##### Article 62

The person of a Member of the *Seimas* shall be inviolable.

A Member of the *Seimas* may not be held criminally liable, arrested, nor may his freedom be otherwise restricted without the consent of the *Seimas*.

A Member of the *Seimas* may not be persecuted for his voting or his speeches at the *Seimas*. However, he may be held liable according to the general procedure for personal insult or slander.<sup>289</sup>

#### 2.1.2. Implementing provisions

The implementing rules of Article 62 of the Constitution are contained in the *Seimas* statute.

### 2.2. Scope and content of national parliamentary immunities

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

#### 2.2.1. Non-liability principle (Article 62 (3) of the Constitution)

Pursuant to Article 62 of the Constitution and to Article 22, second paragraph, of the *Seimas* statute, a member of the *Seimas* may not be persecuted for his voting or speeches in the *Seimas*, i.e. at the sittings of the *Seimas*, *Seimas* committees, commissions and parliamentary groups. However, she or he may be held liable for personal insult or slander, in accordance with the general procedure.

This non-liability is permanent and continues to apply even after the end of the mandate of the Member of Parliament.

#### 2.2.2. Immunity (Article 62 (2) of the Constitution)

Pursuant to Article 62 of the Constitution and to Article 22, third paragraph, of the *Seimas* statute, criminal proceedings may not be instituted against a *Seimas* Member, she or he may not be arrested,

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<sup>289</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 bendrąja tvarka."

and may not be subjected to any other restrictions of personal freedom without the consent of the *Seimas*, except in cases when she or he is caught in the act of committing a crime (*in flagrante delicto*). In such cases the Prosecutor General must immediately notify the *Seimas* thereof.

Article 23 of the *Seimas* statute sets in detail the procedure to follow for the revocation of member's immunity.

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

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.

The practice so far has been that requests for waiver of the parliamentary immunity of MEPs elected in Lithuania have been submitted to the European Parliament by the Prosecutor General of the Republic of Lithuania (Generalinė prokuratūra). This practice has been confirmed in a letter<sup>290</sup> sent to the President of the European Parliament by the Permanent Representation of the Republic of Lithuania to the European Union, according to which the Lithuanian authority entitled to submit requests for waiver of the immunity is the Public Prosecutor.

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<sup>290</sup> See letter dated 9 May 2013.

## LUXEMBOURG

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Luxembourgish government*

### *Constitution*

The composition of the Luxembourgish government is established by Article 76, first paragraph of the Constitution,<sup>291</sup> which reads as follows: "The Grand Duke regulates the organization of his Government, which shall consist of at least three members."<sup>292</sup> Moreover, Article 77 of the Constitution reads as follows: "The Grand Duke appoints and dismisses the members of Government."<sup>293</sup>

### *Implementing provisions*

The above-mentioned provisions of the Constitution are implemented and further specified by the following act of secondary law: *Arrêté royal grand-ducal du 9 juillet 1857 portant organisation du Gouvernement grand-ducal*.<sup>294</sup>

1.1.2. *Denomination of the members of the Luxembourgish government*<sup>295</sup>

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

- *Premier ministre*<sup>296</sup> (*Prime Minister*),
- *Vice-Premier ministre* (*Deputy Prime Minister*),
- *Ministre* (*Minister*); *Ministres* (*Ministers*),
- *Ministre délégué/e* (*Minister Delegate*),<sup>297</sup>
- *Secrétaire d'Etat* (*Secretary of State*); *Secrétaires d'Etat* (*Secretaries of State*).<sup>298</sup>

<sup>291</sup> Available (in French) at: <http://data.legilux.public.lu/file/eli-etat-leg-recueil-constitution-20171020-fr-pdf.pdf>.

<sup>292</sup> "Le Grand-Duc règle l'organisation de son Gouvernement, lequel est composé de trois membres au moins".

<sup>293</sup> "Le Grand-Duc nomme et révoque les membres du Gouvernement".

<sup>294</sup> <http://legilux.public.lu/eli/etat/leg/argd/1857/07/09/n1/jo>.

A detailed description of the composition of the Luxembourgish government is available on internet, at: <https://gouvernement.lu/fr/gouvernement.html>.

<sup>295</sup> Denominations in German, English and Luxembourgish are available at: <https://gouvernement.lu/fr/gouvernement.html>.

<sup>296</sup> Also qualified as "*ministre d'Etat*".

<sup>297</sup> This office is not foreseen by any of the legislative acts mentioned in paragraph 1.1., but the current Government includes Ministers Delegate.

<sup>298</sup> After the 2009 elections, reference to the title of Secretary of State was abolished in Article 1 of the *Arrêté royal grand-ducal*, while Article 4 still refers to this function. Currently, however, the Government does not include any Secretary of State.

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

The date of the beginning of the term of office of the members of the government shall be considered the date of the nomination of the ministers by the Grand Duke.

## 1.2. Member of a national parliament

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

#### *Constitution*

The composition of the Luxembourgish Parliament is established by Article 50 of the Constitution, which reads as follows: "The Chamber of Deputies represents the country. Deputies vote without referring to their constituents and may have in view only the general interests of the Grand Duchy."<sup>299</sup> Article 51(3) of the Constitution establishes that: "The Chamber is made of 60 deputies. A law voted in accordance with the conditions set out in Article 114, para. 2, sets the number of deputies to be elected in each district."<sup>300</sup>

#### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the Chamber of Deputies is contained in its Rules of Procedure.<sup>301</sup>

### 1.2.2. *Denomination of the members of the Luxembourgish Parliament*

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

- *Député/e (Deputy) ; Députés (Deputies)*

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

According to Article 124 of the electoral Law of 18 February 2003<sup>302</sup> the date of the beginning of the term of office of the Deputies shall be considered the date of the first meeting of the Chamber.<sup>303</sup>

<sup>299</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>300</sup> "La Chambre se compose de 60 députés. Une loi votée dans les conditions de l'article 114, alinéa 2 fixe le nombre des députés à élire dans chacune des circonscriptions."

<sup>301</sup> The text of the Rules of Procedure of the Chamber of Deputies is available at: <https://www.chd.lu/wps/wcm/connect/public/5abf3456-f398-4259-a831-20788c0f208c/reglementjuli2019.pdf?MOD=AJPERES&ContentCache=NONE&CACHE=NONE&CVID=mOb0p1W&CVID=mOb0p1W>.

<sup>302</sup> The text is available at: <http://www.legilux.public.lu/leg/a/archives/2003/0030/a030.pdf>. A coordinated version can be found here: <http://legilux.public.lu/eli/etat/leg/recueil/elections/20190422>.

<sup>303</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."



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."<sup>304</sup>

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

The electoral Law of 18 February 2003 also regulates the European elections in Luxembourg. According to Article 283 of this law, the President of the Chamber of Deputies (*Président de la Chambre des Députés*) shall send the President of the European Parliament the necessary documents for the verification of the credentials of representatives of the Grand-Duchy of Luxembourg.<sup>305</sup>

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<sup>304</sup> Article 57 reads as follows: "(2) A leur entrée en fonctions, ils prêtent le serment qui suit: «Je jure fidélité au Grand-Duc, obéissance à la Constitution et aux lois de l'Etat.»

(3) Ce serment est prêté en séance publique, entre les mains du président de la Chambre."

<sup>305</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."

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

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

#### 2.1.1. *Constitution*

In Luxembourg, the parliamentary immunities are granted to the members of the national Parliament by Articles 68 and 69 of the Constitution, as amended in 2006.

#### Article 68

No proceedings, neither criminal nor civil, may be brought against a deputy on account of opinions expressed or votes cast in the exercise of his functions.<sup>306</sup>

#### Article 69

With the exception of the cases regulated by Article 68, deputies may be subjected to criminal pursuits, even in the course of a session.

However, the arrest of a deputy in the course of a session is subjected to the preliminary authorization of the Chamber, except in the case of flagrant offence.

The Chamber's authorization is not required to enforce a sentence rendered against a deputy, including cases of deprivation of freedom.<sup>307</sup>

#### 2.1.2. *Implementing provisions*

More detailed provisions concerning the procedure to be followed to decide upon requests concerning the immunity of Members of Parliaments are included in Articles 179 to 185 of the Rules of Procedure of the Chamber of Deputies.

### 2.2. Scope and content of national parliamentary immunities

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

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<sup>306</sup> "Aucune action, ni civile, ni pénale, ne peut être dirigée contre un député à l'occasion des opinions et votes émis par lui dans l'exercice de ses fonctions."

<sup>307</sup> "A l'exception des cas visés par l'article 68, les députés peuvent être poursuivis en matière pénale, même durant la session. Cependant, l'arrestation d'un député pendant la durée de la session est, sauf le cas de flagrant délit, soumise à l'autorisation préalable de la Chambre. L'autorisation de la Chambre n'est pas requise pour l'exécution des peines, même celles privatives de liberté, prononcées à l'encontre d'un député."

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

Article 68 of the Constitution grants the members of the Chamber of Deputies of Luxembourg the classical non-liability for opinions expressed and votes cast in the exercise of their functions. Such non-liability covers both criminal and civil proceedings and is permanent.

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

According to Article 69 of the Constitution, immunity is restricted to the arrest or detention of Deputies while the Chamber is in session. The authorisation of the Chamber is not necessary if a Deputy is caught in the act of committing a serious offence, or if deprivation of liberty results from the enforcement of a judgment. This immunity only lasts until the Parliament is in session.

In accordance with the Rules of Procedure of the Chamber of Deputies, a special Parliamentary Committee is created to discuss each request to waive the immunity of a Member. The Committee, after having heard the Member concerned, proposes a draft resolution, which is then voted by the Plenary by secret ballot. If the Chamber refuses its authorization to a Member's arrest, no new request concerning the same facts may be transmitted in the course of the same session.

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

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

According to articles 91 and 94 of the Code of Criminal Procedure (*Code de procédure pénale*, before *Code d'instruction criminelle*), the national authority that is competent to adopt an order to appear or an arrest warrant (*mandat d'amener* or *mandat d'arrêt*) is the juge d'instruction. This has been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of the Grand Duchy of Luxembourg to the European Union, according to which the competent national authority is the juge d'instruction, but the request needs to be transmitted to the European Parliament via the Procureur Général d'État.<sup>308</sup>

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<sup>308</sup> See letter dated 20 June 2013.

## HUNGARY

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Hungarian government*

### *The Fundamental Law of Hungary*

The composition of the Hungarian government is established by Article 16 (1), under the section of the Fundamental Law of Hungary<sup>309</sup> entitled "The State", which reads as follows: "The members of the Government shall be the Prime Minister and the Ministers".

### *Implementing provisions*

More detailed provisions concerning the structure of the government and the statute of the members of the government are contained in the following instruments: "Act on the listing of the ministries of Hungary"<sup>310</sup>, "Act CXXV of 2018 on "Governmental administration of 21 December 2018" and "Act on the central administrative bodies and the statute of members of the Government and state secretaries".<sup>311</sup>

1.1.2. *Denomination of the members of the Hungarian government*

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

- *Miniszterelnök (Prime Minister);*
- *Miniszter (Minister), in plural: Miniszterek (Ministers).*

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

Under the terms of Article 16(3) and (4) of the Fundamental Law of Hungary, the Prime Minister is elected by the National Assembly, at the proposal of the President of the Republic, by absolute majority voting (more than 50% of the total membership of the house).<sup>312</sup> In accordance with Article 16(4) of

<sup>309</sup> Act "Magyarország Alaptörvénye" of 25 April 2011. Unless otherwise specified, a Hungarian version of all the legal instruments referred to in this document is available at: <http://njt.hu/>. An English version of the Fundamental Law is available at: <https://www.parlament.hu/documents/125505/138409/Fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>.

<sup>310</sup> Act "2018. évi V. törvény Magyarország minisztériumainak felsorolásáról valamint egyes kapcsolódó törvények módosításáról". No English version is available.

<sup>311</sup> "Act XLIII. of 2010 a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról." No English version is available.

<sup>312</sup> Article 16 provides as follows: "(3). The Prime Minister shall be elected by Parliament at the proposal of the President of the Republic. (4) A simple majority of votes of all Members of Parliament shall be required to elect the Prime Minister. The Prime Minister shall take office immediately upon his or her election."

the Fundamental Law of Hungary, "the Prime Minister shall take office immediately upon his or her election."<sup>313</sup>

Under the terms of Article 16(7) of the Fundamental Law of Hungary, the ministers are appointed by the President of the Republic at the proposal of the Prime Minister. The same rule provides that "Ministers shall take office on the date designated in their deed of appointment or, in the absence thereof, immediately upon their appointment."<sup>314</sup>

## 1.2. Member of a national Parliament

### 1.2.1. *Legal provisions on the composition of the Hungarian National Assembly*

#### *The Fundamental Law of Hungary*

The Hungarian Parliament is the National Assembly, in Hungarian: "*Országgyűlés*". This is a single chamber assembly. General constitutional rules on the National Assembly can be found in the first Chapter of the section of the Fundamental Law of Hungary entitled "The State" (articles 1 to 7).

#### *Implementing provisions*

According to the Act on the election of members of the Hungarian National Assembly<sup>315</sup>, the current number of members of the National Assembly is 199 (106 members are elected from individual constituencies, another 93 from national lists (party lists or national minority lists) ~~(preferential mandate)~~). Further basic rules are contained in the following instruments: "Act on the Hungarian National Assembly"<sup>316</sup> and "Act on the election procedure"<sup>317</sup>.

### 1.2.2. *Denomination of the members of the Hungarian National Assembly*

Members of the Hungarian National Assembly are the following:

- *országgyűlési képviselő (Member of the Parliament), in plural: országgyűlési képviselők (Members of the Parliament).*

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

The term of office of the members of the National Assembly begins with their election, which means they are subject to immunity and receive their remuneration from the day of their election. However, an MP can only exercise his / her parliamentary rights (eg vote) once the mandate was verified and

<sup>313</sup> "A miniszterelnök a megválasztásával hivatalba lép."

<sup>314</sup> "*A miniszter a kinevezésében megjelölt időpontban, ennek hiányában a kinevezésével hivatalba lép.*"

<sup>315</sup> <https://www.valasztas.hu/web/national-election-office/act-cciii-of-2011-on-the-elections-of-members-of-parliament>

<sup>316</sup> Act XXXVI. of 2012 "*Az Országgyűlésről*" Articles 73 - 103. English version:

<https://www.parlament.hu/documents/125505/138409/Act+XXXVI+of+2012+on+the+National+Assembly/b53726b7-12a8-4d93-acef-140feef44395>

<sup>317</sup> Act XXXVI. of 2013 "*A választási eljárásról*". An English version is available at:

<https://www.valasztas.hu/documents/538536/548702/Act+XXXVI+of+2013+on+Electoral+Procedure.pdf/2e82a257-b592-4819-923f-eac4a18cfec6>

approved by resolution of the National Assembly and after the Member has taken an oath at the constitutive sitting. The mandate is approved on the condition that the Member has declared to accept the mandate and made a declaration on the absence of any conflict of interest. A financial declaration must be submitted within 30 days of the taking of oath, failing which his/her rights are suspended.

The investiture procedure is laid down in Article 10 (1) of the Parliamentary resolution on the Rules of Procedure of the National Assembly<sup>318</sup>.

### 1.3. Other functions incompatible with the mandate of a Member of the European Parliament

Article 8 (2) of the "Act on the legal status of Hungarian Members of the European Parliament"<sup>319</sup> extends the scope of the rules relating to incompatibility defined in the Election Act of 1976, by setting a more detailed list of incompatible functions.

Accordingly, the office of a Member of the European Parliament is incompatible with that of:

- (a) a member of the government or parliament of another Member State of the European Union;
- b) the President of the Republic,
- c) a Member of the National Assembly or Nationality Advocate ("nemzetiségi szószóló"),
- (d) a Member of the Government, Secretary of State, Deputy Secretary of State,
- (e) a member of the Constitutional Court,
- f) the Ombudsman for Fundamental Rights or Deputy Ombudsman for Fundamental Rights,
- (g) the President, Vice-President and Auditor of the State Audit Office,
- h) the Governor, the Vice-President of the National Bank of Hungary, or a member of the Monetary Council,
- (i) a judge,
- (j) a prosecutor,
- (k) judicial staff, public servant, employee,
- l) a professional and contractual member of the Hungarian Defence Forces, professional member of the police and civilian national security services,
- m) the Chairman and Deputy Chairman of the National Authority for Data Protection and Freedom of Information.

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

Procedural rules relating to incompatibility are laid down in Article 9 of the Act on the statute of Hungarian members of the European Parliament: "(1) It is in the competence of the European Parliament to terminate the mandate of a Member of the European Parliament on the grounds of conflict of interest. (2) A Member of the European Parliament shall eliminate the cause that constitutes

<sup>318</sup> Resolution no. 10/2014. "Egyes házszabályi rendelkezésekről", English version: <https://www.parlament.hu/documents/125505/138409/Resolution+on+certain+provisions+of+the+Rules+of+Procedure/968f2e08-f740-4241-a87b-28e6dc390407>

<sup>319</sup> Act LVII. of 2004. "Az Európai Parlament magyarországi képviselőinek jogállásáról", English version not available.

a conflict of interest within sixty days of the confirmation of his or her mandate or the emergence of the situation that causes the conflict of interest or of the day when he or she learns about that case of affairs. (3) After the time limit as defined at item (2) above expires, the Member of European Parliament concerned shall notify the President of the European Parliament about the conflict of interest without delay. (4) Anyone may notify in writing the President of the European Parliament that a Member of the European Parliament is in a situation of conflict of interest. Such notification shall exactly define the name of the Member of European Parliament concerned and the cause of the conflict of interest".

The Act does not designate any public authority to communicate cases of incompatibility. However, it has to be noted that, before the election lists are approved by the "Országos Választási Bizottság" (National Election Commission), each candidate must submit a declaration on conflicts of interest to the National Election Office, which verifies this declaration and informs the National Election Commission about the result. Both the National Election Commission and the National Election Office have thus information on cases of incompatibility (at the time of the elections).<sup>320</sup>

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<sup>320</sup> Act XXXVI. of 2013. "A választási eljárásról" (Art. 129 (1) b and Art.331).

## 2. National immunities as referred to by Article 9 a) of the Protocol on the privileges and immunities of the European Union

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

#### 2.1.1. *The Fundamental Law of Hungary*

In Hungary the parliamentary immunities are granted to the members of the National Assembly in accordance with the Fundamental Law of Hungary, Section "The State", Article 4(2).

##### Article 4(2)

Members of the National Assembly shall be entitled to immunity and to remuneration ensuring their independence. A cardinal Act<sup>321</sup> shall specify the public offices which may not be held by Members of the National Assembly, and may lay down other cases of incompatibility or conflict of interest.

#### 2.1.2. *Implementing provisions*

Immunity rules applicable to Members of the National Assembly are defined in Chapter VII (Parliamentary Immunities), Title III (The Status of the Members of the National Assembly) of the "Act on the Hungarian National Assembly." The relevant provisions of this Act provide as follows:

##### Article 73

(1) During and after the term of his or her mandate, the Member shall not be held liable before courts or other authorities for the vote cast or the fact or opinion communicated by him or her in the course of exercising and in connection with his or her mandate.

