

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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



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**HANDBOOK ON THE
INCOMPATIBILITIES AND
IMMUNITY OF THE MEMBERS OF
THE EUROPEAN PARLIAMENT**
August 2014

STUDY for the JURI Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES

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

LEGAL AFFAIRS

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

August 2014

STUDY

Abstract

Upon request by the Legal Affairs Committee, this handbook describes the national rules on the composition of the governments and parliaments of each of the Member States of the European Union and provides an overview of the national rules on parliamentary immunities. It further lists the national authorities that are competent to request the waiver of MEPs immunity, as identified after consultation with the Member States.

This text will be updated regularly, on the basis of information received; please hold as reference the date of edition.

DOCUMENT REQUESTED BY THE COMMITTEE ON LEGAL AFFAIRS

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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, 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 legal framework governing the verification of the credentials and the immunities of the Members of the European Parliament.

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 a MEP, according to Article 7(1) and (2) of the 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 legal provisions on the composition of the national 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.

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

This text will be updated regularly, on the basis of information received from the Permanent Representations of the Member States to the European Union and other sources. Please hold as reference the date of edition and check with Policy Department C whether the version you are reading is the latest version.

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PART I

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

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

Under the terms of Article 12 of the 1976 Act concerning the election of the Members of the European Parliament by direct universal suffrage, as amended by Council decision 2002/772/EC, the European Parliament is required to verify the credentials of its Members. For this purpose, it takes note of the results declared officially by the Member States and rules on any disputes which may arise out of the provisions of the Act, other than those arising out of the national provisions to which the Act refers.¹ It follows that the European Parliament has a legal obligation to assess the existence of any of the grounds for incompatibilities laid down in Article 7(1) and (2) of the above mentioned Act. In accordance with the European Parliament's Rules of Procedure, "where it is established from facts verifiable from sources available to the public that a Member holds an office incompatible with that of Member of the European Parliament, within the meaning of Article 7(1) and (2) of the Act of 20 September 1976, Parliament, on the basis of the information provided by its President, shall establish that there is a vacancy."

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

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

2. Parliamentary immunity

According to article 343 of the TFEU, 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 (PPI).

Articles 8 and 9 of that Protocol lay down the classical two categories of parliamentary immunity: non-liability of Members of Parliament for votes cast and opinions expressed in the performance of their duties, on the one hand, and the

¹ As the Court of Justice has clarified, the Parliament has full power to rule, pursuant to Article 12, on the position of elected candidates possessing one of the qualities incompatible with being a Member of the Parliament, as listed in Article 7: see ECJ, Judgment of 30 April 2009 in Joined Cases C-393/07 and C-9/08 (ECR 2009 Page I-3679, at 69).

protection of Members from prosecutions and restrictions of their personal freedom, on the other hand.

Articles 8 and 9 of PPI read 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."

According to Article 9 of the Protocol, the immunity's regime applicable to the Members during the sessions of the European Parliament varies depending on whether the Member concerned is in the territory of his or her own Member State or in the territory of any other Member State. In the first case, Article 9(a) refers to the national rules on parliamentary immunity of the Member States. It follows that, in the territory of their own State, MEPs enjoy the same immunity which is granted to the members of their respective national Parliaments. The application of Article 9 of the Protocol thus requires the prior identification and understanding of the relevant national rules governing parliamentary immunity in the Member States. An overview of these national rules is provided in the national reports.

Moreover, application of Article 9 also requires the prior identification of the national authorities competent to request the immunity of a Member to be waived. The Rules of Procedure of the European Parliament provide 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" and that "any request for waiver of immunity shall be evaluated in accordance with Articles 7, 8 and 9 of the Protocol on the Privileges and Immunities of the European Union and with the principles referred to in this Rule."

In accordance with Parliament's Rules of Procedure, the competent committee, after consulting the Member States, may draw up an indicative list of the authorities of the Member States which are competent to present a request for the waiver of a Member's immunity. An overview of these authorities is provided in the national reports.

PART II

NATIONAL REPORTS

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	BE
Bulgaria	Republic of Bulgaria	Република България	BG
Czech Republic	Czech Republic	Česká republika	CZ
Denmark	Kingdom of Denmark	Kongeriget Danmark	DK
Germany	Federal Republic of Germany	Bundesrepublik Deutschland	DE
Estonia	Republic of Estonia	Eesti Vabariik	EE
Ireland	Ireland	Éire/Ireland	IE
Greece	Hellenic Republic	Ελληνική Δημοκρατία	EL
Spain	Kingdom of Spain	Reino de España	ES
France	French Republic	République française	FR
Croatia	Republic of Croatia	Republika Hrvatska	HR
Italy	Italian Republic	Repubblica italiana	IT
Cyprus	Republic of Cyprus	Κυπριακή Δημοκρατία	CY
Latvia	Republic of Latvia	Latvijas Republika	LV
Lithuania	Republic of Lithuania	Lietuvos Respublika	LT
Luxembourg	Grand Duchy of Luxembourg	Grand-Duché de Luxembourg	LU
Hungary	Hungary	Magyarország	HU
Malta	Republic of Malta	Repubblika ta' Malta	MT
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
United Kingdom	United Kingdom of Great Britain and Northern Ireland	United Kingdom of Great Britain and Northern Ireland	UK

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 government

The composition of the Belgian government is established by Articles 99 and 104 of the Belgian Constitution.²

Article 99 of the Constitution reads as follows: "The Council of Ministers includes fifteen members at most. With the possible exception of the Prime Minister, the Council of Ministers includes as many French-speaking members as Dutch-speaking members."³

Article 104 of the Constitution reads as follows: "The King appoints and dismisses the Federal Secretaries of State. The latter are members of the Federal Government. They are not part of the Council of Ministers. They are deputies to a minister."⁴

1.1.2. Denomination of the members of the Belgian government

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

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

² For an English translation of the Belgian Constitution please see the following website: http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/grondwetEN.pdf.

³ "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".

⁴ "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 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.⁵

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Belgian Parliament

Constitution

The Belgian Parliament is composed by the Chamber of Representatives and by the Senate. Indeed, Articles 42, 63 §1 and 67 §1 of the Belgian Constitution rule that: "The members of the two Houses represent the Nation [...]"⁶; "The House of Representatives is composed of one hundred and fifty members"⁷; "[...] the Senate is composed of seventy-one senators [...]"⁸. Whereas according to Article 61 of the Constitution, the members of the Chamber of Representatives are all elected directly by citizens, the Senate is composed both by elected members and by appointed members. Indeed, some Senators are appointed by and within the Parliament of the Flemish Community, by and within the Parliament of the French Community, by and within the Parliament of the Germano-speaking Community and by the elected and other appointed Senators⁹ (article 67 §1 of the Constitution). The children of the King or, in the absence of children, the Belgian descendants of the branch of the royal family called on to reign, are Senators by right at the age of eighteen (article 72 of the Constitution).

Implementing provisions

More detailed provisions concerning the composition and the organisation of the Chamber of Representatives and of the Senate are contained in their respective Rules of Procedure¹⁰. Additional provisions concerning the election of the Chamber of representatives and the Senate are contained in the Electoral Law ("*Code électoral*" / "*Kieswetboek*" / "*Wahlgesetzbuch*").¹¹

⁵ http://www.belgium.be/fr/la_belgique/pouvoirs_publics/autorites_federales/gouvernement_federal/formulation_gouvernement/. Also see Article 96 § 2 of the Constitution, according to which, in the case of a vote of no confidence, the successor to the prime minister takes office when the new Federal Government is sworn in.

⁶ "Les membres des deux Chambres représentent la Nation [...]"; "De leden van beide Kamers vertegenwoordigen de Natie [...]"; "Die Mitglieder der beiden Kammern vertreten die Nation [...]".

⁷ "La Chambre des représentants compte cent cinquante membres"; "De Kamer van volksvertegenwoordigers telt honderdvijftig leden"; "Die Abgeordnetenkammer zählt hundertfünfzig Mitglieder."

⁸ "[...] le Sénat se compose de septante et un sénateurs [...]"; "[...] telt de Senaat eenenzeventig senatoren [...]"; "[...] setzt der Senat sich aus einundsiebzig Senatoren zusammen [...]".

⁹ Some appointed Senators, so called co-opted Senators (*sénateurs cooptés/gecoöpteerde senatoren*) are appointed not only by the elected Senators but also by the Senators appointed by the Parliaments of the Communities.

¹⁰ The texts of the Rules of Procedure of the Chamber of Representatives and the Senate are available at: http://www.senate.be/doc/reglement_fr.html (in French or Dutch only); and http://www.lachambre.be/kvvcr/pdf_sections/publications/reglement/reglementE.pdf.

¹¹ The text of the Electoral Law (in French) is available at: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1894041230%2FF&caller=list&row_id=1&numero=5&rech=5&cn=1894041230&table_name=LOI&nm=1894041255&la=F&chercher=t&dt=CODE+ELECTORAL&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&sql=dt+contains++%27CODE%27%2526+%27ELECTORAL%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&trier=promulgation&imgcn.x=72&imgcn.y=16.

1.2.2. Denomination of the members of the Belgian Parliament

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

- *Membre de la Chambre des représentants, lid van de Kamer van volksvertegenwoordigers, Mitglied der Abgeordnetenversammlung* (Deputy); *Membres de la Chambre des Représentants, leden van de Kamer van volksvertegenwoordigers, Mitglieder der Abgeordnetenversammlung* (Deputies),
- *Sénateur/Sénatrice, Senator* (Senator); *Sénateurs, Senatoren* (Senators).

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

- *président/présidente, voorzitter* (President)
- *vice-président/vice-présidente, ondervoorzitter* (Vice-President)
- *président/présidente de commission, commissievoorzitter* (Committee Chairperson)
- *questeur/questeure, quaestor* (Quaestor)
- *secrétaire, secretaris* (Secretary).

1.2.3. Date of the beginning of the term of office

Chamber of Representatives

Members of the Chamber of Representatives officially begin their term of office from the day of taking oath of office.¹² The verification of credentials is established by article 48 of the Constitution and the procedure is determined by Rule 2(4) of the Rules of Procedure of the Chamber of Representatives, which reads as follows: "*Avant d'entrer en fonction, les membres sont tenus de prêter serment en séance plénière et publique*" (Before taking up their seats, the Members are obliged to swear the oath in a plenary and public sitting).

Senate

Both the elected and the appointed Senators begin their term of office on the day of taking oath of office. Article 7 of the Rules of Procedure of the Senate states: "*Avant d'entrer en fonctions, les membres du Sénat sont tenus de prêter serment en séance publique*" (Before taking up their seats, the Members of the Senate are obliged to swear the oath in a public sitting).

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

Pursuant to Federal Law of 23 March 1989¹³ on the election of Belgian members at the European Parliament, most recently amended by the Federal Law of 19 July 2012, the authority entitled to send the European Parliament the list of persons

¹² 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. See http://www.lachambre.be/kvvcr/pdf_sections/jurid/violF.pdf, p. 24-25.

¹³ http://www.ibz.rn.fgov.be/fileadmin/user_upload/Elections2009/fr/lois/LOI_DU_23_MARS_1989_Vers2_0090401.pdf.

elected and the documents necessary to verify their credentials is "le greffier de la Chambre des Représentants"; "de Griffier van de Kamer van Volksvertegenwoordigers" (the registrar of the Chamber of Representatives).

According to Article 37 of the above-mentioned Federal Law: "At the end of the procedure described in Article 43, the registrar of the Chamber of Representatives shall send the European Parliament the records, accompanied by a joint list of persons elected and the documents necessary to verify their credentials". Article 43 reads as follows: "The Chamber of Representatives shall rule on the validity of electoral proceedings with regard to both full elected members and their substitutes. It shall rule on complaints lodged on the basis of the provisions of this law. Any complaint against the election must be made in writing and lodged with the registrar of the Chamber of Representatives within ten days following the election. The decision taken by the Chamber of Representatives on the complaint shall be attached to the documents referred to in Article 37(2)."