(2) The immunity specified in paragraph (1) shall not apply to the liability of the Member under civil law and to the following criminal offences:

- a) agitation against a community, violation of national symbol, public denial of the crimes of the national socialist and communist regimes, misuse of top secret and secret data, misuse of confidential data, misuse of restricted data as laid down in Act IV of 1978 on the Criminal Code in force until 30 June 2013,
- b) incitement against a community, violation of national symbol, public denial of the crimes of the national socialist or communist regime, misuse of classified data as laid down in Act C of 2012 on the Criminal Code.

##### Article 74

(1) Criminal proceeding or – in the absence of voluntarily waiving immunity in the case concerned – infraction proceeding can only be instituted or conducted, and a coercive measure under criminal procedure can only be applied against the Member with the prior consent of the National Assembly.

(2) The Member

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<sup>321</sup> Acts adopted by a 2/3 majority of Members present.



a) may only be detained or another coercive measure under criminal proceedings may only be applied against him or her if he or she is caught in the act of committing a criminal offence,

b) may only be detained or another coercive measure under infraction proceedings may only be applied against him or her if he or she is caught in the act of committing an infraction, provided that the conditions required by an Act for imposing infraction detention are met.

(3) Until the submission of the indictment, the motion for the suspension of immunity shall be submitted to the Speaker by the Prosecutor General, while after the submission of the indictment, or in private accusation cases or substitute private accusation cases, it shall be submitted by the court. If the Member is caught in the act, the motion shall be submitted without delay.

(4) In an infraction case, the infraction authority shall inform the Member directly of the possibility of voluntarily waiving his or her immunity. In the case of the Member voluntarily waiving immunity within eight days, the infraction authority shall, at the time of final conclusion of the proceeding, notify, by way of the Prosecutor General, the Speaker of the waiver of immunity and the result of the proceeding. The Speaker shall send the notification to the committee on immunity, incompatibility, discipline and mandate control. The chair of the committee on immunity, incompatibility, discipline and mandate control shall present the notification at the subsequent meeting of the committee. If the Member does not waive immunity within eight days of the receipt of the request, the motion for the suspension of immunity shall be submitted to the Speaker by the Prosecutor General on the basis of the request made by the infraction authority. In the course of the proceeding, the Member may at any time – until the adoption of the resolution by the National Assembly – waive immunity before the proceeding authority.

#### Article 75

The immunity of the Member shall not apply to proceedings by public administration authorities under the Act on the general rules of the procedures and services of public administration authorities.

#### Article 76

The Member shall be obliged to inform the court or the authority acting in the procedure against the Member of his or her mandate. Should the immunity of the Member be violated despite of the Member performing his or her information obligation, the Member shall notify the Speaker thereof without delay.

#### Article 77

(1) The motion for the suspension of immunity or the notification of the violation of immunity shall be transferred by the Speaker without delay to the committee on immunity, incompatibility, discipline and mandate control for examination, and the Speaker shall announce it at the subsequent sitting day of the National Assembly and inform the affected Member of the transfer.

(2) In the course of the procedure of examining the suspension of immunity or the violation of immunity, all data requested by the committee on immunity, incompatibility, discipline and mandate control in connection with the suspension of immunity or the violation of immunity shall be provided without delay by the Member and by all state authorities at the disposal of the committee on immunity, incompatibility, discipline and mandate control. The data received or provided in the course of the procedure of examining the suspension of immunity or the violation of immunity shall be deleted on the thirtieth day following completion of the procedure on the suspension of immunity or the examination on the violation of immunity.

(3) The suspension of immunity shall be decided upon by the National Assembly.

(4) The decision taken on the suspension of immunity shall only apply to the case in relation of which the motion has been submitted.

(5) In the case started on the basis of the violation of immunity, the committee on immunity, incompatibility, discipline and mandate control shall submit, not later than thirty days after the date specified in paragraph (1), a proposal to the Speaker who shall take the necessary measures and inform the National Assembly thereof.

## Article 78

The Member shall not waive immunity, save in infraction proceedings. This right of the Member shall be respected by everyone.

## Article 79

(1) Immunity shall be enjoyed by the Member from the day of his or her election.

(2) The person verified as a candidate at the election of the Members shall enjoy the same immunity as Members, however the suspension of immunity shall be decided upon by the National Election Commission and the motion for the submission of immunity shall be submitted to the president of the National Election Commission

## 2.2. Scope and content of national parliamentary immunities

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

### 2.2.1. *Non-liability principle (Article 73 of the Act on the Hungarian national Assembly)*

The principle of non-liability for the votes cast and opinions expressed by Members of the National Assembly is set out in Article 73 of the Act on the Hungarian National Assembly. In accordance with this provision, this non-liability covers all votes cast and opinions expressed in connection with the mandate of the Member and during its exercise. The non-liability principle continues to apply even after the end of the term of office, although it only covers votes and opinions expressed during the mandate.

The non-liability principle applies in front of any court or other authority. However, it does not extend to cover accountability under civil law, nor does it extend to procedures undertaken by a public administrative authority (Article 75). Additionally, exceptions apply in case of commission of the following crimes: incitement against the community, defamation of the national emblem, publicly denying the crimes of the national socialist and communist regimes, misuse of data which are strictly secret or are classified as secret, misuse of data classified as confidential, and misuse of data classified as restricted.

### 2.2.2. *Immunity (Articles 74 to 79 of the Act on the Hungarian National Assembly)*

The rules relating to the immunity of Members of the Hungarian National Assembly are set out in Articles 74 to 79 of the Act on the Hungarian National Assembly. In accordance with these provisions, the consent of the Parliament is required in order to subject a Member to criminal or coercive proceedings, as well as to misdemeanour proceedings for which the immunity is not voluntarily waived by the Member. However, Members may be arrested or subjected to coercive procedures if they are

caught in the act of committing a crime (*in flagrante delicto*) or a misdemeanour for which arrest is provided by law. Moreover, Members' immunities do not extend to procedures undertaken by a public administrative authority in accordance with the law on the general rules of public administrative procedures and services.

Requests for waiver of immunity may be submitted to the speaker of the Parliament by the chief prosecutor (before the submission of the indictment) or by the competent court (after the presentation of the indictment, or in the case of a civil or substitute civil action). The speaker subsequently forwards the motion for waiver of immunity to the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection. The Member concerned has the right to be heard before a decision as to the waiver of his/her immunity is taken. The decision to waive the immunity must be taken by a two-thirds majority of the Members present and it applies only to the specific case for which the motion was submitted.

In principle, Members do not have the power to voluntarily waive their immunity, which is a right that must be respected by everyone; however, immunities may be voluntarily waived in misdemeanour procedures.

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

Under the Act on the Hungarian National Assembly, a request for waiver is addressed to the Speaker of the Hungarian Parliament by either the Prosecutor General ("*legfőbb ügyész*") or the competent court (depending on the case).<sup>322</sup> Article 12 (1) of the Act on the Legal Status of Hungarian Members of the European Parliament provides for similar rules as regards requests for waiver concerning Members of the European Parliament.

According to Article 10(2) of Act LXXVII of 2004, the member of the European Parliament has the same immunity as the member of the Hungarian National Assembly. According to Article 74(3) of Act XXXVI of 2012, until the submission of the indictment, the motion for the suspension of immunity shall be submitted to the Speaker by the Prosecutor General, while after the submission of the indictment, or in private accusation cases or substitute private accusation cases, it shall be submitted by the court. If the Member is caught in the act, the motion shall be submitted without delay. In case of MEPs, the motion shall be submitted to the President of the European Parliament.

According to a letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Hungary to the European Union, the applications for a waiver of immunity are to be addressed to the European Parliament by the Prosecutor General ("*legfőbb ügyész*") or by the court that is hearing the case.<sup>323</sup>

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<sup>322</sup> Act XXXVI. of 2012, Article 74 (3).

<sup>323</sup> See letter dated 30 April 2013.

## MALTA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Maltese government*

### *Constitution*

The composition of the Maltese government is established by Article 79 of Chapter VII of the Constitution of Malta Act, 1964.<sup>324</sup>

#### Article 79

(1) There shall be a Cabinet for Malta which shall consist of the Prime Minister and such number of other Ministers as may be appointed in accordance with article 80 of this Constitution.

(2) The Cabinet shall have the general direction and control of the Government of Malta and shall be collectively responsible therefor to Parliament.

Moreover, Article 84 of the Maltese Constitution foresees the possibility for the President to appoint a member of the House of Representatives to be a temporary Minister, if a Minister other than the Prime Minister is unable, by reason of his illness or absence from Malta, to perform the functions of his office. According to Article 88(1) of the Constitution, "The President, acting in accordance with the advice of the Prime Minister, may appoint Parliamentary Secretaries from among the members of the House of Representatives to assist Ministers in the performance of their duties."

### *Implementing provisions*

The above-mentioned provision of the Constitution is further specified by Act VII of 1975 (the Interpretation Act)<sup>325</sup> and by Act 1 of 2009 (the Public Administration Act).<sup>326</sup>

1.1.2. *Denomination of the members of the Maltese government*

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

- *Prim Ministru* (Prime Minister),

<sup>324</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. The Constitution of Malta is available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

<sup>325</sup> As amended by Acts XLIX of 1981, XXXV of 1990, I of 2001, IX of 2003, XIII of 2007 and I and XIII of 2009. The Act is available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8744&l=1>.

<sup>326</sup> Government Gazette of Malta No. 18,374, 3rd February, 2009, available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8963&l=1>.

- *Ministru (Minister); Ministri (Ministers),*
- *Ministru temporanju (Temporary Minister),*
- *Segretarju Parlamentari (Parliamentary Secretary); Segretarji Parlamentari (Parliamentary Secretaries).*

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

According to Article 80 of the Constitution, the President appoints as Prime Minister the member of the House of Representatives who, in his judgment, is best able to command the support of a majority of the members of that House and, acting in accordance with the advice of the Prime Minister, he then appoints the other Ministers from among the members of the House of Representatives. Pursuant to Article 89 of the Constitution, "A Minister or a Parliamentary Secretary shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath of office set out in the Third and in the Second Schedule to this Constitution." The prime minister's mandate normally begins as soon as he is sworn in by the President.

## 1.2. *Member of a national parliament*

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

#### *Constitution*

The composition of the Maltese Parliament is established by the first paragraph of Article 51 of the Constitution, which reads as follows: "There shall be a Parliament of Malta which shall consist of the President and a House of Representatives (*Kamra tad-Deputati*)."<sup>327</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'."

#### *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>328</sup>

<sup>327</sup> The House currently has 67 members (elected in the 2017 general election). The House is presided over by the Speaker of the House. The President of the Republic is elected for a five year term by the House.

<sup>328</sup> Available at: <https://parlament.mt/en/menues/about-parliament/legislative-instruments/standing-orders-of-the-house>.

### 1.2.2. *Denomination of the members of the Maltese Parliament*

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

- *Deputat (Deputy); Deputati (Deputies), or*
- *Membru tal-Parlament (Member of Parliament)*<sup>329</sup>

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

Article 75(3) of the Constitution states that the House of Representatives shall meet not later than two months after the publication of the official result of any general election by the Electoral Commission on a day appointed by the President.

Article 5 of the Standing Orders of the House states: "No Member of the House shall be permitted to take part in the proceedings of the House (other than proceedings necessary for the purposes of section 69 of the Constitution) until he has made before the House an oath or affirmation of allegiance in the form set out in the Third Schedule to the Constitution; provided that the election of the Speaker and Deputy Speaker may take place before the Members of the House have made such oath or affirmation."

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

The European Parliament Election Act<sup>330</sup> does not provide for a specific formal system of communication to the European Parliament.<sup>331</sup>

<sup>329</sup> It is common to use 'Membru Parlamentari'. The Constitution also refers to 'Membru tal-Kamra' / 'Membru tal-Kamra tad-Deputati' (according to the Constitution: 'Member of the House' / 'Member of the House of Representatives').

<sup>330</sup> The European Parliament Election Act is available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8933&l=1>

<sup>331</sup> However, the national authority competent to communicate the names of newly elected Members of the European Parliament is the Clerk of the House of Representatives.

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

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

#### 2.1.1. *Constitution*

Article 65 of the Constitution is the legal basis establishing the Powers and Procedure of Parliament including its privileges, immunities as well as the powers and obligations of the House of Representatives and the members thereof.

#### Article 65

(3) No civil or criminal proceedings may be instituted against any member of the House of Representatives for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

(4) For the duration of any session members of the House of Representatives shall enjoy freedom from arrest for any civil debt except a debt the contraction of which constitutes a criminal offence.

(5) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the House of Representatives while the House is sitting or through the Speaker, the Clerk or any officer of the House."

#### 2.1.2. *Implementing provisions*

The implementing rules of Article 65 of the Constitution are found in the House of Representatives (Privileges and Powers) Ordinance.<sup>332</sup> The Ordinance also protects the officers of the House, while in the execution of parliamentary business.

## 2.2 Scope and content of national parliamentary immunities in Malta

The national system of immunity consists in the freedom of speech of the Member of Parliament ("non-liability"), and a very limited protection against arrest or taking into custody, which only applies to arrest for civil debt ("immunity").

#### 2.2.1. *Non-liability principle (Article 65 (3) of the Constitution)*

The Constitution of Malta establishes the freedom of speech of Members of the House (non-liability regime in civil or criminal proceedings) for statements - oral or written - made in the course of the activities of the member in the House of Representatives. This non-liability does not apply to

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<sup>332</sup> Available at: <http://www.parlament.mt/house-of-representatives?l=1>.

statements made by the Member outside the House. This non-liability may be waived by the Member concerned, while the House has no power to waive it.

In accordance with Article 11 of the House of Representatives (Privileges and Powers) Ordinance, if it appears to the Speaker that a person, whether a Member of the House or not, has committed any of the acts referred to in sub-article (4),<sup>333</sup> he/she shall refer the matter to the Standing Committee on Privileges. The Committee, after making the necessary examinations and hearing the person concerned, reports to the House, recommending either to admonish the person concerned; or to order the executive police to bring the person concerned before the Court of Magistrates (Malta), which only has jurisdiction once such order is made by the Speaker.

### 2.2.2. Immunity (Article 65 (4) of the Constitution)

For the duration of the session members of the House of Representatives enjoy immunity from arrest for any civil debt "provided that this is not fraudulent or otherwise in contravention of the Criminal Code."<sup>334</sup> It should however be noted that arrest for civil debt has largely been abolished from the Maltese procedural law and in any event the privilege is not subject to waiver by the Maltese Parliament.

Members of Parliament do not enjoy immunity from civil or criminal proceedings nor immunity from criminal arrest.

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

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

According to an official letter sent by the Maltese authorities,<sup>335</sup> the competent authority to request waiver of the immunity is the *Avukat Ġenerali (Attorney General)*.

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<sup>333</sup> Which provides for the following offences against the Act:

(a) contempt of the authority of the House in its presence; (b) insult or disrespect of a Member of the House, even if absent, in the presence of the House or any of its committees; (c) infringement of any order on the admission of strangers to the Chamber and their behavior therein; (d) assault upon, obstruction or insult of a Member on his way to or from the House or on account of his conduct in the House, or any endeavour to compel a Member to declare himself in favour of or against any matter pending or expected to be brought before the House; (e) sending any threatening letter to a Member respecting his conduct in the House; (f) any assault upon, interference with, or resistance to an officer of the House while performing, or on account of having performed his duty; (g) any disturbance in or near the House, while it is sitting, whereby the proceedings of the House are likely to be interrupted; (h) unduly influencing any witness in regard to evidence to be given before the House or any Committee; (i) presenting to the House or to any Committee false document, with intent to deceive; (j) publication of any defamatory libel on the Speaker or any Member touching anything done or said by him as a Member in the House or in a Committee; (k) willful or reckless publication of any false or perverted report of any debate or proceedings of the House or a Committee.

<sup>334</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."

<sup>335</sup> See letter received on 29 January 2014.



## THE NETHERLANDS

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Dutch government*

### *Constitution*

According to Article 42 of the Constitution of the Kingdom of the Netherlands<sup>336</sup> (*Grondwet voor het Koninkrijk der Nederlanden*), the government is composed of the King (*de Koning*) and the Ministers. State Secretaries (*Staatssecretarissen*) may be appointed by Royal Decree, in accordance with Article 46 of the Constitution; they may replace Ministers.

### *Implementing provisions*

There are no specific provisions on the composition of the Dutch government

1.1.2. *Denomination of the members of the Dutch government*

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

- *de Koning (the King)*,<sup>337</sup>
- *Minister-President (Prime Minister)*,
- *Minister (Minister)*.

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

For the Prime Minister and the other Ministers, the date of the beginning of their term of office is the day of entry into force of the Royal Decree appointing them (as provided by Article 48 of the Constitution). The day they swear the oaths or make the affirmations and promises before the King in accordance with Article 49 of the Constitution<sup>338</sup> may be a different one and is not considered to be the constitutive moment.

<sup>336</sup> The text of the Constitution is available at: <http://wetten.overheid.nl/>. The official English version is available at: <https://www.government.nl/documents/reports/2019/02/28/the-constitution-of-the-kingdom-of-the-netherlands>.

<sup>337</sup> However, the King is not responsible for acts of government, in accordance with Article 42(2) of the Constitution, which provides that "The Ministers, and not the King, shall be responsible for acts of government." The King does not form part of the Cabinet (*Ministerraad*), a body established by Article 45 of the Constitution.

<sup>338</sup> Which provides that "Upon accepting office Ministers and State Secretaries shall swear an oath or make an affirmation and promise in the presence of the King, in the manner prescribed by Act of Parliament, that they have not done anything which may legally debar them from holding office, and shall also swear or promise allegiance to the Constitution and that they will faithfully discharge their duties." This Article is further specified by Article 1, *Wet beëdiging ministers en leden Staten-Generaal* (Act on the Confirmation on Oath of Ministers and Members of the States General).

## 1.2. Member of a national parliament

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

#### Constitution

Under Article 51 of the Constitution, the Dutch Parliament (the literal, official translation being States General: *Staten-Generaal*) is composed of the Lower House (or Second Chamber: *Tweede Kamer*) with 150 seats and the Upper House (or First Chamber: *Eerste Kamer*) with 75 seats. Both Chambers are elected on the basis of proportional representation, but the electoral procedures are different: the Members of the Lower House are directly elected by the Dutch electorate (defined in Article 54 of the Constitution), whereas the Members of the Upper House are elected by the Members of the Provincial Councils (*Provinciale Staten*) and the members of an electoral college elected in the Caribbean part of the Netherlands (Article 55 of the Constitution).

#### Implementing provisions

The Electoral Act<sup>339</sup> (*Kieswet*) provides for detailed provisions on the elections, the mandate and its ending (Chapters C and Q), the allocation of seats and the determination of the result (Chapters P and U), possible procedures to contest the election result, verification of credentials and the beginning of membership (Chapter V).