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. Constitution

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

Article 58

No member of either 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.

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".

2.1.2. Implementing provisions

The implementing rules of Article 59 of the Constitution are contained in the Rules of Procedure of the Chamber of Representatives, at Article 160. No similar provision can be found in the Rules of Procedure of the Senate.¹⁴

¹⁴ For an analysis of the Belgian rules on non-liability, see *Chambre des Représentants, L'irresponsabilité parlementaire*, March 2007, available at http://www.lachambre.be/kvvcr/pdf_sections/jurid/responsaF.pdf

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 Chamber of Representatives and Senators are therefore exempted from any civil, criminal, or disciplinary liability which could stem from an opinion expressed or votes cast when carrying out their parliamentary activities. This exemption 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).

2.2.2. Immunity (Article 59 of the Constitution)

Pursuant to Article 59 of the Constitution, Members of Parliament in session cannot be arrested nor referred to a court of law without the permission of the assembly they belong to. This protection does not apply when the Member of Parliament is caught in *flagrante delicto*. Since 1997, the assembly only needs to give its permission for the arrest and the referral to a court of law, not for the investigation itself anymore.¹⁵ The immunity is only valid during the term of office¹⁶.

Moreover, in accordance with Article 59 § 5 of the Constitution, Members of Parliament may always request the Chamber to ask for suspension of their prosecution: such a decision is to be taken by a two thirds majority. The Chamber 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 letter¹⁷ 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 (Minister van Justitie / Ministre de la Justice), but the request should be transmitted via the Permanent Representation of Belgium to the European Union.

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¹⁵ 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 Chamber's Speaker. Additionally, the Speaker (or his/her representative) must be present during searches or seizures against Parliamentarians.

¹⁶ For an analysis of the Belgian rules on parliamentary immunity see: http://www.lachambre.be/kvvcr/pdf_sections/jurid/violF.pdf.

¹⁷ 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."¹⁸

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 2009¹⁹, 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.

¹⁸ 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: <http://www.parliament.bg/?page=const&lng=bg>; and in English, at: <http://www.parliament.bg/?page=const&lng=en>.

¹⁹ Promulgated in State Gazette (SG) No 78 of 02.10.2009, last amendments promulgated in SG No 103 of 28.12.2012. 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 1992²⁰, 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 Assembly²¹.

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."²² 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 Assembly²³.

1.2.2. Denomination of the members of the Bulgarian Parliament

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

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

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.

²⁰ Constitutional Court Decision No 1 of 16.01.1992 on constitutional case No 18 of 1991 (State Gazette No 11 of 07.02.1992).

²¹ 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.

²² Article 63 of the Constitution reads: "Народното събрание се състои от 240 народни представители".

²³ Promulgated in State Gazette No. 58/27.07.2009, amended and supplemented, SG No. 60/30.07.2009, Constitutional Court Decision No 11/03.12.2009, SG No 98/11.12.2009; supplemented, SG No 100/15.12.2009, amended and supplemented, SG No 43/08.06.2010; amended and supplemented, SG No 33/26.04.2011; Constitutional Court Decision No 6/16.05.2011, SG No 39/20.05.2011; Constitutional Court Decision No 9/04.10.2011, SG No 80/14.10.2011; amended, SG No 30/17.04.2012, amended, SG No 69/2012. See <http://www.parliament.bg/?page=app&lng=bq&aid=6> (for a consolidated version in Bulgarian) and <http://www.parliament.bg/?page=app&lng=en&aid=6> (for a consolidated version in English).

Under the terms of Article 76 (2) of the Bulgarian Constitution and Article 4(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".²⁴

In a later case, involving the interpretation of a provision of the Constitution²⁵ 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 2001²⁶).

According to Article 16 of the financial rules on the implementation of the budget of the National Assembly,²⁷ 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 115 (1) of the Law on the election of Members of Parliament.²⁸

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 120 of the Law on the election of Members of the European Parliament from Republic of Bulgaria,²⁹ "after the official announcement of the election results, the President of the National Assembly informs the President of the European Parliament about the elected Members of the European Parliament from Republic of Bulgaria".

Article 121 of the same Law reads as follows: "The term of office of Member of the European Parliament from Republic of Bulgaria shall end on resignation, death or in case of incompatibilities under Article 2 of the Law." However, there are no procedural rules for the implementation of this article.

In national law, the Constitutional Court is competent to establish the ineligibility or incompatibility in the case of Members of the National Assembly (Article 72, 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 no later than 14 days after the announcement of the election results by the Central Electoral Commission (Article 118 of the Law on the election of members of the European Parliament from Republic of Bulgaria).

²⁴ Constitutional Court Decision No 1 of 16.01.1992 on constitutional case No 18 of 1991 (State Gazette No 11 of 07.02.1992).

²⁵ Article 64 (1) reads: "The National Assembly shall be elected for a term of four years".

²⁶ Constitutional Court Decision No 5 of 22.03.2001 on constitutional case No 5 of 2001 (State Gazette No 30/2001). An English summary of this decision is available at: <http://www.constcourt.bg/Pages/Document/Default.aspx?ID=1169>.

²⁷ Annex to the Rules of Organisation and procedure of the National Assembly.

²⁸ Закон за избиране на народни представители, available at: <http://www.lex.bg/bg/laws/ldoc/2135182336>.

²⁹ Закон за избиране на членове на Европейския Парламент от република България, available at: <http://lex.bg/bg/laws/ldoc/2135545857> (consolidated version in Bulgarian).

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. 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 132 of the Rules of organisation and procedure of the National Assembly which reads as follows:

Article 132

(1) Members of the National Assembly may not be taken into custody and shall not be liable to criminal prosecution, save for a committed crime of a general nature and, then, by consent of the National Assembly or, when the Assembly is not in session (Article 42, paragraph 2), of the Chairperson of the National Assembly.

(2) Permission to initiate criminal proceedings shall not be required in case there is agreement in writing by the Member of the National Assembly. The Member of the National Assembly shall submit his/her agreement to the Chairperson of the National Assembly in person who shall notify forthwith the Chief Prosecutor and inform the National Assembly at the first sitting following the submission of the agreement. Once given by a Member of the National Assembly the agreement cannot be withdrawn.

(3) No consent to custody shall be required when the Member concerned is caught in the act of committing a grave crime, in which case the National Assembly, or, when the Assembly is not in session (Article 36, paragraph 2), its Chairperson, shall be notified immediately.

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

(5) The request of the Chief Prosecutor and the data therewith shall be considered by the National Assembly, which shall rule thereon not earlier than 14 days after the receipt of the request. If so requested, and if the Member concerned appears before it, the National Assembly shall hear the Member concerned.

(6) When the National Assembly is not in session (Article 36, paragraph 2), the permission to institute criminal proceedings against a Member shall be issued by the Chairperson of the National Assembly. Such permission so issued shall be tabled for approval by the Members of the National Assembly at the first sitting of the Assembly.

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

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

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

2.2. 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 n° 10 of 27 July 1992³⁰).

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.

³⁰ 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 Articles 136 ff. of the Rules of organisation and procedure of the National Assembly.

Article 132 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, para. 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 Chief Prosecutor and inform the National Assembly. Once the Member has given his/her agreement, this cannot be withdrawn (Article 132, para. 4, of the Rules of Procedure of the National Assembly).

Secondly, when a Member is arrested *in flagrante delicto* (Article 70 para. 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 para. 1 of the Constitution and Article 132, para. 2 of the Rules of 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 132 (3) of the Rules of Procedure of the National Assembly, the *Главен прокурор* (Chief Prosecutor) shall direct a substantiated request for permission to institute criminal proceedings.

According to an official letter³¹ 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 Attorney General of the Republic of Bulgaria.

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³¹ 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".³²

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

1.1.3. Date of the beginning of the term of office

Under the terms of Article 69 of the Constitution³³ 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.

³² "*Vláda se skládá z předsedy vlády, místopředsedů vlády a ministrů*". An English translation of the Constitution is available at: http://www.hrad.cz/en/ustava_cr/index.shtm

³³ 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".

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".³⁴

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.³⁵

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)
- *Místopředseda Poslanecké sněmovny* (Vice-President of the Chamber of Deputies)
- *Poslanci* (Deputies)
- *Předseda Senatu* (President of the Senate)
- *Místopředseda Senatu* (Vice-Presidents of the Senate)
- *Senátoři* (Senators)

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

³⁴ "Parlament je tvořen dvěma komorami, a to Poslaneckou sněmovnou a Senátem."

³⁵ The texts of the Rules of Procedure of the Chamber of Deputies and the Senate are available at (respectively): http://www.psp.cz/docs/laws/1995/90_index.html; and http://www.senat.cz/informace/zakon106/zakony/zak107.php?ke_dni=14.12.2012&O=9.

belief." ³⁶ 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 National Electoral Committee within the period of one month after the announcement of the results of elections.

At the first sitting following elections, Senators take the 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.

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 "volební komise" (State Election Commission).

³⁶ 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.

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. Constitution

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

Article 27

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

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

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

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

(5) A Deputy or a Senator may be detained only if he or she has been apprehended when committing a criminal offence or immediately thereafter. The competent agency shall immediately report the detention to the chairman of the chamber of which the detainee is member; if the chairman of the respective chamber does not consent within twenty-four hours of the detention to the surrender of the detainee to a court, the competent agency shall release him or her. At its first subsequent meeting the respective chamber shall decide with final validity on the admissibility of the prosecution."³⁷

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.

³⁷ The Czech wording of this Article is the following: "Poslance ani senátora nelze postihnout pro hlasování v Poslanecké sněmovně nebo Senátu nebo jejich orgánech. Za projevy učiněné v Poslanecké sněmovně nebo Senátu nebo v jejich orgánech nelze poslance nebo senátora trestně stíhat. Poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem. Za přestupky poslanec nebo senátor podléhá jen disciplinární pravomoci komory, jejímž je členem, pokud zákon nestanoví jinak. Poslance ani senátora nelze trestně stíhat bez souhlasu komory, jejímž je členem. Odepře-li komora souhlas, je trestní stíhání navždy vyloučeno. Poslance nebo senátora lze zadržet, jen byl-li dopaden při páčání trestného činu nebo bezprostředně poté. Příslušný orgán je povinen zadržení ihned oznámit předsedovi komory, jejímž je zadržený členem; nedá-li předseda komory do 24 hodin od zadržení souhlas k odevzdání zadrženého soudu, je příslušný orgán povinen ho propustit. Na své první následující schůzi komora rozhodne o přípustnosti stíhání s konečnou platností. "

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, third, fourth and fifth paragraphs, of the Constitution, the authorisation of the Chamber to which the member belongs is needed in order to subject the member to the following measures:

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

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) 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 Union³⁸.

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³⁸ 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 Constitution³⁹ "The King⁴⁰ 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 Constitution, 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 Constitution, the King (currently the Queen) appoints and dismisses the Prime Minister and the other Ministers. He determines their number and the division of competences between them. This is done by a royal decree.⁴¹

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 Constitution.

³⁹ An English translation of the Danish Constitution is available at: <http://www.eu-oplysningen.dk/upload/application/pdf/0172b719/Constitution%20of%20Denmark.pdf>. The Constitution has not been amended since 1953.

⁴⁰ Read "Queen" since the denomination "King" covers the current monarch.

⁴¹ The composition of the current Government is available at: <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 Constitution the *Folketing* consists of one assembly of not more than one hundred and seventy-nine members, of whom two members shall be elected in the Faroe Islands and two members in Greenland. Pursuant to Article 32 of the Constitution, members are elected for a period of four years.

Implementing provisions

More detailed provisions concerning the composition and the organisation of the *Folketing* are contained in the Standing Orders of the Parliament (*Folketingets forretningsorden*).⁴²

1.2.2. Denomination of the members of the Danish Parliament

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

- *Folketingets Formand* (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 a temporary committee consisting of 21 members of Parliament (see Article 1 (2)-(9) of the Standing Orders of the Parliament). The same provision of the Standing Orders of the Parliament as well as Article 32 (7) of the Constitution foresee 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 Articles 40 and 41 of the Law on the election of members to the European Parliament,⁴³ 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 Danish Parliament 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.