### 1.2.2. Denomination of the members of the Dutch Parliament

Pursuant to the provisions of the Constitution, Members of the Dutch Parliament are referred to as:

- *leden van de Staten-Generaal (Members of Parliament), specified as:*
  - *leden van de Tweede Kamer (Members of the Lower House), or*
  - *leden van de Eerste Kamer (Members of the Upper House).*

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

Under Article V 11 of the Electoral Act, membership of either House of Parliament begins "as soon as he has been notified of the decision on his admission."<sup>340</sup> To that effect, the elected Member first has to accept his election/nomination in writing within a delay - normally ten days<sup>341</sup> - from the notification of the result of the elections (Article V 2 Electoral Act) after which the House to which he has been elected will examine his credentials (Article 58 Constitution and Article V 4 Electoral Act). This scrutiny, conducted by a special House committee,<sup>342</sup> concerns inter alia the conditions for eligibility (Article 56 of the Constitution) and the incompatibilities flowing from the Constitution (Article 57) and from implementing legislation, the Parliament and European Parliament Incompatibilities Act (*Wet*

<sup>339</sup> Available at: <http://wetten.overheid.nl/>. An unofficial English translation is available at: <https://english.kiesraad.nl/publications/publications/2019/4/english-version-electoral-act/english-version-electoral-act>.

<sup>340</sup> Also see [http://www.parlement.com/id/vh8lnhrqeylo/aanvang\\_kamerlidmaatschap](http://www.parlement.com/id/vh8lnhrqeylo/aanvang_kamerlidmaatschap).

<sup>341</sup> When someone is appointed during the term of Parliament (for example when a Member has died or resigned), a term of 28 days is applied. See Article V 2 Electoral Act.

<sup>342</sup> For the Lower House, the "Committee on the Examination of the Credentials", according to article 19 of its Rules of Procedure (*Reglement van Orde van de Tweede Kamer*). An unofficial English translation of the Rules of Procedure is available at: <https://www.houseofrepresentatives.nl/services-public/rules-procedure>

*incompatibiliteiten Staten-Generaal en Europees Parlement*) of 20 April 1994. The final decision on admission is taken by the House during a plenary session.

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

Under Article Y 29(1) of the Electoral Act, Dutch Members of the European Parliament must notify the *Voorzitter van de Tweede Kamer* (President of the Lower House) of any incompatibility with their membership pursuant to national legislation. The President of the Lower House may also, *ex officio*, consider that such incompatibility exists. In the latter case, he must warn the Member concerned, who subsequently has eight days to refer the matter to the judgment of the Lower House (Article Y 29(2) and (3) of the Electoral Act). Under Rule 3 of the Rules of Procedure of the Lower House, which also applies to Members of the European Parliament, the House will only decide after a special committee has examined the matter.

The *Voorzitter van de Tweede Kamer* (President of the Lower House) is the competent authority to inform the European Parliament of a final decision of incompatibility (Article Y 28 of the Electoral Act).

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

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

#### 2.1.1. *Constitution*

Articles 71 and 119 of the Constitution read as follows:

##### Article 71

Members of the States General, Ministers, State Secretaries, and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing.

##### Article 119

Present and former members of the States General, Ministers and State Secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Lower House.

#### 2.1.2. *Implementing provisions*

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

### 2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the National Parliament consists in the freedom of speech of the Member of Parliament ("non-liability"), but there is no protection against arrest, taking into custody and prosecution ("immunity"), although there is a special procedure for certain category of offences. It cannot be waived.

#### 2.2.1. *Non-liability principle (Article 71 of the Constitution)*

The non-liability principle set out in Article 71 of the Constitution covers all procedures (civil, criminal, administrative and disciplinary) but is strictly limited to positions (oral and written) submitted to the States General, or its committees, during parliamentary sessions.

#### 2.2.2. *Immunity (Article 119 of the Constitution)*

Members of the Dutch Parliament do not enjoy immunity except for their non-liability under Article 71 Constitution. However, for a narrow category of offences, namely offenses related to the performance of a Member of Parliament's functions ("*ambtsmisdriven*"), Article 119 of the Constitution provides for a special procedure. For such offenses, present and former Members of Parliament shall be tried by the Supreme Court; moreover, these proceedings may only be instituted by Royal Decree or by a resolution of the Lower House. For criminal offences unrelated to the performance of a Member of Parliament's functions, normal procedures of criminal law apply.

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

Members of the Dutch Parliament do not enjoy immunity, except for their non-liability under Article 71 of the Constitution. Thus, under Article 9(1)(b) of the Protocol on the Privileges and Immunities of the European Union, Dutch Members of the European Parliament do not enjoy any immunity while in the Netherlands. However, they enjoy the limited protection against proceedings relating to crimes connected to their mandate offered by Article 119.

According to an official letter sent to the President of the European Parliament by the Permanent Representation of the Kingdom of the Netherlands to the European Union, the national competent authority to request a waiver of the immunity of Members of the European Parliament from other Member States is the *Minister van Justitie* (Minister of Justice), at the request of the *College van Procureurs-Generaal* (College of Prosecutors General).<sup>343</sup>

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<sup>343</sup> See letter received on 10 February 2014.

## AUSTRIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Austrian government*

### *Constitution*

The composition of the Austrian government is regulated by Article 69 of the Constitution,<sup>344</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>345</sup>.

State Secretaries (*Staatssekretäre*), who may be attached to the Federal Ministers according to Article 78 of the Constitution, are not members of the Federal Government.

### *Implementing provisions*

Detailed provisions on the organization of the Austrian government are established in Articles 69 to 78 of the Constitution and in the Federal law on the Federal Ministries.<sup>346</sup>

1.1.2. *Denomination of the members of the Austrian government*

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

- *Bundeskanzler/ Bundeskanzlerin (Federal Chancellor),*
- *Vizekanzler/Vizekanzlerin (Vice-Chancellor),*
- *Bundesminister/Bundesministerin (Federal Minister).*

<sup>344</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>.

An English version is available at: [https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=0300d17f-c100-41ed-850d-170bdad27883&Position=1&SkipToDocumentPage=True&Abfrage=ErV&Titel=federal+constitutional+law&Quelle=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=ERV\\_1930\\_1](https://www.ris.bka.gv.at/Dokument.wxe?ResultFunctionToken=0300d17f-c100-41ed-850d-170bdad27883&Position=1&SkipToDocumentPage=True&Abfrage=ErV&Titel=federal+constitutional+law&Quelle=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Dokumentnummer=ERV_1930_1).

<sup>345</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>346</sup> *Bundesgesetz über die Zahl, den Wirkungsbereich und die Einrichtung der Bundesministerien (Bundesministeriengesetz 1986 – BMG)*, BGBl. Nr. 76/1986, available at: <http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000873>

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

It follows from Article 72(1) and (2)<sup>347</sup> of the Constitution that the term of office of the members of the Federal Government begins on the day they render an affirmation to the Federal President, after signature of the instrument of appointment by the Federal President and counter-signature by the newly appointed Federal Chancellor.

## 1.2. Member of a national parliament

### 1.2.1 *Legal provisions on the composition of the Austrian Parliament*

#### *Constitution*

Austria has a bi-cameral system. According to Article 24 of the Constitution the legislative power of the Federation is exercised by the National Council (*Nationalrat*) jointly with the Federal Council (*Bundesrat*).

The National Council is elected by the citizens in accordance with the principles of proportional representation on the basis of equal, direct, personal, free and secret suffrage for men and women who, on the day of election, have completed their sixteenth year of life.<sup>348</sup>

The Federal Council is composed in proportion to the number of nationals in each *Land*. At the moment, it has 61 members<sup>349</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>350</sup>

#### *Implementing provisions*

According to § 1(1) of the National Council electoral regulations,<sup>351</sup> the National Council has 183 members.

Detailed provisions on organization and procedure of the National Council are established in Articles 24 to 33 of the Constitution and in the Federal law on the National Council's Standing Orders.<sup>352</sup>

<sup>347</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-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>348</sup> Article 26(1) of the Constitution provides that: "Der Nationalrat wird vom Bundesvolk auf Grund des gleichen, unmittelbaren, persönlichen, freien und geheimen Wahlrechtes der Männer und Frauen, die am Wahltag das 16. Lebensjahr vollendet haben, nach den Grundsätzen der Verhältniswahl gewählt."

<sup>349</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>350</sup> Article 35(1) of the Constitution.

<sup>351</sup> Bundesgesetz über die Wahl des Nationalrates (Nationalrats-Wahlordnung 1992 – NRWO), BGBl. Nr. 471/1992, available at: <http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10001199>

<sup>352</sup> Bundesgesetz vom 4. Juli 1975 über die Geschäftsordnung des Nationalrates (Geschäftsordnungsgesetz 1975, GOG), BGBl. Nr. 410/1975, available at: <http://www.parlament.gv.at/PERK/RGES/GOGNR/>. An English version is available at: <http://www.parlament.gv.at/ENGL/PERK/RGES/GOGNR/index.shtml>.

Detailed provisions on the organization and procedure of the Federal Council are established in Articles 34 to 37 of the Constitution and in the Federal Council's Standing Orders.<sup>353</sup>

### 1.2.2. Denomination of the members of the Austrian Parliament

According to the provisions mentioned in paragraph 2.1., members of the Austrian Parliament are the following:

- *Abgeordneter/Abgeordnete zum Nationalrat (member of the National Council)*
- *Bundesrat/Bundesrätin (member of the Federal Council).*<sup>354</sup>

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

The members of the National Council acquire their legal status on the day of the first sitting of the newly elected National Council which has to be convened by the Federal President within 30 days after the election.<sup>355</sup> If a new Member of Parliament follows another Member's mandate in the National Council due to the resignation of this Member, the mandate begins with the transmission of the ballot paper to the Secretarial Department of the National Council.

The members of the Federal Council acquire their legal status with their election by the Diet.<sup>356</sup> If a member of the Federal Council resigns, the substitute member steps *in ex lege*.

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

No particular national procedure has been adopted.<sup>357</sup>

<sup>353</sup> Kundmachung des Bundeskanzlers vom 5. Juli 1988 betreffend die Geschäftsordnung des Bundesrates, BGBl. Nr. 361/1988, available at: <http://www.ris2.bka.gv.at/GeltendeFassung.wxe?QueryID=Bundesnormen&Gesetzesnummer=10000976>

An English version (not updated) is available at: <http://www.parlament.gv.at/ENGL/PERK/RGES/GOBR/>.

<sup>354</sup> § 1(1) of the Federal Council's Standing Orders provides: "Die Mitglieder des Bundesrates werden von den Landtagen für die Dauer der Landtagsgesetzgebungsperioden gewählt und führen als solche den Titel „Bundesrat“ bzw. „Bundesrätin“. Mitglieder des Bundesrates, die eine Funktion gemäß den Bestimmungen dieser Geschäftsordnung ausüben, führen die geschlechtsspezifische Bezeichnung dieser Funktion. Vom Zeitpunkt der Wahl durch den Landtag an hat jedes Mitglied Sitz und Stimme im Bundesrat."

<sup>355</sup> Article 27(2) of the Constitution; in accordance with Article 57(6) of the Constitution, this is also the date on which the immunity of the previous members of the National Council ends. The reasons for an early end of the mandate are enumerated in § 2 GOG. In case of replacements, the legal status of the substitute starts with the appointment by the competent electoral authority. For further details see §§ 108 to 113 NRWO.

<sup>356</sup> Article 35(1) and (3) of the Constitution; § 1(1) of the Federal Council's Standing Orders. The reasons for an early end of the mandate are enumerated in § 3 of the Federal Council's Standing Orders.

<sup>357</sup> However, the national authority competent to communicate the names of newly elected Members of the European Parliament is the President of the National Council (*Präsident des Nationalrats*).



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

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

#### 2.1.1 *Constitution*

Articles 57 and 58 of the Constitution read as follows:

##### Article 57

(1) The members of the National Council may never be made responsible for votes cast in the exercise of their function. They may be made responsible on the grounds of oral or written utterances made in the course of their function only by the National Council; this does not apply to prosecution by authorities because of defamation or an offence punishable under the Federal Act on the Information Rules of the National Council and the Federal Council.

(2) The members of the National Council may be arrested on the ground of a criminal offence – except in the case of apprehension in the act of committing a crime – only with the consent of the National Council. Searches of National Council members' houses likewise require the National Council's consent.

(3) Otherwise, members of the National Council may only be prosecuted without the consent of the National Council on the ground of a criminal offence if it is manifestly not connected with the political activity of the deputy in question. The authority must however obtain a decision by the National Council on the existence of such a connection if the deputy in question or a third of the members of the standing committee entrusted with these matters so demands. In the case of such a demand, any act of prosecution by the authority has immediately to be ceased or stopped.

(4) In all these cases the consent of the National Council shall be deemed given if it has not decided on such a request by the authority competent for prosecution within eight weeks; for the purpose of adopting a resolution in due time, the President shall put such a request to the vote on the day but one before expiry of this period of time at the latest. The time when the National Council is not in session is not included in this period of time.

(5) In the case of an apprehension in the act of committing a crime, the authority has to announce the arrest occurred to the President of the National Council immediately. If the National Council, or when it is not in session the standing committee entrusted with these matters, so demands, the arrest must be suspended or the legal process as a whole be dropped.

(6) The immunity of the deputies ends with the day of the meeting of the newly elected National Council, that of functionaries of the National Council whose term of office extends beyond this date with the end of their term of office.

(7) The detailed provisions are established by the Federal law on the National Council's Standing Orders.<sup>358</sup>

## Article 58

The members of the Federal Council enjoy for the whole duration of their term of office the immunity of the members of the Diet which has delegated them.<sup>359</sup>

### 2.1.2. *Implementing provisions*

Specific provisions for the implementation of national parliamentary immunities are established by the Federal law on the National Council's Standing Orders (§ 10 and 80 GOG).

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

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

### 2.2.1. *Non-liability principle (Article 57(1) of the Constitution)*

The members of the National Council may never be held accountable for votes cast in the exercise of their profession and only be held accountable by the National Council for oral or written statements made in this profession. Non-liability – in Austria commonly referred to as "professional immunity" (*berufliche Immunität*) – covers all votes cast and all oral and written statements made by members of the National Council during the proceedings of the plenary and the committee meetings, during

<sup>358</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 abzuberechnen.

(4) Die Zustimmung des Nationalrates gilt in allen diesen Fällen als erteilt, wenn der Nationalrat über ein entsprechendes Ersuchen der zur Verfolgung berufenen Behörde nicht innerhalb von acht Wochen entschieden hat; zum Zweck der rechtzeitigen Beschlussfassung des Nationalrates hat der Präsident ein solches Ersuchen spätestens am vorletzten Tag dieser Frist zur Abstimmung zu stellen. Die tagungsfreie Zeit wird in diese Frist nicht eingerechnet.

(5) Im Falle der Ergreifung auf frischer Tat bei Verübung eines Verbrechens hat die Behörde dem Präsidenten des Nationalrates sogleich die geschehene Verhaftung bekanntzugeben. Wenn es der Nationalrat oder in der tagungsfreien Zeit der mit diesen Angelegenheiten betraute ständige Ausschuss verlangt, muss die Haft aufgehoben oder die Verfolgung überhaupt unterlassen werden.

(6) Die Immunität der Abgeordneten endet mit dem Tag des Zusammentrittes des neugewählten Nationalrates, bei Organen des Nationalrates, deren Funktion über diesen Zeitpunkt inausgeht, mit dem Erlöschen dieser Funktion.

(7) Die näheren Bestimmungen trifft das Bundesgesetz über die Geschäftsordnung des Nationalrates."

<sup>359</sup> "Die Mitglieder des Bundesrates genießen während der ganzen Dauer ihrer Funktion die Immunität von Mitgliedern des Landtages, der sie entsendet hat."

parliamentary inquiries and in written statements recorded in parliamentary documents. Oral statements of members of the National Council may only lead to a call to respect the topic (*Ruf zur Sache*, § 101 GOG) or to a call to respect the order (*Ruf zur Ordnung*, § 102 GOG).

Non-liability is a ground for exemption from prosecution which continues to apply after the end of the term of office of the members of the National Council. Since 2014, however, there are two exceptions: “professional immunity” **does not apply** to prosecution by authorities because of defamation (§ 297 Criminal Code)<sup>360</sup> or an offence punishable under § 18 of the Federal Act on the Information Rules of the National Council and the Federal Council.<sup>361</sup>

### 2.2.2. Immunity (Article 57(2) and (3) of the Constitution)

Immunity – in Austria commonly referred to as “extra-professional immunity” (*außerberufliche Immunität*) – covers acts punishable by a court, acts governed by administrative criminal law and acts amenable to prosecution under disciplinary law provided that they have been committed in connection with the political activities of the member in question. It does not provide protection against civil legal action.

Immunity is only a temporary impediment to prosecution, and it ceases to apply with the end of the term of office.

A member of the National Council may only be arrested with the consent of the National Council (even if the offence is manifestly not connected with the political activity of the member). The only exception to this rule applies to apprehensions in the act of committing a crime (*in flagrante delicto*), but even then the National Council may request the release of the member who is detained. The National Council's consent is likewise required for searches of National Council members' houses.

Otherwise, members of the National Council may be prosecuted without the latter's consent on the ground of a criminal offence only if it is manifestly not connected with the political activity of the member in question. Whether this is the case or not has to be assessed by the authority competent for prosecution. If the authority finds that the offence might be linked to the member's political activity it has to obtain the National Council's consent before starting or proceeding with prosecution. Furthermore, the authority must obtain a decision by the National Council on the existence of such a connection if the member in question or a third of the members belonging to the standing committee of the National Council entrusted with these matters (*Immunitätsausschuss*) so demands. If the National

<sup>360</sup> § 297 StGB (1) Wer einen anderen dadurch der Gefahr einer behördlichen Verfolgung aussetzt, daß er ihn einer von Amts wegen zu verfolgenden mit Strafe bedrohten Handlung oder der Verletzung einer Amts- oder Standespflicht falsch verdächtigt, ist, wenn er weiß (§ 5 Abs. 3), daß die Verdächtigung falsch ist, mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 720 Tagessätzen, wenn die fälschlich angelastete Handlung aber mit einer ein Jahr übersteigenden Freiheitsstrafe bedroht ist, mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

(2) Nach Abs. 1 ist nicht zu bestrafen, wer freiwillig die Gefahr einer behördlichen Verfolgung beseitigt, bevor eine Behörde etwas zur Verfolgung des Verdächtigten unternommen hat.

<sup>361</sup> § 18 InfGO (1) Wer entgegen den Bestimmungen dieses Bundesgesetzes eine ihm aufgrund dieses Bundesgesetzes zugänglich gewordene, nicht allgemein zugängliche klassifizierte Information der Stufe 3 oder 4 offenbart oder verwertet, deren Offenbarung oder Verwertung geeignet ist, die öffentliche Sicherheit, die Strafrechtspflege, die umfassende Landesverteidigung, die auswärtigen Beziehungen oder ein berechtigtes privates Interesse zu verletzen, ist vom Gericht mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.

(2) Medieninhaber, Herausgeber, Medienmitarbeiter und Arbeitnehmer eines Medienunternehmens oder Mediendienstes sind nicht als Beteiligte im Sinne von § 12 Strafgesetzbuch, BGBl. Nr. 60/1974, zu behandeln, soweit sich ihre Handlung auf die Entgegennahme, Auswertung oder Veröffentlichung der Information beschränkt.

An English Version is available at: <https://www.parlament.gv.at/ENGL/PERK/RGES/InfOG/index.shtml>

Council finds that there is no connection with the member's political activity the authority may proceed with prosecution; if, on the opposite, the National Council finds that there is such a connection it has to decide at the same time whether prosecution may proceed or not.

In all these cases the consent of the National Council shall be deemed given if it has not decided on a request by the authority within eight weeks. The time when the National Council is not in session is not included in this period of time.

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

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

In the case of national MPs, the authority empowered to request waiver of the parliamentary immunity is the authority competent to prosecute the member, i.e.: in the case of criminal proceedings, the competent court or prosecutor's office, in the case of administrative proceedings the competent authority and in the case of disciplinary proceedings the competent disciplinary board.

According to an official letter sent to the President of the European Parliament by the Permanent Representation of the Republic of Austria to the European Union, requests for waiver of the immunity will be forwarded by the Federal Ministry of Justice (*Bundesministerium für Justiz*).<sup>362</sup>

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<sup>362</sup> See letter received on 8 May 2013.

## POLAND

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Polish government*

### *Constitution*

The composition of the government in Poland is established by the first paragraph of Article 147 of the Constitution<sup>363</sup> which reads as follows: "The Council of Ministers shall be composed of the President of the Council of Ministers (Prime Minister) and ministers."<sup>364</sup> Additionally, the second paragraph of the **said article states that "Vice-presidents of the Council of Ministers (Deputy Prime Ministers) may also be appointed within the Council of Ministers<sup>365</sup>", while the fourth adds that "The presidents of committees specified in statutes may also be appointed to membership in the Council of Ministers."<sup>366</sup>**

### *Implementing provisions*

The above-mentioned provisions of the Constitution are implemented by the Act of 8 August 1996 on the Council of Ministers (*Ustawa z dnia 8 sierpnia 1996 r. o Radzie Ministrów*), as well as the Council's Rules of Procedure (*Uchwała Nr 190 Rady Ministrów z dnia 29 października 2013 r. Regulamin pracy Rady Ministrów*).

1.1.2. *Denomination of the members of the Polish government*

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

- *Prezes Rady Ministrów (President of the Council of Ministers),*
- *Wiceprezes Rady Ministrów (Vice-president of the Council of Ministers),*
- *Minister (Minister),*
- *Przewodniczący określonego w ustawie komitetu (The President of Committee (specified in statute); in practice statutes do not specify any such committee).*

<sup>363</sup> The original version, as well as English, French and German translations, are available at: <http://www.sejm.gov.pl/prawo/konst/konst.htm>.

<sup>364</sup> "Rada Ministrów składa się z Prezesa Rady Ministrów i ministrów."

<sup>365</sup> „W skład Rady Ministrów mogą być powoływani wiceprezesi Rady Ministrów”.

<sup>366</sup> "W skład Rady Ministrów mogą być ponadto powoływani przewodniczący określonych w ustawach komitetów."

Contrary to some other EU Member States, the Secretaries and Undersecretaries of State (*Sekretarz i Podsekretarz Stanu*) are not official members of the Council of Ministers;<sup>367</sup> however, their position is incompatible with the mandate of Member of European Parliament under national law.<sup>368</sup>

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

Under the terms of Article 154, paragraph one, second sentence, of the Constitution ("The President of the Republic shall, within 14 days of the first sitting of the *Sejm* or acceptance of the resignation of the previous Council of Ministers, appoint a Prime Minister together with other members of a Council of Ministers and accept the oaths of office of members of such newly appointed Council of Ministers"),<sup>369</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.

## 1.2. Member of a national parliament

### 1.2.1. *Legal provisions on the composition of the Polish Parliament*

#### *Constitution*

The composition of the Parliament in Poland is established by the first paragraph of Article 95(1) of the Constitution which reads as follows: "Legislative power in the Republic of Poland shall be exercised by the *Sejm* (Chamber of Deputies) and the *Senat* (Senate)."<sup>370</sup>

The following Articles 96 and 97 of the Constitution set the number of the Deputies and Senators at, respectively, four hundred sixty and one hundred.

#### *Implementing provisions*

The Election Code of 5 January 2011 (*Kodeks wyborczy, Dz. U. z dnia 31 stycznia 2011 r.*<sup>371</sup>) 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.

<sup>367</sup> According to Article 37(1) of the Act of 8 August 1996 on the Council of Ministers: "The Minister exercises his tasks with the help of a Secretary and Undersecretaries of State as well as his political cabinet." (*Minister wykonuje swoje zadania przy pomocy sekretarza i podsekretarza stanu oraz gabinetu politycznego ministra*).

<sup>368</sup> See Article 334(2) of the Election Code, which states that "A Member of the European Parliament may not be simultaneously, in the Republic of Poland, a member of the Council of Ministers nor a Secretary of the State and shall not occupy any post nor fulfill functions which, in accordance with the provisions of the Constitution of the Republic of Poland, may not be simultaneously performed with the mandate of a deputy to the *Sejm* or a senator." (*Posel do Parlamentu Europejskiego nie moze byc jednoczesnie w Rzeczypospolitej Polskiej czlonkiem Rady Ministrów ani sekretarzem stanu oraz zajmowac stanowiska lub pelnic funkcji, których, stosownie do przepisów Konstytucji Rzeczypospolitej Polskiej albo ustaw, nie można łączyc ze sprawowaniem mandatu posła na Sejm albo senatora*).

<sup>369</sup> The so-called "basic procedure" of forming the Council of Ministers, which - in case of failure - can be followed by two "backup" procedures.

"Prezydent Rzeczypospolitej powołuje Prezesa Rady Ministrów wraz z pozostałymi członkami Rady Ministrów w ciągu 14 dni od dnia pierwszego posiedzenia Sejmu lub przyjęcia dymisji poprzedniej Rady Ministrów i odbiera przysięgę od członków nowo powołanej Rady Ministrów."

<sup>370</sup> "Władzę ustawodawczą w Rzeczypospolitej Polskiej sprawują Sejm i Senat."

<sup>371</sup> Available (Polish only) at: <https://wybory.gov.pl/sejmsenat2019/en/kodeks/550> and [https://pkw.gov.pl/309\\_Kodeks\\_wyborczy](https://pkw.gov.pl/309_Kodeks_wyborczy)

The Act of 9 May 1996 on the exercise of the mandate of Deputy or Senator (*Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu Posła i Senatora*) specifies the conditions appropriate to the effective discharge of their duties by the Deputies and Senators, as well as for defense of their rights resulting from the performance of their mandate.

More detailed provisions concerning the structure and the organisation of the *Sejm* and of the *Senat* are contained in their respective rules of procedure (*Regulaminy*).

### 1.2.2. Denomination of the members of the Polish Parliament

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

- *Posel na Sejm (Deputy)/ poslowie (Deputies),*
- *Senator (Senator)/ senatorowie (Senators).*

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

Under the terms of Article 98(1), second sentence, of the Polish Constitution: "The term of office of the *Sejm* and *Senat* shall begin on the day on which the *Sejm* assembles for its first sitting and shall continue until the day preceding the assembly of the *Sejm* of the succeeding term of office."<sup>372</sup>

The Deputies and Senators are covered by parliamentary immunity starting from the day of announcement of the results of the elections.

Article 104(2) of the Constitution provides for an obligation for all Deputies and (jointly with Article 108) Senators to take an oath in the presence of the *Sejm* or *Senat* - this is the moment of the commencement of the performance of the mandate (i.e. exercise of parliamentary duties and obligations). According to Article 104(3) "A refusal to take the oath shall be deemed to be a renunciation of the mandate".<sup>373</sup>

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

According to Article 366(4) of the Election Code of 5<sup>th</sup> January 2011 the *Marszałek Sejmu* (Marshal of the *Sejm*) is the national authority responsible for notifying immediately to the President of the European Parliament the forfeiture of the seat of a Member of the European Parliament arising from the election (or later assignment) to the *Sejm* or the *Senat* of the Republic of Poland, or from his/her appointment as a Member of the government.<sup>374</sup>

<sup>372</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."

<sup>373</sup> "Odmowa złożenia ślubowania oznacza zrzeczenie się mandatu."

<sup>374</sup> "O utracie mandatu posła do Parlamentu Europejskiego Marszałek Sejmu niezwłocznie zawiadamia Przewodniczącego Parlamentu Europejskiego, z zastrzeżeniem art. 367."

Pursuant to Article 364(3) of the Election Code, a Member of the European Parliament, who during his term in office was elected to the *Sejm* or *Senat*, shall forfeit his or her mandate to the European Parliament on the day of the elections (in practice: the day of the publication of the results of elections).<sup>375</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 European Parliament on the day of the decision of *Marszałek Sejmu* on assigning the national mandate.<sup>376</sup>

It should also be noted that pursuant to Article 364(2) of the Election Code, the seat of a Member of the European Parliament who, on the day of elections, was holding an office or exercising a function **incompatible with MEP's mandate (minister, secretary of state, etc.)**, shall become vacant if this Member fails to submit to *Marszałek Sejmu*, within fourteen days following the announcement of the results of the elections to the European Parliament, a declaration on his or her resignation from that office or function.<sup>377</sup>

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<sup>375</sup> "Utrata mandatu posła do Parlamentu Europejskiego, w przypadku, o którym mowa w § 1 pkt 2a i 3, następuje z dniem powołania lub wybrania."

<sup>376</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>377</sup> "Utrata mandatu posła do Parlamentu Europejskiego, w przypadku, o którym mowa w § 1 pkt 2, następuje, jeżeli nie złoży on Marszałkowi Sejmu, w terminie 14 dni od dnia ogłoszenia przez Państwową Komisję Wyborczą wyników wyborów do Parlamentu Europejskiego, oświadczenia o złożeniu rezygnacji z zajmowanego stanowiska lub pełnionej funkcji."



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

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

#### 2.1.1. Constitution

The parliamentary immunities are granted to the Members of the Polish Parliament (*Sejm* and Senate) by Articles 105 and 108 of the Constitution which read as follows:

#### Article 105

1. *A Deputy shall not be held accountable for his activity performed within the scope of a Deputy's mandate during the term thereof nor after its completion. Regarding such activities, a Deputy can only be held accountable before the Sejm and, in a case where he has infringed the rights of third parties, he may only be proceeded against before a court with the consent of the Sejm.*
2. *From the day of announcement of the results of the elections until the day of the expiry of his mandate, a Deputy shall not be subjected to criminal accountability without the consent of the Sejm.*
3. *Criminal proceedings instituted against a person before the day of his election as Deputy, shall be suspended at the request of the Sejm until the time of expiry of the mandate. In such instance, the statute of limitation with respect to criminal proceedings shall be extended for the equivalent time.*
4. *A Deputy may consent to be brought to criminal accountability. In such instance, the provisions of paragraphs 2 and 3 shall not apply.*
5. *A Deputy shall be neither detained nor arrested without the consent of the Sejm, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. Any such detention shall be immediately communicated to the Marshal of the Sejm, who may order an immediate release of the Deputy.*
6. *Detailed principles of and procedures for bringing Deputies to criminal accountability shall be specified by statute.<sup>378</sup>*

#### Article 108

The provisions of Articles 103-107 shall apply, as appropriate, to Senators.

<sup>378</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.

### 2.1.2. *Implementing provisions*

Detailed principles and procedures as provided for in Article 105(6) of the Constitution have been enacted in the Act of 9 May 1996 on the exercise of the mandate of Deputy or Senator (*Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu Posła i Senatora*).<sup>379</sup> The internal procedures of *Sejm* and *Senat* in dealing with questions of immunity are contained in their respective rules of procedure (*Regulaminy*).

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

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

### 2.2.1. *Non-liability principle (Article 105 (1) of the Constitution)*

Pursuant to Article 105(1) of the Constitution, Members of the Polish Parliament may not be held liable under civil or criminal law for activities carried out as a part of the parliamentary mandate; for such activities, they may only be held accountable in front of their Chamber<sup>380</sup> or, if they infringed on the rights of a third party, with the consent of that Chamber. This immunity lasts for an unlimited period.

Article 6(2) of the Act on the exercise of the mandate of Deputy or Senator lists the following activities as falling within the scope of the non-liability principle: tabling proposals, speeches and votes during sessions of Parliament and other parliamentary meetings, as well as other activities inseparably connected with the performance of their duties.<sup>381</sup>

Waiver of the non-liability principle is only possible in the event of an infringement of the rights of third parties (e.g. defamation and slander), in accordance with Article 6a of the abovementioned Act, which provides that "A deputy or senator who, in taking up actions within the performance of the mandate, violates the rights of third persons may be held accountable to law only with the consent of the *Sejm* or Senate."<sup>382</sup>

### 2.2.2. *Immunity (Article 105 (2), (3), (4) and (5) of the Constitution)*

Pursuant to Article 105, paragraphs 2, 3 and 4 of the Constitution, Deputies and Senators cannot be brought to criminal liability without their own consent or the consent of *Sejm* or *Senat*, unless the

<sup>379</sup> Available (Polish only) at: <http://www.sejm.gov.pl/prawo/mandat/kon6.htm>  
<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19960730350>

<sup>380</sup> The scope of accountability before the *Sejm* is determined by its rules of procedure, for instance in the rules on the ethical responsibility of Deputies (with sanctions such as "reprimanding").

<sup>381</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." The last expression ("other activities inseparably connected with the performance of their duties") is interpreted narrowly: it only includes activities which may be exclusively performed by a Deputy (such as e.g. representing the *Sejm* during proceedings before the Constitutional Tribunal).

<sup>382</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."

criminal proceedings were instituted before their election to Parliament. In this case, however, the Parliament can request the suspension of such proceedings. This immunity lasts, in accordance with the Constitution, from the day of announcement of the results of the elections until the day of the expiry of the mandate of the Member of Parliament. In accordance with Article 105(3) of the Constitution and 7a of the Act on the exercise of the mandate of Deputy or Senator, the statute of limitation in criminal proceedings relating to activities covered by immunity is extended for the equivalent time.<sup>383</sup>

Pursuant to Article 105(5) of the Constitution, Members of Polish Parliament may not be detained nor arrested during their term of office without the consent of *Sejm* or *Senat*, with the exception of cases in which they are caught *in flagrante delicto* and where detention is essential for securing the proper course of proceedings. Even in such cases, however, the *Sejm* or the *Senat* (the Marshal of the Chamber) must be informed of the Member's detention and may always order his/her immediate release. In accordance with Article 10(2) of the Act on the exercise of the mandate of Deputy or Senator, the prohibition of detention or arrest affects all forms of deprivation or restraint of personal liberty of the Deputy or Senator by the enforcement authorities.<sup>384</sup>

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

According to the established practice, the provisions governing the requests for waiver of the immunity of Members of the national Parliament apply, *mutatis mutandis*, with regard to the request for waiver of the immunity of the Polish Members of the European Parliament in the case of proceedings launched in the territory of Poland.

Poland has notified that the Prosecutor General (Head of the Public Prosecution Office in Poland – *Prokurator Generalny*) is the competent authority to request a waiver of the immunity of a Polish Member of the European Parliament both in the case when the offence is prosecuted publicly and privately.<sup>385</sup> Through this notification Poland responded positively to the demands expressed by the European Parliament in its resolution of 24 April 2009 on parliamentary immunity in Poland (2008/2232(INI))<sup>386</sup>.

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<sup>383</sup> "Przedawnienie w postępowaniu karnym czynu objętego immunitetem nie biegnie w okresie korzystania z immunitetu."

<sup>384</sup> "Zakaz zatrzymania [...] obejmuje wszelkie formy pozbawienia lub ograniczenia wolności osobistej posła lub senatora przez organy stosujące przymus."

<sup>385</sup> See email of 21 March 2014.

<sup>386</sup> Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-316>.

## PORTUGAL

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Portuguese government*

### *Constitution*

The composition of the government in Portugal is established by Article 183(1) of the Constitution,<sup>387</sup> which reads as follows: "The Government comprises the Prime Minister, the Ministers and the Secretaries and Under Secretaries of State." Besides, paragraph 2 of the same article states that "The Government may include one or more Deputy Prime Ministers".<sup>388</sup>

1.1.2. *Denomination of the members of the Portuguese government*

Pursuant to the provisions mentioned in paragraph 1.1.1., Members of the government of Portugal are the following:

- *Primeiro/a Ministro/a (Prime Minister),*
- *Vice -Primeiro Ministro/s (Deputy-Prime Minister); Vice -Primeiro Ministros (Deputy-Prime Ministers), if any,*
- *Ministro/a (Minister); Ministros/Ministras (Ministers),*
- *Secretário/a de Estado (Secretary of State); Secretários/Secretárias de Estado (Secretaries of State),*
- *Subsecretário/a de Estado (Under Secretary of State); Subsecretários/Subsecretárias de Estado (Under Secretaries of State).*

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

Under the terms of Article 186 of the Constitution, the date of the beginning of the term of office of the members of the government shall be considered the date of their installation by the President of the Republic.<sup>389</sup>

<sup>387</sup> The Portuguese Constitution is available at: <http://www.parlamento.pt/Legislacao/Paginas/ConstituicaoRepublicaPortuguesa.aspx>. An English version of the Constitution is available at:

<http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>.

<sup>388</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."

<sup>389</sup> "Artigo 186.º Início e cessação de funções. 1. As funções do Primeiro-Ministro iniciam-se com a sua posse e cessam com a sua exoneração pelo Presidente da República. 2. As funções dos restantes membros do Governo iniciam-se com a sua posse e cessam com a sua exoneração ou com a exoneração do Primeiro-Ministro. 3. As funções dos Secretários e Subsecretários de Estado cessam ainda com a exoneração do respectivo Ministro. 4. Em caso de demissão do Governo, o Primeiro-Ministro do Governo cessante é exonerado na data da nomeação e posse do novo Primeiro-Ministro. 5. Antes da apreciação do seu programa pela Assembleia da República, ou após a sua demissão, o Governo limitar-se-á à prática dos actos estritamente necessários para assegurar a gestão dos negócios públicos. "

## 1.2. Member of a national parliament <sup>390</sup>

### 1.2.1. Legal provisions on the composition of the Portuguese Parliament

#### Constitution

The composition of the Portuguese Parliament - the *Assembleia da República* (Assembly of the Republic) - is established in Article 148 of the Constitution which reads as follows: "The Assembly of the Republic shall have a minimum of one hundred and eighty and a maximum of two hundred and thirty Members, as laid down by electoral law."<sup>391</sup>

#### Implementing provisions

Article 13(1) of Law 14/79 of 16 May 1976 defining the Electoral Regime for the Assembly of the Republic (*Lei Eleitoral para a Assembleia da República*) specifies that the Assembly of the Republic is composed of 230 Members: "The total number of Members of the Assembly of the Republic is two hundred and thirty".<sup>392</sup>

### 1.2.2. Denomination of the Members of the Portuguese Parliament

Pursuant to the provisions mentioned in point 1.2.1, Members of the Portuguese Parliament are named

- *Deputado* (Member of Parliament); *Deputados* (Members of Parliament).

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

Under the terms of Article 153(1) of the Constitution<sup>393</sup> and Article 2(1) of the Statute of Members of the Assembly of the Republic (*Estatuto dos Deputados*)<sup>394</sup>, Deputies officially begin their term of office on the date of the first sitting of the Parliament which takes place after the elections.

## 1.3. National authority competent to communicate 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.<sup>395</sup>

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.