⁴² http://www.ft.dk/Dokumenter/Publikationer/Folketinget/Forretningsorden_for_Folketinget.aspx. An English translation of the Standing Orders is available at:

<http://www.thedanishparliament.dk/Publications/Standing%20Orders%20of%20the%20Folketing.aspx>.

⁴³ Consolidated act number 106 of 8 February 2011, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=135718>.

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. Constitution

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

Article 57

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

2.1.2. 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 Constitution)

According to Article 57, second sentence of the Constitution, the non-liability for opinions expressed in the Parliament can be waived with the consent of the *Folketing*. In practice, such consent is never given: therefore, there is a total non-liability for any opinion or vote cast by members of the *Folketing* in the exercise of their functions. 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 ceased office with regard those utterances made when they were members of the *Folketing*.

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

Pursuant to Article 57, first sentence of the Constitution, members of the Parliament cannot be prosecuted or imprisoned without the consent of the Parliament. This immunity covers only public criminal prosecution and applies neither to investigation, interrogation and fines, nor to civil actions or criminal cases resulting from private prosecutions.⁴⁴

⁴⁴ 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

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.⁴⁵

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(*Retsplejeloven*), consolidated act No 1008 of 24 October 2012, available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=143192>. 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.

⁴⁵ 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 Constitution⁴⁶, which reads as follows: "The Federal Government shall consist of the Federal Chancellor and the Federal Ministers."⁴⁷

Implementing provisions

More detailed provisions concerning the composition and the organisation of the German government are contained in Articles 62 to 69 of the Constitution, in the Rules of Procedure of the Government (*GOBReg/ Geschäftsordnung der Bundesregierung*⁴⁸) and in the Rules of Procedure of the Federal Ministries (*GGO/ Gemeinsame Geschäftsordnung der Bundesministerien*⁴⁹).

1.1.2. Denomination of the members of the German government

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

- *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 Constitution, on taking office the Federal Chancellor and the Federal Ministers shall take the oath provided for in Article 56 before the *Bundestag* (Parliament).⁵⁰ It follows that the act of taking the oath and the taking of the office must be kept apart.⁵¹ The notion of "taking of the office" (*Amtsübernahme*) is not specified in the Constitution or the law. The taking of the office takes place after the swearing of the oath, as each

⁴⁶ The text of the German Constitution (*Grundgesetz*) is available at: <http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/grundgesetz/gg.html>. An English translation is available at: <https://www.btg-bestellservice.de/pdf/80201000.pdf>

⁴⁷ "Die Bundesregierung besteht aus dem Bundeskanzler und aus den Bundesministern."

⁴⁸ <http://www.bundesregierung.de/Content/DE/StatischeSeiten/Breg/regierung-und-verfassung-geschaeftsordnung-der-bundesregierung.html>.

⁴⁹ http://www.bmi.bund.de/SharedDocs/Downloads/DE/Veroeffentlichungen/ggo.pdf?__blob=publicationFile. A list of the current Members of the Government may be found here: <http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/Bundeskabinett/bundeskabinett.html>.

⁵⁰ Article 64(2) provides that: "Der Bundeskanzler und die Bundesminister leisten bei der Amtsübernahme vor dem Bundestage den in Artikel 56 vorgesehenen Eid."

⁵¹ See in particular Maunz and Dürig, *Grundgesetz-Kommentar* (2012), Rnr. 36 ff.

Minister 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 envisaged.

It is necessary to distinguish the taking of the office from the beginning of the official relationship under public law. According to Art. 2(2) of the Federal Ministers Act (*Gesetz über die Rechtsverhältnisse der Mitglieder der Bundesregierung*, or *BMinG*⁵²), 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.⁵³

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the German Parliament

Constitution

The German Parliament is the *Bundestag*. According to Article 38(1) of the Constitution: "Members of the German Bundestag shall be elected in general, direct, free, equal and secret elections. They shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience"⁵⁴. The *Bundestag* is not to be confused with the *Bundesrat*, which consists of Members of the Governments of the *Länder*. Pursuant to Article 50 of the Constitution, "The *Länder* shall participate through the *Bundesrat* in the legislation and administration of the Federation and in matters concerning the European Union"⁵⁵.

Implementing provisions

More detailed provisions concerning the composition and the organisation of the *Bundestag* are contained in Articles 38 to 48 of the Constitution and in the *Geschäftsordnung des Deutschen Bundestages*⁵⁶ (Rules of Procedure).

1.2.2. Denomination of the members of the German Parliament

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

- *Abgeordneter des Deutschen Bundestages* (Member of the German Parliament);
- *Abgeordnete des Deutschen Bundestages* (Members of the German Parliament).

1.2.3. Date of the beginning of the term of office

Under the terms of Article 45 of the *Bundeswahlgesetz*⁵⁷ (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.⁵⁸

⁵² <http://www.gesetze-im-internet.de/bming/index.html>.

⁵³ Article 2 (2) provides that: "Das Amtsverhältnis beginnt mit der Aushändigung der Urkunde oder, falls der Eid vorher geleistet worden ist (§ 3), mit der Vereidigung."

⁵⁴ Die Abgeordneten des Deutschen Bundestages werden in allgemeiner, unmittelbarer, freier, gleicher und geheimer Wahl gewählt. Sie sind Vertreter des ganzen Volkes, an Aufträge und Weisungen nicht gebunden und nur ihrem Gewissen unterworfen.

⁵⁵ Durch den Bundesrat wirken die Länder bei der Gesetzgebung und Verwaltung des Bundes und in Angelegenheiten der Europäischen Union mit.

⁵⁶ http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/go_btq/index.html. An English translation is available at: <https://www.btq-bestellservice.de/pdf/80060000.pdf>.

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*⁵⁹). Pursuant to Article 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 the votes⁶⁰ or by the Council of Elders or the President of the German Bundestag.⁶¹

⁵⁷ http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/bwahlq_pdf.pdf.

⁵⁸ 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."

⁵⁹ <http://www.gesetze-im-internet.de/bundesrecht/euwg/gesamt.pdf>.

⁶⁰ According to the Election Scrutiny Law (*Wahlprüfungsgesetz* or *WPrüfG*), available at: <http://www.bundeswahlleiter.de/de/bundestagswahlen/downloads/rechtsgrundlagen/wahlpruefungsgesetz.pdf>.

⁶¹ 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 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. Constitution

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

Article 46

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

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

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

(4) Any criminal proceedings or any proceedings under Article 18 against a Member and any detention or other restriction of the freedom of his person shall be suspended at the demand of the Bundestag.⁶²

2.1.2. Implementing provisions

The implementing rules of Article 46 of the Constitution are contained in Article 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*⁶³), 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).

⁶²"(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."

⁶³ An unofficial version of the Guidelines is available at: http://www.verwaltungsvorschriften-im-internet.de/bsvvwbund_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 Constitution)

Pursuant to Article 46 (1) of the Constitution, members of the *Bundestag* are not liable for the opinions expressed or votes cast in the exercise of their functions. Members of the *Bundestag* are therefore exempted from any civil, criminal, administrative or disciplinary liability which could stem from an opinion expressed or 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 Constitution)

Pursuant to Article 46(2) and (3) of the Constitution, 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 18⁶⁴ of the Constitution (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 Constitution, any criminal proceedings and any proceedings under Article 18 (Forfeiture of basic rights) against a member, any detention and any other restriction of his/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. 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 Nr. 1 of the "*Grundsätze in Immunitätsangelegenheiten*" (Principles of 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:

⁶⁴ 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.

- 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*.⁶⁵

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 Union⁶⁶.

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⁶⁵ The original German text provides that: Berechtigt zur Stellung eines Antrages auf Aufhebung der Immunität sind a) die Staatsanwaltschaften, Gerichte, Ehren- und Berufsgerichte öffentlich-rechtlichen Charakters sowie berufsständische Einrichtungen, die kraft Gesetzes Standesaufsicht ausüben, b) im Privatklageverfahren das Gericht, bevor es nach §383 StPO das Hauptverfahren eröffnet, c) der Gläubiger im Vollstreckungsverfahren, soweit das Gericht nicht auch ohne dessen Antrag tätig werden kann, d) der Ausschuss für Wahlprüfung, Immunität und Geschäftsordnung.

⁶⁶ 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,⁶⁷ holding that the Government of the Republic shall be composed by the Prime Minister and the ministers.

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the Government of the Republic Act.⁶⁸ Article 5 of that Act regulates the appointment to office of the Government.

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 § 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).

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

⁶⁷ The text of the Constitution is available at: <https://www.riigiteataja.ee/akt/127042011002>. An official English translation is available at: <http://www.legaltext.ee/text/en/X0000K2.htm>.

⁶⁸ The text of the Government of the Republic Act is available at: <https://www.riigiteataja.ee/akt/129122011149>. An updated English translation is currently unavailable.

the *Riigikogu* shall be held on the first Sunday in March of the fourth year following the preceding *Riigikogu* election year.

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* begins on the day the results of the election are announced. The mandate of members of the preceding *Riigikogu* terminates on the same day. Before assuming his or her duties, a member of the *Riigikogu* takes an oath of office declaring loyalty to the Republic of Estonia and to its constitutional order.⁶⁹

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

Pursuant to Article 72 of the European Parliament Election Act⁷⁰, the *Vabariigi Valimiskomisjon* (National Electoral Committee) shall register the elected Members of the European Parliament. The National Electoral Committee shall forward the decision to the European Parliament.

If a candidate who is elected holds an office that is incompatible (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.

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 will immediately notify the European Parliament if an Estonian Member of the European Parliament assumes an office not compatible with the mandate of a Member of the European Parliament.

⁶⁹ See also Articles 15 and 16 of the Status of Member of *Riigikogu* Act, available at: <https://www.riigiteataja.ee/akt/129062012024>. An unofficial English translation is available at: http://www.riigikoju.ee/index.php?rep_id=799357.

⁷⁰ Available at: <https://www.riigiteataja.ee/akt/101112012004>. The official English translation (consolidated text as of 16.01.2009) is available at: <http://www.legaltext.ee/text/en/X60009K4.htm>.

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. 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 of the Status of Member of Riigikogu Act.⁷¹ Additionally, more specific implementing rules of Article 76 of the Constitution are contained in Chapter 14 of the Code of Criminal Procedure.⁷²

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.

⁷¹ Providing that: "(1) A member of the *Riigikogu* shall not bear legal liability for votes cast or political statements made by him or her in the *Riigikogu* or in any of its bodies. (2) A Member of the *Riigikogu* may not be hindered from performing his or her duties. (3) Upon preparation of a statement of charges and performing of procedural acts with regard to a Member of the *Riigikogu*, the provisions of Chapter 14 of the Code of Criminal Procedure shall be observed. (4) A Member of the *Riigikogu* cannot yield immunity."

⁷² Available at: <https://www.riigiteataja.ee/akt/121122012010>. The official English translation (consolidated text as of 01.09.2013) is available at: <http://www.legaltext.ee/text/en/X60027K11.htm>.

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

According to Article 377 of the Code of Criminal Procedure, in its current text,⁷³ a member of the *Riigikogu* may be detained as a suspect and preventive measures, seizure of property or physical examinations may be applied with regard to him or her if the consent of the Chancellor of Justice has been obtained on the basis of a request from the Chief Public Prosecutor. However, a member of the *Riigikogu* may be detained as a suspect and preventive measures, seizure of property or physical examinations may be applied with regard to him or her without the consent of the Chancellor of Justice if the member of the *Riigikogu* is caught in the act of committing a criminal offence in the first degree.⁷⁴ The Chief Public Prosecutor and the President of the *Riigikogu* are immediately notified of the performance of such procedural acts. If necessary, the Chancellor of Justice shall examine the materials of the criminal file when granting consent for the performance of a procedural act. The Chancellor of Justice shall grant consent for the performance of a procedural act or return the request within ten days as of the receipt of the request. If the request is returned, the reasons for this must be provided.