<sup>391</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>392</sup> "O número total de deputados é de 230". The Assembly of the Republic Electoral Law is available in English at: <http://www.en.parlamento.pt/Legislation/LeiEleitoralARen.pdf>.

<sup>393</sup> "Article 153 (Beginning and end of term of office)

1. Without prejudice to the suspension or termination of any individual mandate, terms of office of Members of the Assembly of the Republic begin with the first sitting of the Assembly following elections and end with the first sitting following the subsequent elections."

<sup>394</sup> See Article 2 of Law 7/93 of 1 March 1993, whose text is identical to Article 153(1) of the Constitution mentioned before. An English version of this Law is available at: <http://www.en.parlamento.pt/Legislation/StatuteofMembers.pdf>.

<sup>395</sup> However, it must be noted that the authority competent to communicate to the European Parliament the names of newly elected Members of the European Parliament is the *Comissão Nacional de Eleições* (National Electoral Commission).

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

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

#### 2.1.1. Constitution

In Portugal, the parliamentary immunities are granted to Members of the Assembly of the Republic by Article 157 of the Constitution, which reads as follows:

#### “Article 157 (Immunities)

1. Members of the Assembly of the Republic are not civilly or criminally liable for or subject to disciplinary proceedings in relation to their votes or the opinions they express in the exercise of their functions.
2. Members of the Assembly of the Republic may not appear as makers of declarations or accused **persons without the Assembly's authorisation**. In the latter case, the Assembly shall obligatorily decide in favour of authorisation when there are strong indications of the commission of a wilful crime punishable by imprisonment for a maximum term of more than three years.
3. No Member of the Assembly of the Republic may be detained, arrested or imprisoned without the **Assembly's authorisation, save for a wilful crime punishable by the type of prison term referred to by the previous paragraph and *in flagrante delicto***.
4. In the event that criminal proceedings are brought against any Member of the Assembly of the Republic and he is definitively charged, the Assembly shall decide whether or not he must be suspended so that the proceedings can take their course. When the crime is of the type referred to in the previous paragraphs, the Assembly shall obligatorily decide to suspend the Member.”<sup>396</sup>

#### 2.1.2. Implementing provisions

The implementing rules of Article 157 of the Constitution are contained in articles 10 and 11 of the Statute of Members of the Assembly of the Republic.

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<sup>396</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, sendo obrigatória a decisão de suspensão quando se trate de crime do tipo referido nos números anteriores.”

## 2.2. Scope and content of national parliamentary immunities

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

### 2.2.1. *Non-liability principle (Article 157.1 of the Constitution)*

Pursuant to Article 157(1) of the Constitution, Members of Parliament may not be required to give account of any opinions expressed or votes cast in the performance of their duties. Deputies are therefore exempted from any civil, criminal, or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities, as expressly clarified by Article 10 of the Statute of Members. This exemption continues to apply after the end of their term of office.

### 2.2.2. *Immunity (Article 157.2, 157.3 and 157.4 of the Constitution)*

Pursuant to Article 157(2) of the Constitution, the authorisation of the Parliament is required in order for a Member to appear as maker of declarations or as accused persons. However, the same paragraph specifies that the authorisation must be obligatorily granted if there is strong evidence that a wilful crime has been committed, should this crime be punishable with imprisonment for a maximum term of more than three years.

According to paragraph 3, no Member may be detained, arrested or imprisoned without the **Assembly's authorisation, except when found *in flagrante delicto*** committing a wilful crime punishable with a maximum sentence of more than three years' imprisonment.

According to paragraph 4, if criminal proceedings are brought against a Member and he is definitively charged, the Assembly shall decide whether or not the Member shall be suspended. In the event that the charges concern a crime of the type mentioned above, suspension is obligatory. In any case, Parliament may limit the length of **the Member's suspension to the time which, under the circumstances, it deems most fit to both the exercise of the Member's mandate and the furtherance of the criminal proceedings.**<sup>397</sup>

The Statute of Members, in its Article 11, further specifies the procedure to be followed in the case of a request to waive the immunity of a Member. The request is transmitted by the competent judge to the President of the Assembly of the Republic and is then examined by the competent committee, which presents a draft report to the Plenary. The decision as to whether to waive the immunity is taken by the Plenary, after hearing the Member concerned. The statute of limitation in criminal proceedings is suspended until a decision on the request is taken and, if the authorization is refused, until the Member continues to enjoy the immunity.<sup>398</sup>

<sup>397</sup> Article 11(3)(b) of the Statute of Members provides that: "A Assembleia pode limitar a suspensão do Deputado ao tempo que considerar mais adequado, segundo as circunstâncias, ao exercício do mandato e ao andamento do processo criminal."

<sup>398</sup> Article 11, paragraphs 5, 6 and 7, of the Statute of Members provides as follows:

"5 O pedido de autorização a que se referem os números anteriores é apresentado pelo juiz competente em documento dirigido ao Presidente da Assembleia da República e não caduca com o fim da legislatura, se o Deputado for eleito para novo mandato.

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

With regard to the authority competent to transmit to the European Parliament a request to waive the immunity of a Portuguese Member, the same rule that applies to the Members of the Assembly of the Republic should be followed, as expressly provided by Article 1 of Law 14/87 defining the Electoral Regime for Elections to the European Parliament.<sup>399</sup> Consequently, it is up to the competent judge in the procedure to submit such request to the President of the Assembly of the Republic, in accordance with Article 11(5) of the Statute of Members.<sup>400</sup>

In an official letter sent to the President of the European Parliament,<sup>401</sup> the Representation of the Portuguese Republic to the European Union confirmed this interpretation, clarifying that a request to waive immunity is to be transmitted by the competent judge.

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6 As decisões a que se refere o presente artigo são tomadas pelo Plenário, precedendo audição do Deputado e parecer da comissão competente.

7 O prazo de prescrição do procedimento criminal suspende-se a partir da entrada, na Assembleia da República, do pedido de autorização formulado pelo juiz competente, nos termos e para os efeitos decorrentes da alínea a) do n.º 1 do artigo 120.º do Código Penal, mantendo-se a suspensão daquele prazo caso a Assembleia delibere pelo não levantamento da imunidade e enquanto ao visado assistir tal prerrogativa."

<sup>399</sup> Article 1 of Law 14/87 provides as follows: "The election of the Members of the European Parliament elected in Portugal is governed by this law, by the applicable Community rules and, in questions not covered by them or in which the said rules refer back to the national legislations, by the rules that govern the election of Members of the Assembly of the Republic, after the necessary adaptations.". Please see: [http://www.cne.pt/sites/default/files/dl/legis\\_lepe\\_2014.pdf](http://www.cne.pt/sites/default/files/dl/legis_lepe_2014.pdf)

<sup>400</sup> This rule provides that "The competent judge shall submit the authorisation request referred to by the previous paragraphs in the form of a document addressed to the President of the Assembly of the Republic, and the said request shall not lapse at the end of the legislature if the Member in question is elected to a new term of office."

<sup>401</sup> See letter dated 23 January 2014.



## ROMANIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Romanian government*

### *Constitution*

The composition of the government in Romania is established by paragraph 3 of Article 102 of the Constitution which states: "The government consists of the Prime Minister, Ministers, and other members as established by an organic law".<sup>402</sup>

### *Legislative provisions*

The above-mentioned provision of the Constitution is further specified by the following legislative act: "*Legea nr. 90 din 26 martie 2001 privind organizarea si functionarea Guvernului Romaniei si a ministerelor*" (Law No 90 of 26 March 2001 on the organization and functioning of the Romanian government and ministries<sup>403</sup>), as subsequently amended, in particular Articles 3 and 22 (1).

1.1.2. *Denomination of the members of the Romanian government*

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

- *Prim-ministru (Prime Minister),*
- *Ministru (Minister),*
- *Alti membri (Other members):*<sup>404</sup>
  - *a) Viceprim-ministri (Deputy Prime Ministers),*
  - *b) Ministri de Stat (Ministers of State),*
  - *c) Ministri delegati cu insarcinari speciale pe langa primul ministru (delegate ministers with special assignments to the Prime Minister).*

<sup>402</sup> "Guvernul este alcătuit din prim-ministru, miniștri și alți membri stabiliți prin lege organică". The text of the Constitution of Romania is available at: <http://www.cdep.ro/pls/dic/site.page?id=371&par1=3&idl=1>.

An English translation is available at: <http://www.cdep.ro/pls/dic/site.page?id=339&idl=2>.

The website of the Romanian government, including the full list of the Members of the Government, is the following: <http://www.gov.ro/>.

<sup>403</sup> An updated version of this law, in Romanian, is available at: <http://legislatie.just.ro/Public/DetaliiDocument/27685>.

<sup>404</sup> Article 3, paragraph 2 of Law No 90 of 26 March 2001, as amended, states: "The Government may also be made of deputy prime ministers, Ministers of State, as well as delegate ministers with special assignments to the Prime Minister, registered on the list that the Government presents to the Parliament for the vote of confidence" (*Din Guvern pot face parte: viceprim-ministri, miniștri de stat, precum și miniștri-delegați cu însărcinări speciale pe lângă primul-ministru, prevăzuți în lista Guvernului prezentată Parlamentului pentru acordarea votului de încredere*).

Additionally, the *Secretarul General al Guvernului* (The Secretary General of the Government<sup>405</sup>), who is part of the administrative apparatus of the Government (in accordance with Article 20 of Law 90/2001), may have the rank of minister.

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

Under the terms of Article 104, paragraph 2 of the Constitution<sup>406</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.

## 1.2. Member of a national parliament

### 1.2.1. *Legal provisions on the composition of the Romanian Parliament*

#### *Constitution*

The composition of the Parliament in Romania is established by paragraph 2 of Article 61 of the Constitution which reads as follows: "The Parliament consists of the Chamber of Deputies and the Senate."<sup>407</sup>

Article 62, paragraphs 1 and 3, of the Constitution establishes that the Chamber of Deputies and the Senate are elected by universal, equal, direct, secret and free suffrage, in accordance with the electoral law. The number of Deputies and Senators is established by the electoral law, in proportion to the population of Romania.<sup>408</sup>

#### *Legislative provisions and rules of procedure*

The provisions of the Constitution are further specified by a legislative act: "Legea nr. 35 din 13 martie 2008 pentru alegerea Camerei Deputaţilor şi a Senatului şi pentru modificarea şi completarea Legii nr. 67/2004 pentru alegerea autorităţilor administraţiei publice locale, a Legii administraţiei publice locale nr. 215/2001 şi a Legii nr. 393/2004 privind Statutul aleşilor locali (Law No 35 of 13 March 2008 for the Election of the Chamber of Deputies and the Senate and for amending and supplementing Law nr 67/2004 for the election of local public authorities, Law of local public administration nr 215/2001, and

<sup>405</sup> Article 22, paragraph 1 of the Law No 90 of 23 March 2001 states: "The Government has a General Secretariat, led by the Secretary General of the Government, who may have the rank of minister, helped by one or several deputy secretaries general, who may have the rank of secretary of state, appointed by a decision of the Prime Minister" (*Guvernul are un Secretariat General condus de secretarul general al Guvernului, care poate avea rang de ministru, ajutat de unul sau mai mulţi secretari generali adjuncţi, care pot avea rang de secretar de stat, numiţi prin decizie a primului-ministru*).

<sup>406</sup> Article 104, paragraph 2 of the Constitution reads as follows: "The Prime Minister, the Ministers and other members of the Government shall individually take an oath before the President of Romania, as provided under Article 82. The Government as a whole and each of its members shall exercise the mandate from the date of taking the oath" (*Primul-ministru, miniştrii şi ceilalţi membri ai Guvernului vor depune individual, în faţa Preşedintelui României, jurământul de la articolul 82. Guvernul în întregul său şi fiecare membru în parte îşi exercită mandatul, începând de la data depunerii jurământului*).

<sup>407</sup> "Parlamentul este alcătuit din Camera Deputaţilor şi Senat."

<sup>408</sup> "Camera Deputaţilor şi Senatul sunt alese prin vot universal, egal, direct, secret şi liber exprimat, potrivit legii electorale. [...] Numărul deputaţilor şi al senatorilor se stabileşte prin legea electorală, în raport cu populaţia ţării."

Law nr 393/2004 on the Statute of local representatives), as subsequently amended.<sup>409</sup> Under the terms of Article 5, paragraphs 2 and 3, of the above mentioned law, the number of Deputies is fixed to one Deputy for every 70 000 inhabitants, whilst the number of Senators is of one Senator for every 160 000 inhabitants.

The organization and functioning of the Chamber of Deputies and of the Senate are regulated by their own Rules of Procedure.<sup>410</sup>

### 1.2.2. *Denomination of the members of the Romanian Parliament*

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

- *Deputați (Deputies),*
- *Senatori (Senators).*

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

Under the terms of Article 63, paragraph 3 of the Romanian Constitution, the newly elected Parliament meets upon convening by the President of Romania, within twenty days from the elections. According to Article 70, paragraph 1 of the Constitution: "Deputies and Senators shall begin the exercise of their office on the day the Chamber whose members they are has lawfully met, on condition the election is validated and the oath is taken." The form of the oath shall be regulated by an organic law."<sup>411</sup>

### *Chamber of Deputies*

Under the terms of Article 1 of the Rules of Procedure of the Chamber of Deputies, the Chamber lawfully meets on the date and the time fixed by the President of Romania, in compliance with the provisions of the Constitution.

According to the Rules of Procedure of the Chamber of Deputies, for the validation of mandates of the newly elected Deputies the Chamber elects in its first sitting a Committee comprised of 30 Deputies, which reflects the political configuration of the Chamber of Deputies, as results from the establishment of the Parliamentary Groups. The Validation Committee elects a President, a Vice-President and a Secretary, who compose the Committee Bureau. The Validation Committee Bureau verifies the election files received from "*Biroul Electoral Central*" (Central Election Bureau). The Validation Committee draws up a report mentioning the Deputies for whom validation, invalidation, or, as the case may be, deferral of the validation of the mandate is being suggested, with a brief reasoning of the proposals for invalidation or deferral. The Chamber of Deputies rightfully convenes on the fifth day after the setting up of the Validation Committee, in order to debate the latter's report. The Chamber of Deputies is lawfully established after the validation of two thirds of the Deputies' mandates and after the Deputies

<sup>409</sup> An updated version is available at: <http://legislatie.just.ro/Public/DetaliuDocument/90301>.

<sup>410</sup> The Rules of Procedure of both the Chamber of Deputies and the Senate are available at: <http://www.cdep.ro/pls/dic/site.page?id=233&idl=2> and [https://www.senat.ro/pagini/reg\\_sen/Reg\\_Senat\\_Noiembrie2018/REGULAMENTUL\\_SENATULUI\\_Rrepublicare\\_Nov\\_2018.htm](https://www.senat.ro/pagini/reg_sen/Reg_Senat_Noiembrie2018/REGULAMENTUL_SENATULUI_Rrepublicare_Nov_2018.htm).

<sup>411</sup> "Deputații și senatorii intră în exercițiul mandatului la data întrunirii legale a Camerei din care fac parte, sub condiția validării alegerii și a depunerii jurământului. Jurământul se stabilește prin lege organică."

in question have taken oath.<sup>412</sup> Deputies who refuse to take oath are deemed invalidated. Refusal to take oath has to be ascertained by the Chairman.

### *Senate*

Under the terms of Article 3 of the Rules of Procedure of the Senate the newly elected Senate convenes, in compliance with Article 63(3) of the Romanian Constitution, upon notice of the President of Romania, within twenty days from the elections. The same procedure used for the validation of the mandate of Deputies is used for the validation of the mandate of the newly elected Senators. According to Article 14 of its Rules of Procedure, the Senate is legally established after the validation of three fourths of the mandates of the total number of Senators and after these ones have taken the oath.

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

Pursuant to Law No 33 of 16 January 2007, on the elections for the European Parliament,<sup>413</sup> as subsequently amended, *Autoritatea Electorală Permanentă* (the Permanent Electoral Authority) is the Romanian authority in charge of delivering to the European Parliament the list of the names of the newly elected Romanian MEP's. It is also the competent authority that informs the European Parliament of cases of incompatibility, in accordance with Article 9(5) of the said law.

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<sup>412</sup> Article 11 of the Rules of Procedure of the Romanian Chamber of Deputies.

<sup>413</sup> *Legea nr. 33 din 16 ianuarie 2007 privind organizarea și desfășurarea alegerilor pentru Parlamentul European*, updated version available at: <http://legislatie.just.ro/Public/DetaliuDocument/78622>.

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

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

#### 2.1.1. Constitution

In Romania, the parliamentary immunities are granted to the members of the national Parliament by Article 72 of the Constitution which reads as follows:

#### Article 72

(1) No Deputy or Senator shall be held judicially accountable for the votes cast or the political opinions expressed while exercising their office.

(2) The Deputies and Senators may be subject to criminal investigation, or criminally prosecuted for acts that are not connected with their votes or their political opinions expressed in the exercise of their office, but shall not be searched, detained or arrested without the consent of the Chamber they belong to, after being heard. The investigation and prosecution shall only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice shall have jurisdiction over this case.

(3) If caught in the act, Deputies or Senators may be detained and searched. The Minister of Justice shall inform without delay the president of the Chamber in question on the detainment and search. Should the notified Chamber find that there are no grounds for the detainment, it will order the annulment of the measure at once.<sup>414</sup>

#### 2.1.2. Legislative provisions and rules of procedure

The provisions of Article 72 of the Constitution are further specified in Chapter 5 of Law No 96 of 21 April 2006 on the statute of Deputies and Senators.<sup>415</sup> Detailed procedures on the parliamentary immunities are also contained in Articles 191 to 195 of the Rules of Procedure of the Chamber of Deputies and Articles 186 to 187 of the Rules of Procedure of the Senate.

<sup>414</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 acestei măsuri."

<sup>415</sup> *Lege nr. 96 din 21 aprilie 2006 privind Statutul deputaților și al senatorilor*, as amended, completed and republished, available at: <http://legislatie.just.ro/Public/DetaliuDocument/71194>.

## 2.2. Scope and content of national parliamentary immunities

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

### 2.2.1. Non-liability principle (Article 72(1) of the Constitution)

Pursuant to Article 72(1) of the Constitution, members of Parliament may not be required to give account of any opinions expressed or votes cast in the exercise of their mandate.

This non-liability is permanent.

### 2.2.2. Immunity (Article 72(2) and (3) of the Constitution)

Pursuant to Article 72(2) and (3) of the Constitution, the authorisation of the Chamber to which the member belongs is needed in order to subject the member to the following measures:

- personal search, except in the case of a flagrant crime (*infractiune flagranta*);
- detention or preventive arrest, except in the case of a flagrant crime (*infractiune flagranta*).

Criminal proceedings may be initiated without prior authorisation of the Chamber. The investigation and prosecution of members of the Parliament may only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice has jurisdiction over the case.