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

Pursuant to Article 1(3¹) of the Chancellor of Justice Act,⁷⁵ "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 Union⁷⁶.

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⁷³ Note that Article 377 is currently under review in the Parliament, as the Chancellor of Justice found the existing provisions to be unconstitutional.

⁷⁴ In accordance with Article 4(2) of the Penal Code, a criminal offence in the first degree is an offence the maximum punishment for which is imprisonment for a term of more than five years or life imprisonment (or dissolution, in the case of legal entities). The Text of the Penal Code is available at: <https://www.riigiteataja.ee/akt/120122012012>. The official English translation (consolidated text as of 01.01.2012) is available at: <http://www.legaltext.ee/text/en/X30068K9.htm>.

⁷⁵ Available at: <https://www.riigiteataja.ee/akt/129122012038>. The official English translation of the Chancellor of Justice Act (consolidated text as of 01.01.2008) is available at: <http://www.legaltext.ee/text/en/X30041K7.htm>.

⁷⁶ 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 Constitution⁷⁷, 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, 1924⁷⁸ 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, 1977⁷⁹, the expression "Minister of the Government" means a member of the Government having charge of a Department of State.

It is worth specifying that according to these provisions, the Government is advised by the Attorney General who is not formally a member of the Government but participates in its meetings. Similarly, the Chief Whip may also attend meetings of the Government but is not a part of the Government. Members of the Government

⁷⁷ An official English version of the Irish Constitution is available at: http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2012/Bunreacht_na_h%C3%89ireann-Aug2012.pdf.

⁷⁸ <http://www.irishstatutebook.ie/1924/en/act/pub/0016/index.html>.

⁷⁹ <http://www.irishstatutebook.ie/1977/en/act/pub/0028/sec0004.html#zza28y1977s4>.

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 166 members, pursuant to section 2 of the Electoral (Amendment) Act 2005.⁸⁰ However, the Electoral (Amendment) (*Dáil* Constituencies) Act 2013 will reduce the *Dáil* to 158 members after the next election.⁸¹

⁸⁰ <http://www.oireachtas.ie/documents/bills28/acts/2005/a1605.pdf>.

⁸¹ <http://www.oireachtas.ie/documents/bills28/acts/2013/a713.pdf>.

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 Orders⁸².

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).⁸³

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 1992⁸⁴ 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

⁸² The texts of the *Dáil* and of the *Seanad* Standing Orders are available at: <http://www.oireachtas.ie/parliament/about/publications/standingorders/>.

⁸³ The abbreviations TD for singular and TDs for plural are normally used.

⁸⁴ Available at: <http://www.irishstatutebook.ie/1992/en/act/pub/0023/index.html>.

upon which they begin to enjoy the privileges and immunities associated with being a member of Parliament.

Senate - Seanad Éireann

The rules governing the election of Senators are set out in several pieces of legislation, depending on whether one is referring to the election of Panel Members or University Members. According to Section 53 of the *Seanad Electoral (Panel Members) Act, 1947*,⁸⁵ 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*,⁸⁶ 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)⁸⁷ sets out cases of incompatibility with membership of the European Parliament,⁸⁸ 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.

⁸⁵ Available at: <http://acts.oireachtas.ie/en.act.1947.0042.1.html>.

⁸⁶ Available at: <http://www.irishstatutebook.ie/1937/en/act/pub/0030/index.html>.

⁸⁷ 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).

⁸⁸ 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 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. 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, 1976,⁸⁹ 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*⁹⁰ (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

⁸⁹ Available at: <http://acts2.oireachtas.ie/zza10y1976.1.html>

⁹⁰ http://www.oireachtas.ie/documents/proceduraldocuments/Standorders2011_revised.pdf

the course of proceedings in a way which adversely affects their reputation or invades their privacy.

Additionally, Article 17 of the 2009 Defamation Act⁹¹ 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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⁹¹ 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,⁹² "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 N° 1558/1985 governs the composition and functioning of the Government and its relevant bodies, also providing for its competences, limitations and incompatibilities of its members. This law has been codified into Presidential Decree no 63/2005, along with all other relevant legislation to this matter.

Pursuant to Articles 1 and 40 of Presidential Decree 63/2005, 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. 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 Constitution⁹³ states that any professional activity whatsoever of members of the Government and Undersecretaries shall be in abeyance during the discharge of their duties. Under law 1558/1985, as codified in article 43 of Presidential Decree 63/2005, 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:

⁹² As revised by the parliamentary resolution of May 27th 2008 of the VIIIth Revisionary Parliament. An English translation is available at: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggluko.pdf>.

⁹³ Article 81(3).

- *Πρωθυπουργός* (Prime Minister),
- *Υπουργός* (Minister); *Υπουργοί* (Ministers),
- *Αναπληρωτής Υπουργός* (Deputy Minister); *Αναπληρωτές Υπουργοί* (Deputy Ministers),
- *Υπουργός χωρίς χαρτοφυλάκιο* (Minister without portfolio); *Υπουργοί χωρίς χαρτοφυλάκιο* (Ministers without portfolios).

As mentioned above, relevant legislation specifies that undersecretaries⁹⁴ are not part of the government. This possibility is provided for by the Constitution (Article 81).⁹⁵

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 24 of Presidential Decree 63/2005). 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 39 of Presidential Decree 63/2005) 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 provision regarding incompatibilities and disqualifications of the Members of the Parliament.

Implementing provisions

The electoral law currently in force⁹⁶ establishes that the number of Members of Parliament shall be 300 and lays down electoral methods and procedures.

1.2.2. Denomination of Greek Members of Parliament

The Members of the Hellenic Parliament are designated as follows:

⁹⁴ *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'.

⁹⁵ 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 (currently, article 42 of Presidential Decree 63/2005).

⁹⁶ Codified by Presidential Decree 96/2007, re-amended early in 2008 and re-codified by Presidential Decree 26/2012 (Article 2).

- 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 elections⁹⁷.

Moreover, with regard to the incompatibilities of Members of the Greek Parliament, 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 Court⁹⁸ 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,⁹⁹ as well as by other Constitutional provisions regarding their financing (such as exceeding electoral expenditure or infringement of certain provisions regarding the electoral campaign¹⁰⁰).

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.

⁹⁷ 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).

⁹⁸ Set up under Article 100 of the Constitution and functioning in accordance with Law 345/1976.

⁹⁹ 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.

¹⁰⁰ 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 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. 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 session¹⁰¹.

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 periods 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 felony¹⁰².

¹⁰¹ This paragraph has been contained in the text of the Constitution since its adoption in 1975.

¹⁰² The Constitution employs the technical term 'felony' (*κακούργημα*) as opposed to the (wider) notion of 'flagrante delicto'.

2.1.2. Implementing provisions

Article 83 of the Standing Orders of the Hellenic Parliament¹⁰³ specifies the procedure applicable to requests from the Public Prosecutor's Office for the waiver of immunity. The Speaker of the House forwards these request to the Committee on Parliamentary Ethics¹⁰⁴, which hears the affected Member of the Parliament to exclude the case of a political persecution and, without addressing the validity of request, prepares a report and processes 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 civil¹⁰⁵, falls within the scope of Article 61 of the Constitution.

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*), not the (wider) notion of '*flagrante delicto*': under Articles 18 and 52 of the Penal Code, felonies incur prison sentences of at least five years.

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 54).

¹⁰³ The text (in Greek) is available at: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/kanonismos-Thematiko-syntagma%202010.pdf>.

¹⁰⁴ Article 43A of the Standing Orders.

¹⁰⁵ Or even disciplinary, according to the prevailing view.

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

The rules applicable to Members of the Hellenic Parliament¹⁰⁶ state that requests by the Prosecutor's Office for authorisation to institute criminal proceedings against a Member of Parliament shall be submitted to the Parliament by the Minister for Justice after they have been examined by the Attorney of the Hellenic Supreme Civil and Criminal Court.

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,¹⁰⁷ 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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¹⁰⁶ Article 83 of the Standing Orders of the Greek Parliament.

¹⁰⁷ 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"¹⁰⁸.

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* (President)
- *Vicepresidente/s* (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.¹⁰⁹

¹⁰⁸ "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

¹⁰⁹ The current Spanish government has been appointed by Royal Decree on 21 December 2011 (Real Decreto 1826/2011).

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"¹¹⁰.

The following Article 68 of the Constitution fixes the number of the Deputies which must be between three hundred minimum and four hundred maximum. Furthermore, Article 162 of Organic Act 5/1985 of electoral Regime (Ley Orgánica del Régimen Electoral General, LOREG¹¹¹) specifies that the Chamber of Deputies is composed of three hundred fifty members.

As far as the Senate is concerned, Article 69 of the Constitution establishes the number of senators: "In each province, four Senators shall be elected by the voters thereof by universal, free, equal, direct and secret suffrage, under the terms established by an organic law"¹¹². Pursuant to Article 69(4) and 69(5) of the Constitution: "The cities of Ceuta and Melilla shall each elect two Senators. The Autonomous Communities shall, moreover, nominate one Senator and a further Senator for each million inhabitants in their respective territories"¹¹³. At the moment (in the tenth term) there are 266 Senators.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the Chamber of Deputies and of the Senate are contained in their respective Rules of Procedure: *Reglamento del Congreso de los Diputados 10 de febrero de 1982*;¹¹⁴ *Reglamento del Senado de 3 de mayo de 1994*.¹¹⁵

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* (Deputy)
- *Senador* (Senator)

¹¹⁰ "Las Cortes Generales representan al pueblo español y están formadas por el Congreso de los diputados y el Senado."

¹¹¹ A Spanish version is available at: <http://www.boe.es/buscar/doc.php?id=BOE-A-1985-11672>

¹¹² "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".

¹¹³ "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."

¹¹⁴ A Spanish version of the Rules is available at:

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.

¹¹⁵ Available at: <http://www.senado.es/legis5/publicaciones/pdf/senado/bocq/I0119.PDF>.

1.2.3. Date of the beginning of the term of office

Chamber of Deputies

Under the terms of Article 20(1) and 20(2) of the Rules of Procedure of the Chamber 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 General Electoral System Act.
- iii) Taking the oath or pledge to observe the Constitution at the first plenary sitting of Congress which they attend.

Senate

Under the terms of Article 12 of the Senate Standing Orders, 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 Article 220 of the Organic Law of electoral Regime (LOREG), "with regard to the elections of the Members of the European Parliament, the Central Electoral Committee (*Junta Electoral Central*) is the competent electoral committee for all procedures set out in Title I, Chapter VI, section II, of the present Act, concerning the presentation and proclamation of candidates."¹¹⁶

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

¹¹⁶ "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 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. 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.¹¹⁷

2.1.2. Implementing provisions

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

2.2. 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 Articles 10 and 21 of, respectively, the Rules of Procedure of the Chamber 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 he/she is caught in the act of committing the crime (*in flagrante delicto*). Thus, both Members of Congress and Senators may

¹¹⁷ "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."

only be indicted or subjected to trial with the authorization of their Chamber. According to Article 11 of the Rules of Procedure of the Chamber 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."¹¹⁸ According to Article 22(1) of the Rules of Procedure of the Senate: "During the period of their mandate, the Senators shall enjoy parliamentary immunity and may only be detained or arrested in cases of *flagrante delicto*. The detention or arrest shall be immediately communicated to the Presidency of the Senate. Senators may not be charged or tried without the previous authorization of the Senate, required through the corresponding request. Such authorization shall also be necessary in the proceedings brought against persons who become Senators while being tried or prosecuted."¹¹⁹

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 *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 *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.¹²⁰

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¹¹⁸ "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."

¹¹⁹ "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."

¹²⁰ 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.¹²¹

Implementing provisions

The composition of the French Government is set out in a Decree adopted by the President of the Republic.¹²²

1.1.2. Denomination of the members of the French government

According to the decree of 21 June 2012, the French government is composed of:

- *Premier Ministre* (Prime Minister),
- *Ministre* (Minister); *Ministres* (Ministers),
- *Ministre délégué/e* (Delegated Minister); *Ministres délégués* (Delegated Ministers).

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 publication of the decree establishing their appointment by the President of the French Republic.¹²³

¹²¹ The text of the Constitution is available at: <http://www.assemblee-nationale.fr/connaissance/constitution.asp>. An English translation is available at: <http://www.assemblee-nationale.fr/english/8ab.asp>.

¹²² The text of the relevant decree, adopted on 21 June 2012, is available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026050285>. The composition of the Government has been subsequently modified by the Decrees of 19 March and 2 July 2013. The composition of the current French government is available at: <http://www.gouvernement.fr/gouvernement/composition-du-gouvernement>.

¹²³ 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. [...]"¹²⁴

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."¹²⁵

As regards the National Assembly, Articles LO 119 to LO 122 of the French electoral code provides the details related to deputies, who are elected for 5 years.

With regard to the Senate, Articles LO 274 to LO 278 of the French electoral code provides the details related to senators, who are elected for 6 years; half of this chamber is renewed every 3 years.

More detailed provisions concerning the composition and the organisation of the National Assembly and of the Senate are contained in their respective Rules of Procedure¹²⁶.

¹²⁴ "[...]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. [...]"

¹²⁵ "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."

¹²⁶ 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.asp> and <http://www.senat.fr/reglement/reglement.html> (in French); and at: http://www.assemblee-nationale.fr/english/8ac.asp#chap_14 and http://www.senat.fr/lng/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/qui/xml/liste_alpha.asp?legislature=14, and at: <http://www.senat.fr/senateurs/senatl.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.*"¹²⁷ 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.*"¹²⁸

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

No information found.¹²⁹

¹²⁷ "The powers of the National Assembly expire on the third Tuesday of June of the fifth year after its election."

¹²⁸ "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."

¹²⁹ 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 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. 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.¹³⁰

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*)¹³¹; 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);¹³² and the "*Instruction générale du Bureau du Sénat*" (Article III *bis*).¹³³

¹³⁰ "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."

¹³¹ Article created by Law n°96-62 of 29 January 1996. The Order is available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069203&dateTexte=20090218#LEGIARTI000006530070>.

¹³² Available at: <http://www.assemblee-nationale.fr/connaissance/instruction.asp>.

¹³³ Available at: http://www.senat.fr/reglement/reglement65.html#IGB_table_III_bis.

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.¹³⁴

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*.¹³⁵

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,¹³⁶ 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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¹³⁴ For an analysis of the French provisions on non-liability and immunity, also see: <http://www.assemblee-nationale.fr/connaissance/immunité.asp>. Until 1995, authorization was also required in order to open investigations against a Member of Parliament.

¹³⁵ 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.

¹³⁶ 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 109 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."¹³⁷

Implementing provisions

The provisions of the Constitution are implemented by the Croatian Government Act.¹³⁸ 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,

¹³⁷ The text of the Constitution of the Republic of Croatia (as published in Croatia's official journal, *Narodne novine*, no. 85/2010) is available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_85_2422.html. An English translation of the Croatian constitution is available from: <http://www.sabor.hr/Default.aspx?art=2405>.

¹³⁸ As published in Croatia's official journal, *Narodne novine*, no. 150/2011. The Act is available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_12_150_3084.html.

enjoys the confidence of a majority of all deputies. In accordance with Article 110 of the Constitution, "Members of Government shall be proposed by the person to whom the President of the Republic has entrusted the mandate to form Government. Immediately upon forming the Government, or 30 days after accepting the mandate at the latest, 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 deputies 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 72 of the Constitution, which provides that "The Croatian Parliament shall have no less than 100 and no more than 160 deputies elected on the basis of direct, universal and equal suffrage by secret ballot." In accordance with Article 73, Deputies are elected for 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,¹³⁹ which governs for instance incompatibilities, and in the Standing Orders of the Croatian Parliament, adopted in June 2013.¹⁴⁰

1.2.2. Denomination of the members of the Croatian Parliament

Members of the Parliament are the following:

- *predsjednik / predsjednica Hrvatskoga sabora* (Speaker of the Croatian Parliament)
- *potpredsjednik / potpredsjednica Hrvatskoga sabora* (Deputy Speaker of the Croatian Parliament), *potpredsjednici / potpredsjednice Hrvatskoga sabora* (Deputy Speakers of the Croatian Parliament)

¹³⁹ An English version is available from: <http://www.sabor.hr/Default.aspx?art=2447>.

¹⁴⁰ An English version is available at: <http://www.sabor.hr/fqs.axd?id=26416>.

- *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* (Chairman/Chairwoman of a party deputy club in the Croatian Parliament)
- *potpredsjednik / potpredsjednica Kluba zastupnika u Hrvatskom saboru* (Deputy Chairman/Chairwoman 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 74 of the Constitution, "The first session of the Croatian Parliament shall be held no 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 deputies."

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 by Members of Parliament, on the names of the Members of Parliament who are engaged in duties that are incompatible with parliamentary duties, so their terms as Members 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 passing a conclusion, Members of Parliament or substitute Members of Parliament swear an oath before the chair of Parliament (Article 7 of the Standing Orders); Deputies who are not present at the constituent session of Parliament, or at the session in which Parliament decided on the commencement of their post, swear the oath at the next session (Article 8 of the Standing Orders).

According to Article 9 of the Standing Orders, "Deputies 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 the rights and obligations of deputies as stipulated by the Constitution, laws and these Standing Orders. The alternate deputy shall begin performing his/her duties as of the date when Parliament establishes by a decision the legal prerequisites for the application 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 alternate deputies, the date when Parliament establishes the legal prerequisites for the application 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 Republic of Croatia European Parliamentary Elections Act,¹⁴¹ "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 data on his/her alternate. The alternate member shall commence performance of duties after the Croatian Parliament ascertains the onset of the legal conditions for application of the institute of replacement."

¹⁴¹ 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 Republic of Croatia European Parliamentary Elections Act (Official Gazette *Narodne novine*, no. 23/2013) is available (only in the Croatian language) at: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_23_382.html, and the Act on Amendments to the Republic of Croatia European Parliamentary Elections Act (Official Gazette *Narodne novine*, no. 143/2013) is available (also only in the Croatian language) at: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_143_3071.html.

2. NATIONAL IMMUNITIES AS REFERRED TO 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. Constitution

In Croatia, parliamentary immunities are granted to the members of the Parliament by Article 76.

Article 76

Deputies in the Croatian Parliament shall enjoy immunity.

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

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

A deputy 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 its deputy 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 76(2) of the Constitution)

Pursuant to the second paragraph of Article 76 of the Constitution, a deputy 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 deputy 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 their mandate expires.

2.2.2. Immunity (Article 76 (3), (4) and (5) of the Constitution)

Members of the Croatian Parliament enjoy inviolability (procedural immunity) pursuant to Article 76, 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 prosecutions against them may not be launched. Nevertheless, if a deputy is caught in the act of committing a crime (*in flagrante delicto*) for which the prescribed penalty is imprisonment exceeding five years, he/she may be detained without the previous authorization 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 or for filing criminal charges against him/her 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; 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 (Article 26).

In its interpretation of Article 17(1) of the Criminal Procedure Act,¹⁴² which stipulated that criminal proceedings begin upon confirmation of an indictment¹⁴³,

¹⁴² 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.

¹⁴³ 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“, and previous items 2 and 3 have become items 3 and 4.

the Credentials and Privileges Commission assumed that “decision-making on the immunity of an MP is not possible prior to a 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 an MP’s immunity”.¹⁴⁴

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 national 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.¹⁴⁵

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¹⁴⁴ See the Report of the Credentials and Privileges Commission, available at: <http://www.sabor.hr/Default.aspx?art=29528>.

¹⁴⁵ 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."¹⁴⁶

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 Ministers¹⁴⁷), in particular Articles 1, 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* (Minister¹⁴⁸); *Ministri* (Ministers),
- *Sottosegretario/a di Stato* (Undersecretary of State); *Sottosegretari di Stato* (Undersecretaries of State),
- *Viceministro/a* (Deputy-Minister); *Viceministri* (Deputy-Ministers).

Current members of the government are appointed by a Decree of the President of the Republic.¹⁴⁹

¹⁴⁶ "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 (in English).

¹⁴⁷ The updated text of the law is available (in Italian) at: http://www.governo.it/Presidenza/normativa/allegati/L_19880823_400.pdf.

¹⁴⁸ In the Italian government ministers may be with or without a portfolio.

¹⁴⁹ The current composition of the Italian government is available at: http://www.governo.it/Governo/Ministeri/ministri_gov.html.

1.1.3. Date of the beginning of the term of office

Under the terms of Article 93 of the Constitution¹⁵⁰ 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."¹⁵¹

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. 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 Procedure¹⁵².

1.2.2. Denomination of the members of the Italian Parliament

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

- *Deputato/a* (Deputy); *Deputati/e* (Deputies)
- *Senatore/Senatrice* (Senator); *Senatori/Senatrici* (Senators)

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*" (central district electoral 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.¹⁵³ Once the Deputies have

¹⁵⁰ 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).

¹⁵¹ "Il Parlamento si compone della Camera dei deputati e del Senato della Repubblica."

¹⁵² The English texts of the Rules of Procedure of both the Chamber of Deputies and the Senate are available on the following websites: http://en.camera.it/4?scheda_informazioni=31 and <http://www.senato.it/3807>.

¹⁵³ 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: http://leg16.camera.it/temiap/Manuale4febbraio2013_WEB.pdf.

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.¹⁵⁴

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 seats¹⁵⁵. 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.¹⁵⁶

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 1979,¹⁵⁷ 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.¹⁵⁸

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.

¹⁵⁴ See Article 17 of the Rules of Procedure of the Chamber.

¹⁵⁵ 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.

¹⁵⁶ 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>).

¹⁵⁷ 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).

¹⁵⁸ 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 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 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. 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.¹⁵⁹

2.1.2. Implementing provisions

The implementing rules of Article 68 of the Constitution are contained in Law No 140 of 20 June 2003.¹⁶⁰

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 from an opinion expressed or

¹⁵⁹ "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."

¹⁶⁰ Available at: <http://www.camera.it/parlam/leggi/03140l.htm>.

vote cast when carrying out their parliamentary activities.¹⁶¹ 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 1993,¹⁶² no previous authorisation of the competent Chamber is necessary in order to subject a member of the Parliament to criminal proceedings.

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.

¹⁶¹ 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).

¹⁶² Constitutional Law No 3, of 29 October 1993.

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,¹⁶³ 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)).¹⁶⁴

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 "*pubblico ministero*" (prosecutor). Additionally, Article 29 of Law n. 69/2005, concerning the European Arrest Warrant, also foresees that, if the person concerned benefits of immunity, the judicial authority may request its waiver to the competent foreign or international authority.

This has been confirmed by an official letter¹⁶⁵ 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).¹⁶⁶

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¹⁶³ Prosecutors do not have the power to transmit such requests, but they may only transmit the file to the competent judge: Article 3(6).

¹⁶⁴ 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 powers"). 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.

¹⁶⁵ See letter dated 8 May 2013.

¹⁶⁶ 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 Constitution¹⁶⁷, which read as follows:

Article 1

The State of Cyprus is an independent and sovereign Republic with a presidential regime, the President being Greek and the Vice-President being Turk elected by the Greek and the Turkish Communities of Cyprus respectively as hereinafter in this Constitution provided.

Article 36

The President of the Republic is the Head of the State and takes precedence over all persons in the Republic. The Vice-President of the Republic is the Vice-Head of the State and takes precedence over all persons in the Republic next after the President of the Republic. [...]

Article 54

Subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice-President of the Republic, acting either separately or conjointly, the Council of Ministers shall exercise executive power in all other matters other than those which, under the express provisions of this Constitution, are within the competence of a Communal Chamber, including the following: [...]