Under the terms of Article 21 (3) of Law No 96 of 21 April 2006 on the Statute of Deputies and Senators this immunity applies only during their term of office.<sup>416</sup>

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

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

The waiving of the immunity of a member of the Romanian Parliament is regulated by Law 96/2006 on the Statute of Deputies and Senators and by the Rules of Procedure of the Chamber of Deputies and those of the Senate. Under these provisions<sup>417</sup>, Ministrul Justiției (the Minister of Justice) is entitled to submit to the President of the Chamber to which the member belongs a request for detaining, arrest

<sup>416</sup> Article 21 (3) of Law No 96 of 21 April 2006 on the Statute of Deputies and Senators reads: "Imunitatea parlamentară începe odată cu validarea mandatului de deputat sau de senator și încetează la data încheierii mandatului, în cazurile și în condițiile prevăzute de Constituție și de prezenta lege.". In addition, according to Article 191 of the Rules of Procedure of the Chamber of Deputies, "Deputies shall enjoy parliamentary immunity from the date when the certificates attesting their election are issued, provided they are validated."

<sup>417</sup> Rules of Procedure of the Chamber of Deputies, Article 193, paragraph 2. Rules of Procedure of the Senate, Article 186, paragraph 6.

or search. In the event of a flagrant crime, Deputies<sup>418</sup> and Senators<sup>419</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 of such detention or search, without delay. If the Chamber finds there are no grounds for detention, it can order immediate cancellation of such measure.

The competence of the Minister of Justice to request waiver of the immunity of Members of the European Parliament has been confirmed in an official letter sent to the President of the European Parliament by the Permanent Representation of Romania to the European Union<sup>420</sup>. According to the letter, the authorities empowered to request waiver of immunity (in particular, prosecuting authorities, the Office of the Prosecutor at the Court of Cassation or the National Anti-corruption Department) must address the request to the Minister of Justice, who then transmits it to the European Parliament.

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<sup>418</sup> Rules of Procedure of the Chamber of Deputies, Article 194, paragraph 1.

<sup>419</sup> Rules of Procedure of the Senate, Article 186, paragraph 5.

<sup>420</sup> See letter dated 8 April 2013.

## SLOVENIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Slovene government*

### *Constitution*

The Slovenian government is formed in accordance with the constitutional provisions, in particular Article 110 of the Constitution of the Republic of Slovenia, which reads as follows: "The Government is composed of the president and ministers. Within the scope of their powers, the Government and individual ministers are independent and accountable to the National Assembly."<sup>421</sup>

### *Implementing provisions*

The provisions of the Constitution are implemented by the rules laid down in the Government of the Republic of Slovenia Act,<sup>422</sup> and in particular its Article 10, which states that "The Prime Minister and ministers may not simultaneously hold office in state authorities, courts, or local community authorities or hold any other public office, or carry out other activities that, pursuant to an Act, are incompatible with the office of a member of the Government".<sup>423</sup>

1.1.2. *Denomination of the members of the Slovene government*

Pursuant to Article 110 of the Constitution, members of the Slovene government are the following:

- *Predsednik vlade (Prime Minister or President of the Government),*
- *Minister (Minister).*

<sup>421</sup> Article 110 of the Constitution: "Vlado sestavljajo predsednik in ministri. Vlada in posamezni ministri so v okviru svojih pristojnosti samostojni in odgovorni državnemu zboru." An English translation of the Constitution is available at: <http://www.dz-rs.si/wps/portal/en/Home/PoliticniSistem/UstavaRepublikeSlovenije>.

<sup>422</sup> *Zakon o Vladi Republike Slovenije*, ZVRS-UPB1, official consolidated version, Uradni list RS, št. 24/2005 str. 2057, 11. 3. 2005, 109/2008, 55/2009 Odl.US: U-I-294/07-16, 8/201221/13, 65/14, 55/17. The Act in English is available at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

<sup>423</sup> Article 10 of the Government of the Republic of Slovenia Act "Predsednik vlade in ministri ne morejo hkrati opravljati funkcij v državnih organih, sodiščih, organih lokalnih skupnosti in drugih javnih funkcij, niti opravljati drugih dejavnosti, ki po zakonu niso združljive s funkcijo člana vlade."



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

Under the terms of Article 111 of the Constitution, the Prime Minister is elected by the National Assembly by a majority vote of all deputies. Article 112 further provides that Ministers are appointed and dismissed by the National Assembly on the proposal of the Prime Minister.<sup>424</sup>

"It shall be deemed that the Government has assumed office when more than two thirds of the ministers have been appointed, not including the ministers without portfolio" (for further information: Government of the Republic of Slovenia Act, Article 11).<sup>425</sup>

Under Article 115 of the Constitution: "The President of the Government and ministers cease to hold office when a new National Assembly convenes following elections; ministers also cease to hold office whenever the President of the Government ceases to hold office and whenever such ministers are dismissed or resign; ministers must, however, continue to perform their regular duties until the election of a new President of the Government or until the appointment of new ministers."<sup>426</sup> Also, "if within three months of the Government assuming office the National Assembly fails to appoint the ministers who have not yet been appointed, it shall establish that the Prime Minister and the ministers have ceased to hold office" (as stems from Article 11 of the Government of the Republic of Slovenia Act).<sup>427</sup>

## 1.2. Member of a national parliament

### 1.2.1. *Legal provisions on the composition of the Slovenian Parliament*

#### *Constitution*

The Slovenian Parliament is officially called the National Assembly. However, the legislative process in Slovenia also involves another body - the National Council, which under the Constitution has a limited role in the legislative procedure.<sup>428</sup>

The composition of the National Assembly is established by Article 80 of the Constitution, which reads as follows: "The National Assembly is composed of deputies of the citizens of Slovenia and comprises ninety deputies. Deputies are elected by universal, equal, direct, and secret voting. One deputy of the

<sup>424</sup> Additionally, in accordance with Article 113 of the Constitution, "upon election and appointment respectively, the Prime Minister and ministers shall swear before the National Assembly the oath of office provided by Article 104."

<sup>425</sup> From Article 11 of the Government of the Republic of Slovenia Act: "Šteje se, da je vlada nastopila funkcijo, če je imenovanih več kot dve tretjini ministrov, pri čemer se ne všttevajo ministri brez resorja."

<sup>426</sup> Article 115 of the Constitution: "Funkcija predsednika vlade in ministrov preneha, ko se po volitvah sestane nov državni zbor, funkcija ministrov pa tudi z vsakim drugim prenehanjem funkcije predsednika vlade ter z razrešitvijo ali odstopom ministra, morajo pa opravljati tekoče posle do izvolitve novega predsednika vlade oziroma do imenovanja novih ministrov".

<sup>427</sup> Fourth paragraph of Article 11 of the Government of the Republic of Slovenia Act: "Če Državni zbor tudi v treh mesecih po nastopu funkcije vlade ne imenuje še neimenovanih ministrov, Državni zbor ugotovi, da je funkcija predsedniku vlade in ministrom prenehala."

<sup>428</sup> The National Council is considered the "incomplete second chamber" since its competence in the legislative procedure is limited. It is the representative body for social, economic, professional, and local interests.

Italian and one deputy of the Hungarian national communities shall always be elected to the National Assembly. [...]."<sup>429</sup>

According to Article 43 of the Constitution, the right to vote shall be universal and equal. Every citizen who has attained the age of eighteen years has the right to vote and be elected. Pursuant to the first paragraph of Article 81 of the Constitution, the deputies are elected for a period of four years. Article 82 provides that deputies of the National Assembly are representatives of all the people and shall not be bound by any instructions, and that the law shall establish who may not be elected a deputy, and the incompatibility of the office of deputy with other offices and activities.

### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the National Assembly are contained in the Rules of Procedure of the National Assembly<sup>430</sup> and the Deputies Act.<sup>431</sup> Important provisions are also laid down in the Election of Members of the European Parliament from the Republic of Slovenia Act,<sup>432</sup> Article 2 of which states that a Member of the European Parliament may not be a deputy in the National Assembly and may not perform any executive function in a local authority. Members of the European Parliament may also not perform the functions and activities that cannot be performed by a deputy in the National Assembly.

#### *1.2.2. Denomination of the members of the Slovene Parliament*

Pursuant to the provisions of the Constitution and the Rules of Procedure, members of the National Assembly are:

- *poslanec (deputy); poslanci (deputies).*

Some of the deputies perform special functions, such as that of President or Vice-President. Their denominations are the following:

- *Predsednik (President),*
- *Podpredsednik (Vice-President),*
- *Predsednik odbora (Chair of a Committee),*
- *Podpredsednik odbora (Deputy Chair of a Committee),*
- *Člani odborov (Members of Committees),*
- *Vodja poslanske skupine (Head of a Parliamentary/Deputy Group),*
- *Predsednik komisije (Chair of a commission),*

<sup>429</sup> Article 80 of the Constitution: "Državni zbor sestavljajo poslanci državljanov Slovenije in šteje 90 poslancev. Poslanci se volijo s splošnim, enakim, neposrednim in tajnim glasovanjem. V Državni zbor se vedno izvoli po en poslanec italijanske in madžarske narodne skupnosti. [...]"

<sup>430</sup> *Poslovnik Državnega zbora - Uradno prečiščeno besedilo (PoDZ-1-UPB1)*, Uradni list RS št. 92/07str. 12284, 10. 10. 2007, **105/10, 80/13 in 38/17**. An English translation of the Rules of Procedure is available at: <http://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/PristojnostilnFunkcije/RulesoftheProcedureText>.

<sup>431</sup> *Zakon o poslancih - Uradno prečiščeno besedilo* (ZPos-UPB2), Uradni list RS 112/2005, str. 12020, 15. 12. 2005, 46/2006 - Skl. US, 33/2007 - Odl. US, 109/2008, 39/2011, 48/2012. Deputies Act in English available at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>.

<sup>432</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, 109/2009, 9/14 in 59/17. Election of Members of the European Parliament from the Republic of Slovenia Act available in English: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>.

- *Podpredsednik komisije (Deputy Chair of a commission).*

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

Under the third paragraph of Article 81 of the Constitution, the first session of the new National Assembly shall be called by the President of the Republic no later than twenty days after the election. According to Article 9 of the Rules of Procedure, the National Assembly is constituted at the first session at which the mandates of more than half of the deputies are confirmed.<sup>433</sup> According to Article 6 of the Deputies Act, a candidate obtains his or her mandate on the day of the election, but begins to exercise it on the day of the confirmation of the mandate by the National Assembly.

## 1.3. Member of the National Council of the Republic of Slovenia

According to the Constitution, the National Council of the Republic of Slovenia is the representative body for social, economic, professional and local interests. It is composed of representatives of functional interests (social, economic, professional) and representatives of local interests (territorial interests).

It has 40 members:

- *4 representatives of employers,*
- *4 representatives of employees,*
- *4 representatives of farmers, crafts and trades, and independent professions,*
- *6 representatives of non-commercial fields,*
- *22 representatives of local interests.*

The term of office of members of the National Council is five years. National Council Act<sup>434</sup> regulates the election to and organisation of the National Council. As it stems from Article 1, Members are elected at indirect elections held within interest organisations or local communities by electoral bodies (electors).

According to Article 2, every citizen of Slovenia who has reached the age of 18 has the right to vote and to be elected as a member of the National Council. National Council members are not elected on the basis of general suffrage but of special suffrage, which is determined by law for each interest group and requires membership in a specific interest group or local community.

The right to vote and to be elected for a member of the National Council is held by:

- *For representatives of employers, employees, farmers, crafts and trades, independent professions and non-commercial activities (functional interests), this right is held by people who perform or are employed in a relevant activity in Slovenia. Non-nationals who perform or are employed in a relevant activity in Slovenia elect members of the National Council from these interest groups under the same conditions as Slovenian citizens. However, they do not have a right to be elected to the National Council themselves;*

<sup>433</sup> The procedure leading to confirmation of the mandates is set out in Article 13 of the Rules of Procedure.

<sup>434</sup> **Zakon o državnem svetu (ZDSve)** - Uradno prečiščeno besedilo (ZDSve-UPB1), Uradni list RS, št. 100/05, str. 10474, 11.3.2005, 95/09 – odl. US, 21/13 – ZFDO-F in 81/18 – odl. US.

- *For representatives of local interests, this right is held by those with a permanent residence in the constituency. Member of the town council, who is a citizen of any other EU state has a right to vote, but cannot be elected to the National Council.*

Under the principle of relative majority, the candidate with the most number of votes is elected. If two or more candidates receive the same number of votes, lots are drawn to decide who is elected.

Elections to the National Council are called by the President of the National Assembly. General elections are called not earlier than 135 days and not later than 75 days before the end of the five-year term of office. The period between the calling of elections and election day may not exceed 90 days or be shorter than 60 days. By-elections at which only individual members of the National Council are elected whose term of office is terminated before the end of the National Council's five-year mandate are held not later than 75 days after the termination of the member's term of office.

### *1.3.1. Election of representatives of functional interests*

Common and specific provisions on election procedure are defined in Articles 11 - 42 of the National Council Act. The election of 18 members - representatives of functional interests - is carried out by electors sitting on electoral boards or by members of an interest organisation when election is taking place in only one organisation. Representatives of the electorate (electors) are elected by interest organisations in accordance with their own rules.

National Council candidates are chosen by interest organisations in accordance with their own rules and the members are elected in accordance with the rules on election procedure in the National Council Act:

- *four members - representatives of employers are elected by chambers of commerce and industry and employers' associations organized in the territory of the state,*
- *four members - representatives of employees are elected by representative trade Unions organized in the territory of the state,*
- *four members - representatives of farmers, crafts and trades and independent professions are elected as follows:*
  - *two representatives of farmers are elected by the professional farmers' organisation organized in the territory of the state,*
  - *one representative of crafts and trades is elected by the professional crafts and trade organisation organized in the territory of the state,*
  - *one representative of independent professions is elected by the professional organisation of other independent professions organised in the territory of the state;*
- *six members - representatives of non-commercial fields are elected in the following manner:*
  - *one representative of universities, colleges and junior colleges is elected by universities, colleges and junior colleges,*
  - *one representative of care and education is elected by professional organisations of the teaching staff,*
  - *one representative of research activities is elected by professional research organisations,*
  - *one representative of culture and sports is elected by professional organisations of cultural workers and workers in sports,*
  - *one representative of health care is elected by professional organisations of medical professionals and medical associates,*
  - *one representative of social care is elected by professional organisations of professionals in social care.*

### 1.3.2. *Election of representatives of local interests*

Local communities elect 22 members of the National Council to serve as representatives of local interests. No more than 22 constituency, which may cover one or more local communities, are formed and defined by law for the election of representatives of local interests. Slovenia is divided into 22 constituency. These are contiguous areas in terms of territory, history and interest.

An electoral body is formed for each constituency, comprising of:

- *members of the representative local community body, if the National Council members are elected in constituency covering a single local community;*
- *elected representatives of local communities if the National Council members are elected in constituency covering two or more local communities; representatives of local communities are elected by their representative bodies.*

Representative local community bodies (municipal councils) adopt rules applying to the election of their representatives to electoral bodies and the election of candidates to the National Council. Municipal councils elect electors and candidates for the National Council by secret ballot.

Under the National Council Act, every local community (municipality) may nominate one National Council candidate. Each municipality has one place in the electoral body regardless of number of inhabitants, plus one further place for every additional 5,000 inhabitants.

### 1.3.3. *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the National Council are contained in its Rules of Procedure and the National Council Act. In accordance with Article 61 of the National Council Act, a Member of the National Council may not be a deputy in the National Assembly at the same time, nor may perform any function in state bodies.<sup>435</sup>

### 1.3.4. *Denomination of the members of the National Council*

Pursuant to the provisions of the Rules of Procedure, members of the National Council are:

- ***državni svetnik (national councillor); državni svetniki (national councillors).***

Some of the national councillors perform special functions, such as that of President or Vice-President. Their denominations are the following:

- *Predsednik (President),*
- *Podpredsednik (Vice-President),*
- *Predsednik komisije (Chairman of Commission),*
- *Podpredsednik komisije (Vice Chairman of Commission),*
- ***Člani komisij (Members of Commissions),***
- *Vodja interesne skupine (Head of Interest group),*
- ***Člani interesnih skupin (Members of Interest groups).***

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<sup>435</sup> Article 61 of the National Council Act: "Član državnega sveta ne sme biti hkrati poslanec državnega zbora niti ne sme opravljati druge funkcije v državnih organih."

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

Based on the Article 48 of National Council Act the first session of the National Council shall be called by the President of the National Assembly no later than twenty days after the elections. According to Article 5 of the Rules of the Procedure the National Council is constituted at the first session at which the mandates of more than half of the members are confirmed.

### 1.3.6. *Immunity*

The legal bases of parliamentary immunity are the Constitution of the Republic of Slovenia, the National Council Act and the Rules of the Procedure of the National Council<sup>436</sup>.

The Constitution of the Republic of Slovenia states in Article 100:

**"Members of the National Council enjoy the same immunity as deputies.**

**Immunity is decided upon by the National Council."**

The National Council Act states in Article 60:

**"A member of the National Council shall enjoy immunity.**

A member of the National Council shall not be criminally liable for any opinion expressed or vote cast at sessions of the National Council or its working bodies.

No member of the National Council may be detained nor, where such member claims immunity, may criminal proceedings be initiated against him/her without the permission of the National Council, except where such member has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed.

Following a proposal from the Mandates and Immunity Commission, the National Council shall take a decision on the request of the competent national body to obtain an authorization from the preceding paragraph no later than 30 days from the date of filing such request.

The National Council may also grant immunity to a member of the National Council who has not claimed such immunity or who has been apprehended committing such criminal offence as referred to in paragraph three of this Article.

Rules of the Procedure of the National Council state in Articles 85-92:

**"Where there are grounds to order the detention of a member of the National Council or where there are grounds to initiate criminal proceedings against a member of the National Council who claims immunity, the competent state authority sends the request for permission to detain or initiate criminal proceedings to the President of the National Council.**

In the event a member of the National Council has been detained or criminal proceedings have been initiated against him because he has been apprehended committing a criminal offence for which a

<sup>436</sup> Poslovnik Državnega sveta (PoDS-1), Uradni list RS, št. 70/08, str. 9597, 11.7.2008, 73/09, 101/10, 6/14 in 26/15).

prison sentence of over five years is prescribed, the competent state authority immediately sends to the President of the National Council the notification of detention or of the initiation of criminal proceedings. The competent state authority sends the notification of the initiation of criminal proceedings to the President of the National Council also when the member of the National Council has not claimed immunity.

The President of the National Council immediately sends the request or the notification to the Mandates and Immunity Commission.

In considering the request or the notification, the Mandates and Immunity Commission establishes whether the granting of immunity is indispensable for performing the office of a member of the National Council. As a general rule, it is deemed that the granting of immunity may be indispensable for performing the office of member of the National Council in the event the competent state authority intends to detain or has already detained the member of the National Council, but not where it intends to initiate or has already initiated criminal proceedings against such member of the National Council.

The Mandates and Immunity Commission may only exceptionally and for particularly justified reasons propose to the National Council that it subsequently grant immunity to a member of the National Council who has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed or to a member of the National Council against whom criminal proceedings have been initiated because he has not claimed immunity. The Commission must thereby also take into consideration the reasons for which the member of the National Council has not claimed immunity.

In considering the request or the notification, the Mandates and Immunity Commission does not evaluate the evidence and does not judge the state of facts regarding the alleged criminal offence or whether the member of the National Council is criminally liable.

The Mandates and Immunity Commission discusses the request or the notification at a closed session.

The Mandates and Immunity Commission examines the request or the notification and proposes that the National Council grant or not grant immunity to the member of the National Council.