Implementing provisions

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

1.1.2. Denomination of the members of the Cypriot government

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

- *Πρόεδρος της Δημοκρατίας* (President of the Republic)

¹⁶⁷ An English translation of the text of the Constitution of Cyprus is available at: [http://www.presidentcy.gov.cy/presidentcy/presidentcy.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/\\$file/CY_Constitution.pdf?openelement](http://www.presidentcy.gov.cy/presidentcy/presidentcy.nsf/all/1003AEDD83EED9C7C225756F0023C6AD/$file/CY_Constitution.pdf?openelement).

The current composition of the Cypriot Council of Ministers is available at: http://www.presidentcy.gov.cy/presidentcy/presidentcy.nsf/prc07_en/prc07_en?opendocument.

- Αντιπρόεδρος της Δημοκρατίας (Vice-President of the Republic)
- Υπουργικό Συμβούλιο (Council of Ministers)

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 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.¹⁶⁸

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.¹⁶⁹

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Cypriot Parliament

Constitution

According to Article 61 of the Constitution "The legislative power of the Republic shall be exercised by the House of Representatives in all matters except those expressly reserved to the Communal Chambers under this Constitution". Article 65 provides that "the term of office of the House of Representatives shall be for a period of five years."

The composition of the Cypriot Parliament is established by Article 62 of the Constitution, which states that the number of representatives shall be fifty. This number can be modified by a resolution of the House of Representatives, if carried by a majority comprising two-thirds of the Representatives elected 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

¹⁶⁸ 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.

¹⁶⁹ 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.

a contested election, by universal suffrage and by direct and secret ballot held on the same day.¹⁷⁰

In 1985,¹⁷¹ 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.¹⁷² This decision was taken invoking the "*doctrine of necessity*", since the Constitution requires separate majorities of Greek Cypriots and Turkish Cypriots to amend the provisions on the number of representatives.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the House of Representatives are contained in the Rules of Procedure.

1.2.2. Denomination of the members of the House of Representatives

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

- *Βουλευτές* (Representatives)

1.2.3. Date of the beginning of the term of office

According to Article 5 of the Rules of Procedure of the House of Representatives: "The Representative presiding over the sitting referred to hereinbefore [that is, the first sitting of the opening ordinary session of the term of office of the House] shall declare the commencement of such sitting and shall invite the elected Representatives to make, before assuming duties as such in the House of Representatives, the affirmation provided in Article 69 of the Constitution. A Representative absent from the first sitting of the House or a Representative elected during the period of the term of office of the House, before assuming duties as such in the House, shall make the affirmation provided in Article 69 of the Constitution."

On the basis of this provision, the term of office of a Member of Parliament commences once he is solemnly declared as Member of Parliament by the President of the House during the sitting following the affirmation referred to in Article 69 of the Constitution.¹⁷³

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

¹⁷⁰ The Cyprus Constitution (Articles 86-111) also provides for two Communal Chambers, elected respectively by each of the two communities by separate ballot. These provisions have become void and not applicable since the inter-communal strife of 1963 which led to the withdrawal of all Turkish Cypriots from the government and the Parliament, and the division of the island since 1974.

¹⁷¹ Decision 2060/1985 of the House of Representatives, taken in accordance to article 62(1) of the Constitution.

¹⁷² A full list of the current Members of the House of Representatives is available at:

<http://www.parliament.cy/easyconsole.cfm/id/186>.

¹⁷³ 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'."

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*).

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. 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.¹⁷⁴

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¹⁷⁴ 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"¹⁷⁵ and by Article 56 which provides "The Cabinet shall be formed by the person who has been invited by the President to do so."¹⁷⁶

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)¹⁷⁷ 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).¹⁷⁸

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 of office of the government or an individual minister starts at the moment when the Saeima

¹⁷⁵ "Ministru kabinets sastāv no ministru prezidenta un viņa aicinātiem ministriem". The Latvian Constitution is available, in English, at: <http://www.saeima.lv/en/legislation/constitution>.

¹⁷⁶ "Ministru kabineta sastāda persona, kuru uz to aicina Valsts Prezidents".

¹⁷⁷ The text in Latvian is available at: <http://likumi.lv/doc.php?id=175919>. No English translation is available.

¹⁷⁸ According to Article 5(2) of the Law on the Structure of Cabinet, ministers for special assignments may be members of the government.

(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."¹⁷⁹

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*).¹⁸⁰

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.

Article 6(2) of the *Saeima* election law (*Saeimas vēlēšanu likums*)¹⁸¹ 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.

¹⁷⁹ "Saeima sastāv no simts tautas priekšstāvjiem."

¹⁸⁰ Available at: <http://www.saeima.lv/en/legislation/rules-of-procedure> (in English).

¹⁸¹ The text in Latvian is available at: <http://likumi.lv/doc.php?id=35261>. Unofficial English translations are available at: <http://web.cvk.lv/pub/public/28126.html> and <http://www.saeima.lv/en/about-saeima/saeimas-velesanas-1/saeimas-velesanu-likums-1>.

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. Constitution

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

Article 28

Members of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. Court proceedings may be brought against members of the *Saeima* if they, albeit in the course of performing parliamentary duties, disseminate:

- 1) defamatory statements which they know to be false, or
- 2) defamatory statements about private or family life

Article 29

Members of the *Saeima* shall not be arrested, nor shall their premises be searched, nor shall their personal liberty be restricted in any way without the consent of the *Saeima*. Members of the *Saeima* may be arrested if apprehended in the act of committing a crime. The Presidium shall be notified within twenty-four hours of the arrest of any member of the *Saeima*; the Presidium shall raise the matter at the next sitting of the *Saeima* for decision as to whether the member shall continue to be held in detention or be released. When the *Saeima* is not in session, pending the opening of a session, the Presidium shall decide whether the member of the *Saeima* shall remain in detention.

Article 30

Without the consent of the *Saeima*, criminal prosecution may not be commenced and administrative fines may not be levied against its members.

Article 31

Members of the *Saeima* have the right to refuse to give evidence:

- 1) concerning persons who have entrusted to them, as representatives of the people, certain facts or information;
- 2) concerning persons to whom they, as representatives of the people, have entrusted certain facts or information; or
- 3) concerning such facts or information itself.¹⁸²

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

¹⁸² "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 četru stundu laikā jāpaziņo Saeimas prezidijam, kurš to ceļ priekšā nākošā Saeimas sēdē izlemšanai par Saeimas locekļa paturēšanu apcietinājumā vai par viņa atsvabināšanu. Laikā starp sesijām, līdz sesijas atklāšanai, par Saeimas locekļa paturēšanu apcietinājumā lemj Saeimas prezidijs.

30. Pret Saeimas locekli nevar uzsākt kriminālvajāšanu vai uzlikt viņam administratīvu sodu bez Saeimas piekrišanas.

31. Saeimas loceklim ir tiesības atteikties no liecības došanas:1) par personām, kuras viņam kā tautas priekšstāvim uzticējušas kādus faktus vai ziņas,2) par personām, kurām viņš, izpildot savus tautas priekšstāvja pienākumus, uzticējis kādus faktus vai ziņas,3) par pašiem šiem faktiem un ziņām."

case, the Presidium¹⁸³ 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.

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 law¹⁸⁴ 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.¹⁸⁵

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¹⁸³ According to Art. 16 of the constitution, the Presidium is elected by the Saeima and composed of a chairperson, two deputies and secretaries.

¹⁸⁴ An English version, including the amendments adopted until 21.10.2010, is available at: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Criminal_Procedure_Law.doc.

¹⁸⁵ 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".¹⁸⁶

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).¹⁸⁷

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, the date of the beginning of the term of office of the members of the government shall be considered the date they

¹⁸⁶ "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>.

¹⁸⁷ An English translation of this Law (updated to the 2008 amendments) is available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=318386.

take an oath to be faithful to the Republic of Lithuania, to observe the Constitution and laws.¹⁸⁸

1.2. Member of a national parliament

2.1.1. 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* statute¹⁸⁹.

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 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*.

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 Parliament¹⁹⁰ the competent authority to take a decision on the incompatibility of the functions and

¹⁸⁸ 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".

¹⁸⁹ Available at: http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_e?p_id=389585 (in English).

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,¹⁹¹ 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 3 days.

¹⁹⁰ Law No IX-1837 of 20 November 2003 (as amended); an English version is available at: http://www3.lrs.lt/pls/inter/dokpaieska.showdoc_bin?p_id=438069.

¹⁹¹ 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 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. 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.¹⁹²

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.

¹⁹² "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."

2.2.2. Immunity (Article 62 (2) of the Constitution)

Pursuant to Article 62 of the Constitution and to Article 22, third paragraph, of the *Seimas* statute, criminal proceedings may not be instituted against a *Seimas* Member, she or he may not be arrested, and may not be subjected to any other restrictions of personal freedom without the consent of the *Seimas*, except in cases when she or he is caught in the act of committing a crime (*in flagrante delicto*). In such cases the Prosecutor General must immediately notify the *Seimas* thereof.

Article 23 of the *Seimas* statute sets in detail the procedure to follow for the revocation of member's immunity.

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

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 letter¹⁹³ 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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¹⁹³ 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,¹⁹⁴ which reads as follows: "The Grand Duke regulates the organization of his Government, which shall consist of at least three members."¹⁹⁵ Moreover, Article 77 of the Constitution reads as follows: "The Grand Duke appoints and dismisses the members of Government."¹⁹⁶

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*."¹⁹⁷

1.1.2. Denomination of the members of the Luxembourgish government

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

- *Premier Ministre*¹⁹⁸ (Prime Minister),
- *Vice-Premier Ministre* (Deputy Prime Minister),
- *Ministre* (Minister); *Ministres* (Ministers),
- *Ministre délégué/e* (Minister Delegate),¹⁹⁹
- *Secrétaire d'Etat* (Secretary of State); *Secrétaires d'Etat* (Secretaries of State).²⁰⁰

¹⁹⁴ Available (in French) at: <http://www.gouvernement.lu/gouvernement/constitution-luxembourgeoise.pdf>.

¹⁹⁵ "Le Grand-Duc règle l'organisation de son Gouvernement, lequel est composé de trois membres au moins".

¹⁹⁶ "Le Grand-Duc nomme et révoque les membres du Gouvernement".

¹⁹⁷ A detailed description of the composition of the Luxembourgish government is available on internet, at: <http://www.gouvernement.lu/1719075/gouvernement> and <http://www.gouvernement.lu/3311528/20131204->.

¹⁹⁸ Also qualified as "*ministre d'Etat*".

¹⁹⁹ This office is not foreseen by any of the legislative acts mentioned in paragraph 1.1., but the current Government includes Ministers Delegate.

²⁰⁰ 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."²⁰¹ 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."²⁰²

Implementing provisions

More detailed provisions concerning the composition and the organisation of the Chamber of Deputies is contained in its Rules of Procedure.²⁰³

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 2003²⁰⁴ 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.²⁰⁵

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."²⁰⁶

²⁰¹ "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."

²⁰² "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."

²⁰³ The text of the Rules of Procedure of the Chamber of Deputies is available at: <http://www.chd.lu/wps/wcm/connect/03d3a2804344ff9181b58dc6c93b4d35/R%C3%83%C2%A8glements+CHD-mars2012.pdf?MOD=AJPERES>.

²⁰⁴ The text is available at: <http://www.legilux.public.lu/leg/a/archives/2003/0030/a030.pdf>.

²⁰⁵ 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."

²⁰⁶ 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."

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.²⁰⁷

²⁰⁷ 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 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. 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.²⁰⁸

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.²⁰⁹

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 171 to 177 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").

2.1.1. 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.

²⁰⁸ "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."

²⁰⁹ "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."