The National Council decides to grant or not to grant immunity to the member of the National Council without debate.

On the proposal of the Mandates and Immunity Commission or an interest group, the National Council may decide that decision-making thereon be carried out at a closed session. At such closed session, a debate is possible.

In deciding whether to grant or not to grant immunity to the member of the National Council, the National Council takes into consideration the criteria referred to above.

In every case involving a member of the National who has been detained the Mandates and Immunity Commission decides immediately whether to grant immunity.

At its next session the National Council upholds, or revokes and alters the decision of the Mandates and Immunity Commission.

The National Council or, in the cases referred to above, the Mandates and Immunity Commission immediately communicates its decision to grant or not to grant immunity to the member of the National Council to the competent state authority.

When the National Council or the Mandates and Immunity Commission grants permission to detain or initiate criminal proceedings against a member of the National Council, the member of the National

Council may be detained or criminal proceedings may be initiated against him only for the criminal offence for which permission has been granted."

#### 1.4. National authority competent to communicate 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, Predsednik (the President of the National Assembly) shall inform the President of the European Parliament about the cessation of a Member of the European Parliament's term of office and about who has been elected a Member of the European Parliament instead of the Member whose term of office terminated.



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

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

#### 2.1.1. Constitution

In Slovenia the parliamentary immunities are granted to the members of the National Assembly by Article 83.

#### Article 83

##### *Immunity of Deputies*

"No deputy of the National Assembly shall be criminally liable for any opinion expressed or vote cast at sessions of the National Assembly or its working bodies.

No deputy may be detained nor, where such deputy claims immunity, may criminal proceedings be initiated against him without the permission of the National Assembly, except where such deputy has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed. The National Assembly may also grant immunity to a deputy who has not claimed such immunity or who has been apprehended committing such criminal offence as referred to in the **preceding paragraph**".

#### 2.1.2. Implementing provisions

The implementing rules concerning immunities (procedure regarding immunity) are found in Articles 203 - 210 of the Rules of Procedure of the National Assembly. Article 203 of the Rules makes clear that a deputy enjoys immunity "from the time of the confirmation of his mandate until the expiry of his term."<sup>437</sup> Additionally, the Deputies Act contains provisions on immunity in Articles 21 and 22; in Article 22 states that the National Assembly decides on the application within 30 days from its receipt, following the recommendation of the Commission for Public Office and Elections<sup>438</sup>.

### 2.2. Scope and content of national parliamentary immunities

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

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<sup>437</sup> Article 203 of the Rules of Procedure: "A deputy enjoys immunity from the time of the confirmation of his election until the expiry of his term."

<sup>438</sup> From Article 22 of the Deputies Act: "The request of the competent state body for the permission referred to in the preceding paragraph shall be decided on by the National Assembly on the proposal of the commission for public office and elections no later than 30 days from the day of lodging the request (...)."

### 2.2.1. *Non-liability principle (Article 83 (1) of the Constitution)*

Pursuant to the first paragraph of Article 83 of the Constitution, repeated in Article 21 of Deputies act, a deputy cannot be made criminally liable because of the opinions expressed or votes cast in the National Assembly or its working bodies. In accordance with Articles 76 to 79 and in particular 77 of the Rules of Procedure, however, a deputy may be issued a warning if he speaks without having been given the floor by the chairperson, if he interrupts another speaker, if he speaks about an issue which is not on the agenda, or if he otherwise violates order at the session and the provisions of the Rules of Procedure; a deputy may be, after two warnings and continuous violations, withdrawn the floor or even expelled from the session or part of the session

This non-liability is permanent: it does not end with the end of the mandate as Member of the Parliament.

### 2.2.2. *Immunity (Article 83 (2) of the Constitution)*

According to the second paragraph of Article 83 of the Constitution, the permission of the National Assembly is necessary in order to detain or initiate criminal proceedings against a deputy. Nevertheless, no such permission is required where a deputy is caught in the act of committing a crime for which the prescribed penalty is imprisonment of five years or more. In principle, the deputy concerned must claim immunity in order to be able to benefit from it. However, the National Assembly has the power to grant immunity even to a deputy who has not claimed it or who has been caught *in flagrante delicto* for which prescribed penalty is imprisonment of 5 years or more.

A deputy enjoys this immunity from the time of the confirmation of his election until the expiry of his term<sup>439</sup>.

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

With respect to the Members of the European Parliament, Article 9 of the Act on the Election of Members of the European Parliament from the Republic of Slovenia provides that, concerning immunities, the provisions of EU regulations shall apply; regarding issues that are not regulated by EU regulations, the provisions of the Deputies Act and the provisions of other Acts applicable to deputies of the National Assembly shall apply, *mutatis mutandis*<sup>440</sup>.

Article 22 of the Deputies Act provides that no deputy may be detained, nor where such deputy claims immunity may criminal proceedings be initiated against him or her without the permission of the

<sup>439</sup> Article 203 of the Rules of Procedure, "A deputy enjoys immunity from the time of the confirmation of his election until the expiry of his term."

<sup>440</sup> Article 9 of the Act on the Election of Members of the European Parliament from the Republic of Slovenia: "Regarding the position of MEPs, the acquisition and cessation of MEPs' office, the incompatibility of the office of MEP with other office, the immunity of MEPs, the material and other conditions for the work of MEPs, the rights of MEPs after the cessation of their office, and the limitations and obligations related to the office of MEP, the provisions of EU regulations shall apply; regarding issues that are not regulated by EU regulations, the provisions of the Deputies Act and the provisions of other Acts applicable to deputies of the National Assembly shall apply *mutatis mutandis*."

National Assembly, except where such deputy has been apprehended committing a criminal offence for which a prison sentence of more than five years is prescribed. The request of the competent state body for the permission shall be decided on by the National Assembly on the proposal of the commission for public office and elections no later than 30 days from the day of lodging the request.

The procedure regarding the immunity of Members is regulated in more detail by section 10 of chapter IV of the Rules of Procedure of the National Assembly. Article 204<sup>441</sup> of the Rules of Procedure of the National Assembly provides that, where there are grounds to order the detention of a deputy or to initiate criminal proceedings against a deputy who claims immunity, the "competent state authority" sends the request for permission to detain or initiate criminal proceedings to the President of the National Assembly. The case is considered by the competent parliamentary committee (the Commission for Public Office and Elections), which makes a proposal to the National Assembly. The latter decides to grant or not to grant immunity to the deputy without debate or explanation of the vote, taking into consideration the criteria set out in Article 205 of the Rules. The "competent state authority" in such cases is the *Državno tožilstvo* (Public Prosecutor's Office) or the competent court.

According to the Criminal Procedure Act, the authorisation to initiate criminal proceedings or to order detention may be requested by the public prosecutor, and in cases where the public prosecutor does not conduct criminal proceedings, the court (investigating magistrate). The competent national authority in the Republic of Slovenia is therefore the public prosecutor's office or the competent court in the Republic of Slovenia.

The competent public prosecutor's office or the competent court sends the request to the President of the European Parliament via the Ministry of Foreign Affairs (*Ministrstvo za zunanje zadeve*) or the Permanent Representation of the Republic of Slovenia to the European Union. The competence of such authorities to transmit requests for waiver of the immunity was confirmed in a letter sent by the Permanent Representation of the Republic of Slovenia to the President of the European Parliament.<sup>442</sup>

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<sup>441</sup> Article 204 of the Rules of Procedure: "Where there are grounds to order the detention of a deputy or where there are grounds to initiate criminal proceedings against a deputy who claims immunity, the competent state authority sends the request for permission to detain or initiate criminal proceedings to the President of the National Assembly. In the event a deputy has been detained or criminal proceedings have been initiated against him because he has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed, the competent state authority immediately sends to the President of the National Assembly the notification of detention or of the initiation of criminal proceedings. The competent state authority sends the notification of the initiation of criminal proceedings to the President of the National Assembly also when the deputy has not claimed immunity"

<sup>442</sup> See letter dated 4 July 2013.

## SLOVAKIA

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Slovak government*

### *Constitution*

The composition of the Slovak government is established by the first paragraph of Article 109 of the Constitution, which reads as follows: "The Government shall consist of the prime minister, deputy prime ministers, and ministers."<sup>443</sup>

### *Implementing provisions*

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: *Zákon o organizácii činnosti vlády a organizácii ústrednej štátnej správy* (Law No 575/2001 on the activity of the government and on the organisation of the Ministries), in Sections 1, 2, 3, 4 and 5.

1.1.2. *Denomination of the members of the Slovak government*

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

- *Predseda/Predsedníčka vlády Slovenskej republiky (Prime Minister),*
- *Podpredseda/Podpredsedníčka vlády Slovenskej republiky (Deputy Prime Minister); Podpredsedovia/Podpredsedníčky vlády Slovenskej republiky (Deputy Prime Ministers),*
- *Minister/Ministerka (Minister); Ministri/Ministerky (Ministers).*

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

There is no specific rule clarifying the date when the term of office of the members of the Slovak Government begins. The setting up of the government is regulated by the Constitution. In particular, under Articles 110 and 111 of the Constitution, the prime minister is appointed and recalled by the president of the Slovak Republic; on a proposal of the prime minister, the president of the Republic also appoints and recalls other members of the Government and entrusts them with the management of ministries. Under the terms of Article 112, Members of the Government are sworn in by the president of the Slovak Republic. According to Article 113 of the Constitution, within 30 days after its

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<sup>443</sup> "Vláda sa skladá z predsedu, podpredsedov a ministrov". An English translation of the Slovak Constitution is available at: <https://www.ustavnysud.sk/ustava-slovenskej-republiky>

appointment, the Government is obliged to appear before the National Council of the Slovak Republic, to present its manifesto, and to ask for a vote of confidence.

## 1.2. Member of a national parliament

### 1.2.1. Legal provisions on the composition of the Slovak Parliament

#### *Constitution*

The Slovak Parliament is denominated *Národná rada* (the National Council). According to Article 72 of the Constitution, the National Council of the Slovak Republic is the sole constituent and legislative body of the Slovak Republic. The composition of the National Council is laid down by the first paragraph of Article 73 of the Constitution, which reads as follows: "The National Council of the Slovak Republic has 150 deputies who are elected for a four-year period."<sup>444</sup>

#### *Implementing provisions*

More detailed provisions concerning the composition and the organisation of the Parliament are contained in Act No 350/1996 Coll. on the Rules of Procedure of the Slovak National Council, as amended.<sup>445</sup>

### 1.2.2. Denomination of the members of the Slovak Parliament

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

- *Predseda/Predsedačka Národnej rady Slovenskej republiky (Speaker of the National Council of the Slovak Republic),*
- *Podpredseda/Podpredsedačka Národnej rady Slovenskej republiky (Deputy Speaker of the National Council of the Slovak Republic); Podpredsedovia/Podpredsedníčky Národnej rady Slovenskej republiky (Deputy Speakers of the National Council of the Slovak Republic),*
- *Predseda/Predsedačka výboru Národnej rady Slovenskej republiky (Chairman/Chairwoman of Parliamentary Committees); Predsedovia/Predsedačky výborov Národnej rady Slovenskej republiky (Chairmen/Chairwomen of Parliamentary Committees),*
- *Člen/Členka výboru (Member of Parliamentary Committee); Členovia výborov (Members of Parliamentary Committees),*
- *Poslanec/Poslankyňa (Member of Parliament); Poslanci/Poslankyne (Members of Parliament).*

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

Under the terms of Article 5 of the Act on Rules of Procedure of the National Council of the Slovak Republic, "The member of parliament gains his rights and obligations on election. The Member of

<sup>444</sup> Article 73 (1): "Národná rada Slovenskej republiky má 150 poslancov, ktorí sú volení na štyri roky."

<sup>445</sup> The text of the Act on Rules of Procedure of the Slovak National Council is available at:

<https://secure.ipex.eu/IPEXL-WEB/parliaments/institution/skrad.do>

actual version in Slovak language: [https://www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/zd\\_rokovaci-poriadok-20190821.pdf](https://www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/zd_rokovaci-poriadok-20190821.pdf)

Parliament assumes his/her function and commences to exercise his/ her mandate on taking the oath". Article 75(2) of the Constitution further specifies: "Any refusal to take the oath or any reservation thereof shall result in the loss of the mandate."

### 1.3. National authority competent to communicate 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.

By means of Section 95(3) of Act no. 180/2014 Coll. on the Conditions of the Right to Vote, the Central Electoral Commission shall make a record of the election results and submit it to the Speaker of the National Council of the Slovak Republic, who shall submit the election results to the European Parliament. However, neither authority is competent to examine whether the elected candidate performs any other duties or holds a function incompatible with the office of a Member of the European Parliament.

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

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

#### 2.1.1. Constitution

In Slovakia the parliamentary immunities are granted to the members of the national Parliament by Articles 78 and 79 of the Constitution.

#### Article 78

(1) A Member of Parliament may not be subject to legal proceedings for his voting in the National Council of the Slovak Republic, or its bodies; this applies also after the termination of his mandate.

(2) For statements made in the National Council of the Slovak Republic, or its body, while discharging the function of a Member of Parliament, a Member of Parliament may not be subject to criminal proceedings; this applies also after the termination of his mandate. A Member of Parliament is subject to the disciplinary powers of the National Council of the Slovak Republic.

(3) A Member of Parliament cannot be taken into custody without the consent of the National Council of the Slovak Republic.

(4) If a Member of Parliament has been caught and detained while committing a criminal act, the relevant authority is obliged to report this immediately to the Speaker of the National Council of the Slovak Republic and the Chairperson of the Mandate and Immunity Committee of the National Council. If the Mandate and Immunity Committee of the National Council of the Slovak Republic does not give its consent to the detainment, the Member of Parliament must be released immediately.

(5) If a Member of Parliament is in custody, his mandate does not terminate, it is only not exercised.<sup>446</sup>

#### 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.

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<sup>446</sup> Article 78, as amended, provides as follows: "Čl.78

(1) Za hlasovanie v Národnej rade Slovenskej republiky alebo v jej výboroch nemožno poslanca sťahovať, a to ani po zániku jeho mandátu.

(2) Za výroky pri výkone funkcie poslanca prednesené v Národnej rade Slovenskej republiky alebo v jej orgánoch nemožno poslanca trestne sťahovať, a to ani po zániku jeho mandátu. Poslanec podlieha disciplinárnej právomoci Národnej rady Slovenskej republiky.

(3) Poslanca nemožno vziať do väzby bez súhlasu Národnej rady Slovenskej republiky.

(4) Ak bol poslanec pristihnutý a zadržaný pri trestnom čine, príslušný orgán je povinný to ihneď oznámiť predsedovi Národnej rady Slovenskej republiky a predsedovi Mandátového a imunitného výboru Národnej rady Slovenskej republiky. Ak mandátový a imunitný výbor Národnej rady Slovenskej republiky následný súhlas na zadržanie nedá, poslanec musí byť ihneď prepustený.

(5) Ak je poslanec vo výkone väzby, jeho mandát nezaniká, iba sa neuplatňuje."

### 2.1.2. *Implementing provisions*

The implementing rules of Articles 78 and 79 of the Constitution are contained in the Rules of Procedure of the National Council, as amended. Additional implementing rules may be found in Act no. 372/1990 Coll. on Offences (which deals with non-criminal offences) and in Act no. 300/2005 Coll. Criminal Code (which deals with criminal offences).

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

The system of immunity represents the classical model of immunities which consists in the freedom of speech of the Member of the Parliament ("non-liability"), and the protection against arrest and taking into custody ("immunity"). Since September 2012, after Parliament passed the necessary amendments to the Constitution and the Criminal Code, the necessity of prior approval by National council of criminal prosecution was abolished. With exception of proceedings concerning statements and voting during their mandate, Slovak Members of Parliament hence no longer enjoy immunity from criminal prosecution.

### 2.2.1. *Non-liability principle (Article 78(1) and (2) of the Constitution)*

Pursuant to Article 78(1) of the Constitution, a deputy cannot be subject to legal proceedings for his voting in the National Council of the Slovak Republic or its bodies; this rule continues to apply even after the end of the Member's mandate. Moreover, a deputy may not be subject to criminal proceedings, and is only answerable to the disciplinary powers of the National Council, for statements made in the National Council or its bodies in the exercise of his/her mandate.

Pursuant to Section 135 of the Rules of Procedure of the National Council, each Member may be subjected to the disciplinary powers of the Council for:

- *statements made during the performance of a Member's functions in the National Council or any of its bodies;*
- *breaches of the ban on voting for another Member [as provided by Section 39 (6) of the same Rules];*
- *major breaches of the Member's oath;*
- *breaches of the Member's Code of Ethics;*
- *disturbance of order at the National Council meeting [as provided by Section 32 of the same Rules].*

### 2.2.2. *Immunity (Article 78(3) and (4) of the Constitution)*

Pursuant to Article 78(3) and (4) of the Constitution, the authorisation of the National Council is needed in order to take a member into custody or to maintain him/her in detention, if arrested after being caught *in flagrante delicto*. In the latter case, the relevant authority is obliged to report this immediately to the Speaker of the National Council of the Slovak Republic and to the Chairperson of the Mandate and Immunity Committee. Unless the Mandate and Immunity Committee of the National Council of the Slovak Republic gives its consent to the detention, the Member of Parliament must be released immediately. This limited immunity applies only during the mandate as a Member of Parliament.

Deputies also have the right to refuse to testify in matters about which they learned while discharging their office, even after they cease to be deputies, in accordance with Article 79 of the Constitution.



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

Under Act No. 301/2005 Coll., as amended, only the Prosecutor has the right to request the immunity of Members of Parliament to be waived with respect to their detention.

This has been confirmed by an official letter sent to the President of the European Parliament by the Permanent Representation of the Slovak Republic to the European Union,<sup>447</sup> according to which the competent authority is the General Prosecutor.

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<sup>447</sup> See letter dated 22 May 2013.

## FINLAND

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Finnish government*

### *Constitution*

The composition of the Finnish Government is set out in Sections 60 and 61 of the Finnish Constitution<sup>448</sup> (*perustuslaki, grundlag*), which provide as follows:

#### Section 60

The Government consists of the Prime Minister and the necessary number of Ministers. The Ministers shall be Finnish citizens known to be honest and competent.

The Ministers are responsible before the Parliament for their actions in office. Every Minister participating in the consideration of a matter in a Government meeting is responsible for any decision made, unless he or she has expressed an objection that has been entered in the minutes.

#### Section 61

The Parliament elects the Prime Minister, who is thereafter appointed to the office by the President of the Republic. The President appoints the other Ministers in accordance with a proposal made by the Prime Minister.

Before the Prime Minister is elected, the groups represented in the Parliament negotiate on the political programme and composition of the Government. On the basis of the outcome of these negotiations, and after having heard the Speaker of the Parliament and the parliamentary groups, the President informs the Parliament of the nominee for Prime Minister. The nominee is elected Prime Minister if his or her election has been supported by more than half of the votes cast in an open vote in the Parliament.

If the nominee does not receive the necessary majority, another nominee shall be put forward in accordance with the same procedure. If the second nominee fails to receive the support of more than half of the votes cast, the election of the Prime Minister shall be held in the Parliament by open vote. In this event, the person receiving the most votes is elected.