2.2.2. 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 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.²¹⁰

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²¹⁰ 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 of the portion of the Fundamental Law of Hungary entitled "The State"²¹¹, 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 the Hungarian Republic"²¹² and "Act on the central administrative bodies and the statute of members of the Government and state secretaries."²¹³

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); *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 Parliament, at the proposal of the President of the Republic, by simple majority voting.²¹⁴ In accordance with article 16(4) of the

²¹¹ Act "Magyarország Alaptörvénye". Unless otherwise specified, a Hungarian version of all the legal instruments referred to in this document is available at:

<http://www.magyarorszag.hu/kereses/jogszabalykereso>. An English version of the Fundamental Law is available at: <http://www.mkab.hu/rules/fundamental-law>. The Fundamental Law of Hungary was approved on 25 April 2011 and is in force since the 1st January 2012.

²¹² Act "2010. évi XLII. törvény a Magyar Köztársaság minisztériumainak felsorolásáról". The actual number and name of ministries are supposed to be amended by each new government. No English version is available.

²¹³ "Act XLIII. of 2010 a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról." No English version is available.

²¹⁴ 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."

Fundamental Law of Hungary, "the Prime Minister shall take office immediately upon his or her election."²¹⁵

Under the terms of Article 16(7) of the Fundamental Law of Hungary, the ministers are appointed by the President of the Republic.²¹⁶ 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."²¹⁷

1.2. Member of a national Parliament

1.2.1. Legal provisions on the composition of the Hungarian Parliament

The Fundamental Law of Hungary

The Hungarian Parliament is the "*Országgyűlés*". This is a single chamber assembly. General constitutional rules on the Parliament can be found in the first Chapter of the portion of the Fundamental Law of Hungary entitled "The State" (articles 1 to 7).

Implementing provisions

The current number of members of the Parliament is 386 (176 members are elected from individual constituencies, another 210 from different party lists).

However, Act „2011. évi CCIII. törvény az országgyűlési képviselők választásáról”²¹⁸ sets the number of the members of the Parliament to 199 (106 members will be elected from individual constituencies, another 93 from different party lists). This Act came into force on 1st January 2012, but it will only be applicable starting from the next parliamentary elections, in 2014.

Further basic rules are contained in the following instruments: "Act on the Hungarian National Assembly"²¹⁹ and "Act on the election procedure"²²⁰.

1.2.2. Denomination of the members of the Hungarian Parliament

Members of the Hungarian Parliament are the following:

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

1.2.3. Date of the beginning of the term of office

In accordance with article 8 of the '*Országgyűlés 46/1994. (IX.30.) OGY határozat egyes házszabályi rendelkezésekről*' (Rules of Procedure) the members officially begin their term of office from the moment of taking oath (after validation of their credentials).²²¹

²¹⁵ "A miniszterelnök a megválasztásával hivatalba lép."

²¹⁶ Article 16 (7): "Ministers shall be appointed by the President of the Republic at the proposal of the Prime Minister. Ministers shall take office on the date designated in their deed of appointment or, in the absence thereof, immediately upon their appointment."

²¹⁷ "A miniszter a kinevezésében megjelölt időpontban, ennek hiányában a kinevezésével hivatalba lép."

²¹⁸ English version to be found on http://www.valasztas.hu/en/ovi/241/241_1_11.html

²¹⁹ Act XXXVI. of 2012 "Az Országgyűlésről" Articles 73 - 103. No English version is available.

²²⁰ Act "2013. évi XXXVI. törvény a választási eljárásról", adopted in 2013. An English version is available at: http://www.valasztas.hu/en/ovi/241/241_1_10.html.

²²¹ Standing Order No. 8 of the Rules of Procedure provides as follows: "(1) At the constituent sitting - after the passing of the resolution on the results of the examination of mandates - the Members shall take an oath. [...] (3) Members who have been absent at the constituent sitting, as well as Members

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

Article 8 of the "Act on the statute of members of the European Parliament"²²² 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.

Procedural rules relating to incompatibility are laid down in Article 9 of the same act: "(1) It is in the competence of the European Parliament to terminate the mandate of a Member of the European Parliament on the grounds of conflict of interest. (2) A Member of European Parliament shall eliminate the cause that constitutes a conflict of interest within sixty days of the confirmation of his or her mandate or the emergence of the situation that causes the conflict of interest or of the day when he or she learns about that case of affairs. (3) After the time limit as defined at item (2) above expires, the Member of European Parliament concerned shall notify the President of the European Parliament about the conflict of interest without delay. (4) Anyone may notify in writing the President of the European Parliament that a Member of the European Parliament is in a situation of conflict of interest. Such notification shall exactly define the name of the Member of European Parliament concerned and the cause of the conflict of interest".

No public authority is specified in the Act in order to communicate cases of incompatibility. However, it has to be noted that, before the election lists are approved by the Országos Választási Bizottság (National Election Commission), each candidate must submit a declaration on conflicts of interest to the National Election Office, which verifies this declaration and informs about the result to the National Election Commission. Both the National Election Commission and the National Election Office have thus information on cases of incompatibility (at the time of the elections).²²³

cleared according to paragraph (2) of Standing Order No. 7, shall take the oath before Parliament after the examination of mandates. (4) The Member - with the exception of tasks necessarily related to the constituent sitting - may not take part in the work of Parliament until the taking of the oath and the signing of its text; he shall only be entitled to remuneration and reimbursement of expenses - also retroactively -, or may only take advantage of benefits after having taken the oath."

²²² Act "2004. évi LVII. törvény az Európai Parlament magyarországi képviselőinek jogállásáról". An English version of a selected number of provisions of this Act is available at: http://www.parlament.hu/biz/eib/angol/actlvii_2004.htm (not updated).

²²³ Act '2013. évi XXXVI. törvény 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 Parliament by the Fundamental Law of Hungary, "The State", Parliament, Article 4(2).

Article 4(2)

Members of Parliament shall be entitled to immunity and to remuneration ensuring their independence. A cardinal Act shall specify the public offices which shall not be filled by Members of Parliament, and may stipulate other cases of conflict of interests.

2.1.2. Implementing provisions

Immunity rules applicable to Members of the national Parliament are defined in Chapter VII (entitled Parliamentary Immunities), articles 73 - 103, of the "Act on the Hungarian national Assembly." The relevant provisions of this Act provide as follows:

73. (1) Members cannot be held accountable before a court or any other authority in the course of or following the termination of their mandate for their votes cast, or for facts and opinions in connection with their mandate which are stated during the exercise of their mandate.

(2) The immunity set out in paragraph (1) does not apply to Members' accountability under civil law or to 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.

74. (1) A criminal procedure or, in the event of immunity not being waived voluntarily in respect of the matter in question, a misdemeanour procedure may be initiated or pursued and coercive procedures applied against a Member only with the prior consent of Parliament.

(2) A Member may only

(a) be arrested or have other coercive procedures under criminal law taken against him or her if he or she is caught *in flagrante delicto* of a criminal offence;

(b) be arrested or have other coercive procedures for a misdemeanour taken against him or her at the time of being caught *in flagrante delicto* of a misdemeanour if the conditions set out in the law on orders for misdemeanour arrest subsist.

(3) A motion to waive immunity shall be submitted to the speaker by the chief prosecutor before the submission of the indictment or by the court after the presentation of the indictment or in the case of a civil or substitute civil action. In the event of a Member being caught *in flagrante delicto*, the motion shall be submitted immediately.

(4) In a misdemeanour case the authority responsible shall inform the Member that he or she may waive his or her immunity voluntarily. In the event of a voluntary waiving of a Member's immunity within one week, the authority responsible shall inform the speaker through the chief prosecutor of the waiving of immunity or the result of the procedure when the procedure has been definitively concluded. The speaker shall forward the information to the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection. The Chair of the Committee shall convey the information to the Committee at its next meeting. If the Member involved in a misdemeanour case fails to waive his or her immunity within one week of receipt of the notice, a motion for a waiver of immunity based on the notice from the authority responsible shall be submitted to the speaker by the chief prosecutor. During the procedure, the Member may waive his or her immunity at any time before any acting authority and at the latest by the time a parliamentary resolution is passed.

75. A Member's immunity shall 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.

76. In proceedings initiated against them, Members are obliged to inform the court or authority of their position as Members. If, in spite of fulfilling their obligation to provide such information, a Member's immunity is violated, the Member is obliged to inform the speaker of this immediately.

77. (1) The speaker shall forward the motion for waiver of immunity or the report on violation of immunity immediately to the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection and shall inform Parliament of this at its next sitting and shall inform the Member concerned that the motion has been forwarded.

(2) Throughout an investigation into the waiving of immunity or a violation of immunity, the Member and all government bodies shall make all data related to the waiving of immunity and violation of immunity which is requested by the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection available to that committee without delay. All data received or made available in the course of an investigation into the waiving of immunity or a violation of immunity must be deleted on the 30th day following the conclusion of the procedure concerning the waiving of immunity or the investigation into violation of immunity.

(3) The Member concerned may make clear his or her standpoint prior to a decision being taken in a waiver of immunity case. A two-thirds majority of the Members present is sufficient to decide on a waiver of immunity.

(4) A decision on a waiver of immunity shall apply only to the case for which the motion was submitted.

(5) In a violation of immunity case, the Committee on Immunity, Conflicts of Interest, Discipline and Mandate Inspection shall, no later than 30 days after the date determined in paragraph (1), make a proposal to the speaker, who shall take the necessary action and inform Parliament of this.

78. A Member may not waive his or her immunity, except with regard to a misdemeanour procedure. Immunity is a right which must be respected by everyone.

79. (1) Immunity is in force starting from the day on which a Member is elected.

(2) A person verified as a candidate in the election of Members shall enjoy the same immunity, except that any waiver of immunity shall be determined by the National Electoral Committee and any motion for a waiver of immunity shall be submitted to the Chair of the National Electoral Committee.²²⁴

Further procedural rules are contained in articles 130-131 of the Rules of procedure.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the National 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 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 Parliament is set out in Art. 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 Member of Parliament 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 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.

²²⁴ Unofficial translation. Further information concerning the immunities of the Members of the Parliament may be found at: http://www.parlament.hu/angol/members.htm#_Toc214178455.

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 Chief Public Prosecutor ("*legfőbb ügyész*") or the competent court (depending on the case).²²⁵ 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 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 Chief Public Prosecutor ("*legfőbb ügyész*") or by the court that is hearing the case.²²⁶

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²²⁵ Act XXXVI. of 2012, Article 74 (3).

²²⁶ 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, 1964.²²⁷

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)²²⁸ and by Act 1 of 2009 (the Public Administration Act).²²⁹

²²⁷ 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>.

²²⁸ 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>

²²⁹ 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>

1.1.2. Denomination of the members of the Maltese government

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

- *Prim Ministru* (Prime Minister),
- *Ministru* (Minister); *Ministri* (Ministers),
- *Ministru temporanju* (Temporary Minister),
- *Sekretarju Parlamentari* (Parliamentary Secretary); *Sekretarji 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*)."²³⁰

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.²³¹

²³⁰ The House currently has 69 members, elected for a five year term. 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.

²³¹ Available at: <http://www.parlament.mt/standing-orders?l=1>.

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)

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 Act²³² does not provide for a specific formal system of communication to the European Parliament.²³³

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. 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

²³² The European Parliament Election Act is available at:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8933&l=1>

²³³ However, the national authority competent to communicate the names of newly elected Members of the European Parliament is the Acting Clerk of the House of Representatives.

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.²³⁴ 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 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),²³⁵ he/she shall refer the matter to the Committee of 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.

²³⁴ Available at: <http://www.parlament.mt/house-of-representatives?l=1>.

²³⁵ 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.

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."²³⁶ 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,²³⁷ the competent authority to request waiver of the immunity is the *Avukat Generali* (Public prosecutor).

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²³⁶ 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."

²³⁷ 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 Netherlands²³⁸ (*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),²³⁹
- *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 Constitution²⁴⁰ may be a different one and is not considered to be the constitutive moment.