In practice though, the negotiations for the formation of government normally are achieved, the programme set and the ministers chosen by their group and party bodies before the vote on the person of prime minister takes place in parliament. Hence, the vote, when it intervenes, in reality is a vote on

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<sup>448</sup> The Finnish Constitution is available: in Finnish, at: <http://www.finlex.fi/fi/laki/ajantasa/1999/19990731>; in Swedish, at: <http://www.finlex.fi/sv/laki/ajantasa/1999/19990731>; and in an unofficial English translation, at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>.

the confidence in the whole government, which reinforces parliamentarism compared to the letter of the Constitution.

The Parliament shall be in session when the Government is being appointed and when the composition of the Government is being essentially altered.

### *Implementing provisions*

There are no specific provisions for the composition of the Finnish government.<sup>449</sup> Ministers need not necessarily be MPs though they normally are.

#### *1.1.2. Denomination of the members of the Finnish government*

Members of the government are called:

- *pääministeri, statsminister (Prime Minister),*
- *ministeri, minister (Minister)*

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

The term of office begins as soon as the President appoints a new government (Constitution, Section 61).

## *1.2. Member of a national parliament*

### *1.2.1 Legal provisions on the composition of the Finnish Parliament*

#### *Constitution*

The composition of the Finnish Parliament is set out in Sections 24 and 25 of the Finnish Constitution, which provide as follows:

#### *Section 24*

The Parliament is unicameral. It consists of two hundred Representatives, who are elected for a term of four years at a time.

The term of the Parliament begins when the results of the parliamentary elections have been confirmed and lasts until the next parliamentary elections have been held.

#### *Section 25*

The Representatives shall be elected by a direct, proportional and secret vote. Every citizen who has the right to vote has equal suffrage in the elections.

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<sup>449</sup> The composition of the current Government of Finland is available at: <http://valtioneuvosto.fi/hallitus/jasenet/en.jsp>.

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, to associations founded to this effect by at least 100 electors in the constituency (Electoral Act, *vaallaki, vallag*) 714/1998<sup>450</sup>, Section 119).

In addition, Section 28.1 of the Constitution and Section 77 of The Parliament's Rules of Procedure contain provisions on those Representatives who become Members of the European Parliament:

### *Constitution*

#### Section 28.1

The office of a Representative is suspended for the time during which the Representative is serving as a Member of the European Parliament. During that time a deputy of the Representative shall replace the Representative.

### *The Parliament's Rules of Procedure*

#### Section 77<sup>451</sup>

A Representative who has been elected as a Member of the European Parliament shall notify the Speaker whether he or she will choose to serve as a Representative or whether he or she will serve as a Member of the European Parliament. After an election to the European Parliament, the notification shall be made before the European Parliament convenes in its first plenary session. After parliamentary elections, the notification shall be made at the latest at noon on the third day after the scrutiny of the **Representative's credentials. If the Representative has chosen to serve as a Member of the European Parliament**, his or her office of Representative shall be suspended as from the date when the credentials of the substitute Representative have been examined.

### *Implementing provisions*

The Electoral Act provides in more detail for conduct of elections.

#### *1.2.2. Denomination of the members of the Finnish Parliament*

Members of the Finnish Parliament are referred to as:

- *kansanedustaja, riksdagsledamot (Member of Parliament)*

<sup>450</sup> The text of the Electoral Act (No 714/1998) is available at:  
<http://www.finlex.fi/fi/laki/ajantasa/1998/19980714?search%5Btype%5D=pika&search%5Bpika%5D=Vaailaki> (in Finnish),  
<http://www.finlex.fi/sv/laki/ajantasa/1998/19980714> (in Swedish), and  
<http://www.finlex.fi/en/laki/kaannokset/1998/en19980714.pdf> (in English; translation including amendments up to Act No 218/2004).

<sup>451</sup> [https://www.eduskunta.fi/EN/tietoeduskunnasta/Documents/RulesofProcedure\\_20150416.pdf](https://www.eduskunta.fi/EN/tietoeduskunnasta/Documents/RulesofProcedure_20150416.pdf)

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

The term of the Parliament begins when the results of the parliamentary elections have been confirmed and lasts until the next parliamentary elections have been held (Constitution, Section 24).

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

*The national authority competent to communicate cases of incompatibility to the European Parliament is the Ministry of Justice (olkeusministeriö, justitieministeriet).*

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

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

#### 2.1.1. *Constitution*

Members of Parliament are basically immune against charges for their parliamentary activity. A very high threshold (83 % of votes cast) is required to lift this immunity. Concerning charges for common law offences, they do not however enjoy immunity but may not, for offences punishable with prison for less than six months, be arrested or taken into custody on remand unless Parliament by simple majority consents to such a coercive measure (Constitution, Section 30).

#### Section 30

A Representative shall not be prevented from carrying out his or her duties as a Representative.

A Representative shall not be charged in a court of law nor be deprived of liberty owing to opinions expressed by the Representative in the Parliament or owing to conduct in the consideration of a matter, unless the Parliament has consented to the same by a decision supported by at least five sixths of the votes cast.

If a Representative has been arrested or detained, the Speaker of the Parliament shall be immediately notified of this. A Representative shall not be arrested or detained before the commencement of a trial without the consent of the Parliament, unless he or she is for substantial reasons suspected of having committed a crime for which the minimum punishment is imprisonment for at least six months.

#### 2.1.2. *Implementing provisions*

The Rules of Procedure of Parliament do not contain further provisions for the implementation of parliamentary immunity. For confirmation of lack of such provisions, see also under 2.3 below.

### 2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to the members of the Finnish Parliament consist in the freedom of speech of the Member of Parliament, and the protection against arrest and taking into custody for minor offences.

#### 2.2.1. *Limited liability principle (Section 30 of the Constitution)*

The limited liability set out in Section 30 implies protection against prosecution and arrest or detention for Members for their opinions expressed in Parliament and their conduct in the consideration of a matter. For such opinions and conduct, Members may only be charged in court or deprived of liberty with the consent of Parliament; such authorization is to be supported by at least five sixths of the votes cast. The section only applies to criminal acts committed in the Parliament that are linked to the functions of a member; other crimes committed by members can be prosecuted as if they had been committed by any other person, and the permission of Parliament is not required.

This limited liability continues even after the end of the mandate of the Member.

### 2.2.2. Immunity (Section 30 of the Constitution)

The enhanced protection of members in criminal proceedings established in Section 30 prevents the arrest or custody on remand for MPs for minor offences until criminal proceedings have commenced in Court, unless the Chamber consents to it. Once proceedings have begun, the competent court may impose detention without the consent of Parliament. It should be noted that if a member is sentenced to a term of imprisonment, Section 30 does not give protection against the carrying-out of that sentence. In respect of criminal sanctions, members are in the same position as any other citizen.

The enhanced protection of members in criminal proceedings relates to the office of member generally. It thus applies both to activities in Parliament and to other conduct. This protection does not, however, apply if a member is for substantial reasons suspected of having committed a crime for which the minimum penalty is imprisonment for at least six months. Moreover, it only lasts until the person is still in office.

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

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

According to an official letter sent to the President of the European Parliament by the Permanent Representation of Finland to the European Union,<sup>452</sup> Finnish legislation contains no provision concerning requests for waiver of the immunity of MEPs.

For the lifting of immunity against coercive measures for minor common law offences to start, a conditional arrest warrant or decision by court ordering custody is required. Pursuant to Chapter 2, Section 9 of the Coercive Measures Act (No 806/2011) (*pakkokeinolaki, tvångsmedelslag*)<sup>453</sup>, a detention order must be issued by an official who has the power of arrest which are, depending on the context, the police (*poliisi, polisen*); the prosecution (*syyttaja, åklagare*); customs (*Tullihallitus, Tullstyrelsen*) and border guard (*Rajavartiolaitos, Gränsbevakningsväsendet*).

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<sup>452</sup> See letter dated 16 April 2013.

<sup>453</sup> The text of the Coercive Measures Act (No 806/2011) is available at: <https://www.finlex.fi/fi/laki/ajantasa/2011/20110806> (in Finnish), <https://www.finlex.fi/sv/laki/ajantasa/2011/20110806> (in Swedish), and [https://www.finlex.fi/fi/laki/kaannokset/2011/en20110806\\_20131146.pdf](https://www.finlex.fi/fi/laki/kaannokset/2011/en20110806_20131146.pdf) (unofficial English translation).

## SWEDEN

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

1.1. Member of the Government of a Member State

1.1.1. *Legal provisions on the composition of the Swedish government*

### *Constitution*

The composition of the Swedish government is established by Chapter 6, Article 1 of the Instrument of Government<sup>454</sup> (*Regeringsformen*), which reads as follows: "The Government consists of the Prime Minister and other ministers. The Prime Minister is appointed in accordance with the procedure laid down in Articles 4 to 6. The Prime Minister appoints the other ministers". Article 2 further states that the ministers must be Swedish citizens, and may not have any other employment or hold any appointment or engage in any activity which might impair public confidence in them.

According to the Instrument of Government, Government business is settled by the Government at Government meetings, which shall be attended by at least five members (Chapter 7, Articles 3 and 4). Thus, a lower limit is set for the number of Government ministers, but there is no upper limit. In recent years, the number has been just over 20.

1.1.2. *Denomination of the members of the Swedish government*

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

- *Statsministern (Prime Minister),*
- *Statsråd (Ministers).*

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

When the *Riksdag* has approved a proposal for a new Prime Minister, the Prime Minister shall inform the *Riksdag* as soon as possible of the names of the ministers. Government changes hands thereafter at a Council of State before the Head of State (i.e. the King or Queen) or, in his or her absence, before the Speaker who shall always be summoned to attend such a Council. The Speaker issues a letter of appointment for the Prime Minister on the *Riksdag's* behalf (Instrument of Government, Chapter 6, Article 6).

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<sup>454</sup> Regeringsformen (1974:152), [http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Kungorelse-1974152-om-beslu\\_sfs-1974-152/?bet=1974:152](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Kungorelse-1974152-om-beslu_sfs-1974-152/?bet=1974:152).

An official English version is available at:

<https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-instrument-of-government-2015.pdf>



## 1.2. Member of a national parliament

### 1.2.1. *Legal provisions on the composition of the Swedish Parliament*

#### *Constitution*

The composition of the *Riksdag* (the Swedish Parliament) is established by Chapter 3, Article 2, of the Instrument of Government, which reads as follows: "The *Riksdag* consists of a single chamber comprising three hundred and forty-nine members. Alternates shall be appointed for members."

Ordinary elections for the *Riksdag* are held every four years (Instrument of Government, Chapter 3, Article 3).

Eligibility is regulated in Chapter 3, Article 4 of the Instrument of Government, which reads as follows: **"Every Swedish citizen who is currently domiciled within the Realm or who has ever been domiciled within the Realm, and who has reached the age of eighteen, is entitled to vote in an election to the *Riksdag*. Only a person who is entitled to vote may be a member or alternate member of the *Riksdag*. The question of whether a person has the right to vote is determined on the basis of an electoral roll drawn up prior to the election."**

#### *Implementing provisions*

More detailed provisions concerning the organisation of the *Riksdag* are contained in the *Riksdag Act* (*Riksdagsordningen*)<sup>455</sup>, which occupies a position between a fundamental law and an ordinary law.

### 1.2.2. *Denomination of the members of the Swedish Parliament*

Pursuant to the provisions mentioned in paragraph 1.2.1., members of the Swedish parliament are the following:

- *Riksdagsledamot* (Member of Parliament); *Riksdagsledamöter* (Members of Parliament).

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

Chapter 3, Article 10 of the Instrument of Government stipulates that "[e]ach election is valid for the period from the date on which the newly-elected *Riksdag* convenes to the date on which the *Riksdag* elected next thereafter convenes. The newly-elected *Riksdag* convenes on the fifteenth day following election day but no sooner than the fourth day after the result of the election has been declared".

The date of the beginning of the term of office of the *Riksdag* Members coincides with the date of the first sitting of the *Riksdag*. At the first meeting, a report from the Election Review Board concerning the

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<sup>455</sup> Riksdagsordning (2014:801), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/riksdagsordning-2014801\\_sfs-2014-801](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/riksdagsordning-2014801_sfs-2014-801)

An official English version is available at: <https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-riksdag-act-2015.pdf>

examination of the certificates of members and alternate members is presented and a roll-call of members is taken (*Riksdag* Act, Chapter 3, Article 3).

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

Cases of incompatibility with membership of the European Parliament are set out in Chapter 1, Article 6 of the Swedish Elections Act (2005:837)<sup>456</sup>. No national authority is explicitly entrusted with the task of communicating incompatibilities to the European Parliament, but the Elections Act establishes procedures for determining which candidates have been elected and for the issuance and examination of certificates for those appointed.

According to Chapter 14, Article 1 of the Elections Act, the central election authority (*Valmyndigheten*) shall, on the basis of the result of the final counting of votes, distribute the seats in the *Riksdag* and the European Parliament and also determine which candidates have been elected as members and substitutes. For those who have been appointed as a member of the *Riksdag* or the European Parliament or as a substitute, the central election authority immediately issues a certificate to that effect, stating the name of the person who has been appointed, and the time, the party and the constituency that he/she has been appointed for. An extract from the record or another document from the calculation upon which the member of substitute has been appointed shall apply as a certificate. A certificate that relates to a member of the European Parliament shall be sent to the person appointed, to the Election Review Board and the Speaker of the *Riksdag*, and to the European Parliament (Elections Act, Chapter 14, Articles 28 and 29).

The Election Review Board (Swe. *Valprövningsnämnden*), which is appointed by the *Riksdag*<sup>457</sup>, shall examine certificates for members of the *Riksdag* or members of the European Parliament and substitutes to consider whether these have been properly issued. A report on the examination shall be immediately delivered to the Speaker of the *Riksdag* and, if the election relates to members of the European Parliament, to the Parliament (Chapter 14, Section 30).

**Chapter 15, Article 10 of the Elections Act states that "Members of the European Parliament shall take up their assignment when they have been appointed and their eligibility considered by the European Parliament".**

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<sup>456</sup> Vallag (2005:837), available in Swedish at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/vallag-2005837\\_sfs-2005-837](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/vallag-2005837_sfs-2005-837).

<sup>457</sup> Instrument of Government, Chapter 3, Article 12.

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

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

#### 2.1.1. Constitution

In Sweden the parliamentary immunity is granted in accordance with Chapter 4, article 12 of the Instrument of Government, which reads as follows:

#### **Chapter 4, article 12**

Legal proceedings may not be initiated against a person who holds a mandate as a member of the *Riksdag*, or who has held such a mandate, on account of a statement or an act made in the exercise of his or her mandate, unless the *Riksdag* has given its consent thereto in a decision supported by at least five sixths of those voting.

Nor may such a person be deprived of his or her liberty, or restricted from travelling within the Realm, on account of an act or statement made in the exercise of his or her mandate, unless the *Riksdag* has given such consent thereto.

If, in any other case, a member of the *Riksdag* is suspected of having committed a criminal act, the relevant legal provisions concerning apprehension, arrest or detention are applied only if he or she admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years.

#### 2.1.2. Implementing provisions

Further provisions on the prosecution or deprivation of liberty of members of the *Riksdag* are laid down in Chapter 5, Article 7 the *Riksdag* Act. According to the Article, an application for the consent of the *Riksdag* (cf. Instrument of Government, Chapter 4, Article 12 above) shall be submitted by a prosecutor, or any other person wishing to initiate legal proceedings, to the Speaker. If the application is so incomplete that it cannot be used as a basis for consideration by the *Riksdag*, or if the applicant has failed to demonstrate that he or she is competent to raise charges or apply for such action to be taken by a public authority, the Speaker shall reject the application. In any other case, the Speaker shall notify the matter to a meeting of the Chamber. A supplementary provision (5.7.1) establishes that such an application shall be submitted in writing and shall contain the grounds for the application.

Pursuant to Chapter 10, Article 2 of the *Riksdag* Act, an application for consent to prosecution or deprivation of liberty which has been notified in the Chamber shall be referred to the Committee on the Constitution for preparation.

### 2.2. Scope and content of national parliamentary immunities

#### 2.2.1. Limited liability principle (Chapter 4, article 12, paragraph 1 of the Instrument of Government)

According to Chapter 4, Article 12, paragraph 1 of the Instrument of Government, legal proceedings may not be initiated against a person who holds, or has held, a mandate as a member of the *Riksdag*, on account of a statement or an act made in the exercise of his or her mandate, unless the *Riksdag* has

given its consent thereto in a decision supported by at least five sixths of those voting. Nor may such a person be deprived of his or her liberty, or be restricted from travelling within the Realm, on account of an act or statement made in the exercise of his or her mandate, unless the *Riksdag* has given such consent thereto.

According to the preparatory works, this immunity should apply **only to members' activities in the Chamber and in *Riksdag* bodies where the members' activities are clearly linked to the mandate, e.g. the parliamentary committees.**<sup>458</sup>

The rules in paragraph 1 also apply to the Speaker and to an alternate exercising a mandate as a member (Instrument of Government, Chapter 4, Article 13).

The *Riksdag* has received applications from prosecutors with respect to initiation of legal proceedings against a member of the *Riksdag* on two occasions. On both occasions, the Committee on the Constitution, during its preparation of the matter, found that the acts in question had not been made **in the exercise of the member's mandate and, consequently, that no permission from the *Riksdag* was needed for prosecution** (cf. below regarding relative immunity).<sup>459</sup>

### 2.2.2. Immunity (Chapter 4, article 12, paragraph 2 of the Instrument of Government)

Chapter 4, article 12, paragraph 2 of the Instrument of Government provides limited immunity for crimes committed by a member of the *Riksdag* in an individual capacity, i.e. beyond the exercise of his or her mandate as a member of the *Riksdag*. The provision states that if a member of the *Riksdag*, in any other case than under the paragraph 1 (cf. above), is suspected of having committed a criminal act, the relevant legal provisions concerning apprehension, arrest or detention are applied only if he or she admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years. Note however, that there are no restrictions regarding prosecution. Nor does the immunity cover travelling restrictions or bringing a member in for questioning.

The rules on relative immunity also apply to an alternate exercising a mandate as a member (Instrument of Government, Chapter 4, Article 13).

Chapter 4, article 11, paragraph 3 of the Instrument of Government sets out that a member of the *Riksdag* may only be removed if that member, has committed a crime, and is obviously unsuitable for the. Such decision is decided by a court.

<sup>458</sup> Government bill 1973:90 p. 266, available in Swedish at: <https://data.riksdagen.se/fil/A867E025-F83C-43D0-A82D-3EB127C6573D>

<sup>459</sup> Report of the Committee on the Constitution 1993/94:KU49; Report of the Committee on the Constitution 1999/2000:KU21.

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

Cf. provisions governing the procedure of a request for the waiver of immunity of members of the national parliament referred to under 2.1.2 above. No specific procedural rules have been adopted with regard to requests for waiver of immunity of the Swedish members of the European Parliament.

According to an official letter<sup>460</sup> sent to the President of the European Parliament by the Permanent Representation of Sweden to the European Union, the Swedish Prosecution Authority (*Åklagarmyndigheten*) is the national competent authority to request the immunity of a Swedish member of the European Parliament to be waived.

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<sup>460</sup> See letter dated 11 April 2013.



## Abstract

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

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