²³⁸ The text of the Constitution is available at: <http://wetten.overheid.nl/>. The official English version is available at: <http://www.rijksoverheid.nl/documenten-en-publicaties/brochures/2008/10/20/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>.

²³⁹ 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.

²⁴⁰ 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

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*) (Article 55 of the Constitution).

Implementing provisions

The Electoral Act²⁴¹ (*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."²⁴² To that effect, the elected Member first has to accept his election/nomination in writing within a delay - normally ten days²⁴³ - 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,²⁴⁴ concerns inter alia the conditions for eligibility (Article 56 of the Constitution) and the incompatibilities

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).

²⁴¹ Available from: <http://wetten.overheid.nl/>. An unofficial English translation is available at: http://www.kiesraad.nl/sites/default/files/Pdf_voor_Engelse_site-Elections_Act.pdf.

²⁴² Also see <http://www.kiesraad.nl/faq/wanneer-begint-het-lidmaatschap-van-de-tweede-kamer> and http://www.parlement.com/id/vh8lnhrqeylo/aanvang_kamerlidmaatschap.

²⁴³ 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.

²⁴⁴ 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: http://www.houseofrepresentatives.nl/sites/www.houseofrepresentatives.nl/files/content/rules_of_procedure_1.pdf.

flowing from the Constitution (Article 57) and from implementing legislation, the Parliament and European Parliament Incompatibilities Act (*Wet 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 Electoral Act).

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. 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 ("*ambtsmisdrijven*"), 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 is the *Minister van Justitie* (Minister of Justice), at the request of the *College van Procureurs-Generaal* (College of Prosecutors General).²⁴⁵

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²⁴⁵ 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,²⁴⁶ 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"²⁴⁷.

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.²⁴⁸

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:

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

²⁴⁶ <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>
An English version is available at:

http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=ErV&Dokumentnummer=ERV_1930_1.

²⁴⁷ "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."

²⁴⁸ *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)²⁴⁹ 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.²⁵⁰

The Federal Council is composed in proportion to the number of nationals in each *Land*. At the moment, it has 61 members²⁵¹. 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.²⁵²

Implementing provisions

According to § 1(1) of the National Council electoral regulations,²⁵³ 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.²⁵⁴

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.²⁵⁵

²⁴⁹ "(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."

²⁵⁰ 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."

²⁵¹ 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.

²⁵² Article 35(1) of the Constitution.

²⁵³ 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>

²⁵⁴ 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>.

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).²⁵⁶

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.²⁵⁷

The members of the Federal Council acquire their legal status with their election by the Diet.²⁵⁸

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

No particular national procedure has been adopted.²⁵⁹

²⁵⁵ 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/>.

²⁵⁶ § 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."

²⁵⁷ 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.

²⁵⁸ 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.

²⁵⁹ 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 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 Constitution

Articles 57 and 58 of the Constitution read as follows:

Article 57

(1) The members of the National Council may never be held accountable for votes cast in the exercise of their function and only by the National Council on the grounds of oral or written utterances made in the course of their function.

(2) The members of the National Council may 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.²⁶⁰

²⁶⁰ "(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

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.²⁶¹

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 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.

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 hinausgeht, mit dem Erlöschen dieser Funktion.

(7) Die näheren Bestimmungen trifft das Bundesgesetz über die Geschäftsordnung des Nationalrates."

²⁶¹ "Die Mitglieder des Bundesrates genießen während der ganzen Dauer ihrer Funktion die Immunität von Mitgliedern des Landtages, der sie entsendet hat."

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 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*).²⁶²

§ § §

²⁶² 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 Constitution²⁶³ which reads as follows: "The Council of Ministers shall be composed of the President of the Council of Ministers (Prime Minister) and ministers."²⁶⁴ 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 Ministers²⁶⁵", while the fourth adds that "The presidents of committees specified in statutes may also be appointed to membership in the Council of Ministers."²⁶⁶

Implementing provisions

The above-mentioned provisions of the Constitution are implemented by the Act of 8 August 1996 on the Council of Ministers (*Ustawa z dnia 8 sierpnia 1996 r. o Radzie Ministrów*), as well as the Council's Rules of Procedure (*Uchwała Nr 49 Rady Ministrów z dnia 19 marca 2002 r. Regulamin pracy Rady Ministrów*).

1.1.2. 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)
- *Członek Rady Ministrów* (Member of the Council of Ministers)

Contrary to some other EU Member States, the Secretaries and Undersecretaries of State (*Sekretarz i Podsekretarz Stanu*) are not official members of the Council of Ministers;²⁶⁷ however, their position is incompatible with the mandate of Member of European Parliament under national law.²⁶⁸

²⁶³ The original version, as well as English, French and German translations, are available at: <http://www.sejm.gov.pl/prawo/konst/konst.htm>.

²⁶⁴ "Rada Ministrów składa się z Prezesa Rady Ministrów i ministrów."

²⁶⁵ "W skład Rady Ministrów mogą być powoływani wiceprezesi Rady Ministrów".

²⁶⁶ "W skład Rady Ministrów mogą być ponadto powoływani przewodniczący określonych w ustawach komitetów."

²⁶⁷ 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

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"),²⁶⁹ 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)."²⁷⁰

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 5th January 2011 (*Kodeks wyborczy, Dz. U. z dnia 31 stycznia 2011 r.*²⁷¹) 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.

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)
- *Senator* (Senator).

cabinet." (*Minister wykonuje swoje zadania przy pomocy sekretarza i podsekretarzy stanu oraz gabinetu politycznego ministra*).

²⁶⁸ 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, ktorých, stosownie do przepisów Konstytucji Rzeczypospolitej Polskiej albo ustaw, nie można łączyc z sprawowaniem mandatu posla na Sejm albo senatora*).

²⁶⁹ "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."

²⁷⁰ "Władzę ustawodawczą w Rzeczypospolitej Polskiej sprawują Sejm i Senat."

²⁷¹ Available (Polish only) at: <http://pkw.gov.pl/ustawy-wyborcze/ustawa-z-dnia-5-stycznia-2011-r-kodeks-wyborczy-wraz-z-przepisami-wprowadzajacymi.html>.

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."²⁷²

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* before the commencement of the performance of the mandate. According to Article 104(3) "A refusal to take the oath shall be deemed to be a renunciation of the mandate".²⁷³

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

According to Article 366 of the Election Code of 5th 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 Poland²⁷⁴, or from his/her appointment as a Member of the government.²⁷⁵

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 publication of the results of elections.²⁷⁶

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.²⁷⁷

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 has been appointed as a member of the government shall become vacant if this Member fails to submit to *Marszałek Sejmu*, within fourteen days following the appointment, a declaration on his or her resignation from that office.²⁷⁸

²⁷² "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."

²⁷³ "Odmowa złożenia ślubowania oznacza zrzeczenie się mandatu."

²⁷⁴ "O utracie mandatu posła do Parlamentu Europejskiego Marszałek Sejmu niezwłocznie zawiadamia Przewodniczącego Parlamentu Europejskiego."

²⁷⁵ "O utracie mandatu posła do Parlamentu Europejskiego Marszałek Sejmu niezwłocznie zawiadamia Przewodniczącego Parlamentu Europejskiego, z zastrzeżeniem art. 367."

²⁷⁶ "Poseł do Parlamentu Europejskiego wybrany w czasie kadencji na posła na Sejm albo na senatora traci mandat posła do Parlamentu Europejskiego z dniem ogłoszenia przez Państwową Komisję Wyborczą wyników wyborów do Sejmu albo do Senatu."

²⁷⁷ "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."

²⁷⁸ "Utrata mandatu posła do Parlamentu Europejskiego [...] powołanego w czasie kadencji na stanowisko lub funkcję, o których mowa w przepisach art. 333 i art. 334 ust. 2, następuje, jeżeli nie złoży on Marszałkowi Sejmu, w terminie 14 dni od dnia [...] powołania na stanowisko lub funkcję, o których mowa w przepisach art. 333 i art. 334 ust. 2 ustawy, oświadczenia o złożeniu rezygnacji z zajmowanego stanowiska lub pełnionej funkcji."

2. 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. 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.²⁷⁹

²⁷⁹ 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.

Article 108

The provisions of Articles 103-107 shall apply, as appropriate, to Senators.

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*).²⁸⁰ 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 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 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 Chamber²⁸¹ or, if they infringed on the rights of a third party, with the consent of the latter. 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.²⁸²

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."²⁸³

²⁸⁰ An unofficial English translation of the Act may be found at http://publicofficialsfinancialdisclosure.worldbank.org/fdl/sites/fdl/files/assets/law-library-files/Poland_MPs%20and%20Senators%20Mandate%20Act_1996_en.pdf

²⁸¹ 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").

²⁸² "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).

²⁸³ "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."

2.2.2. Immunity (Article 105 (2), (3), (4) and (5) of the Constitution)

Pursuant to Article 105 paragraphs 2, 3 and 4 of the Constitution, Deputies and Senators cannot be brought to criminal liability without their own consent or the consent of *Sejm* or *Senat*, unless the criminal proceedings were instituted before their election to Parliament. In this case, however, the 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.²⁸⁴

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 the proper course of proceedings. Even in such cases, however, the *Sejm* or the *Senat* 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.²⁸⁵

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 – *Prokuratora Generalnego*) 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.²⁸⁶ 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))²⁸⁷.

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²⁸⁴ "Przedawnienie w postępowaniu karnym czynu objętego immunitetem nie biegnie w okresie korzystania z immunitetu."

²⁸⁵ "Zakaz zatrzymania [...] obejmuje wszelkie formy pozbawienia lub ograniczenia wolności osobistej posła lub senatora przez organy stosujące przymus."

²⁸⁶ See email of 21 March 2014.

²⁸⁷ 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 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,²⁸⁸ 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".²⁸⁹

1.1.2. Denomination of the members of the Portuguese government

Pursuant to the provisions mentioned in paragraph 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.²⁹⁰

²⁸⁸ 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>.

²⁸⁹ "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."

²⁹⁰ "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

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Portuguese Parliament

Constitution

The composition of the Portuguese Parliament - the *Assembleia da República* (Assembly of the Republic) - is established in Article 148 of the Constitution which reads as follows: "The Assembly of the Republic shall have a minimum of one hundred and eighty and a maximum of two hundred and thirty Members, as laid down by electoral law."²⁹¹

Implementing provisions

Article 13(1) of Law 14/79 of 16 May 1976 defining the Electoral Regime for the *Assembleia da República* (*Lei Eleitoral para a Assembleia da República*) specifies that the *Assembleia da República* is composed of 230 Members: "The total number of Members of the Assembly of the Republic is two hundred and thirty".²⁹²

1.2.2. Denomination of the Members of the Portuguese Parliament

Pursuant to the provisions mentioned in point 2.1, Members of the Portuguese Parliament are named

- *Deputado* (Deputy); *Deputados* (Deputies).

1.2.3. Date of the beginning of the term of office

Under the terms of Article 153(1) of the Constitution²⁹³ and Article 2(1) of the Statute governing Members of the Assembly of the Republic (*Estatuto dos Deputados*),²⁹⁴ 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.²⁹⁵

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.

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. "

²⁹¹ "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."

²⁹² " 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>.

²⁹³ "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."

²⁹⁴ 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>.

²⁹⁵ 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 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. Constitution

In Portugal, the parliamentary immunities are granted to Members of the National Assembly 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.²⁹⁶

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 *Assembleia da República*.

²⁹⁶ " 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 immunity 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 defendant. 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.²⁹⁷

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 Deputy. 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.²⁹⁸

²⁹⁷ 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."

²⁹⁸ Article 11, paragraphs 5, 6 and 7, of the *Estatuto dos Deputados* provides as follows:

5 - O pedido de autorização a que se referem os números anteriores é apresentado pelo juiz competente em documento dirigido ao Presidente da Assembleia da República e não caduca com o fim da legislatura, se o Deputado for eleito para novo mandato.

6 - As decisões a que se refere o presente artigo são tomadas pelo Plenário, precedendo audição do Deputado e parecer da comissão competente.

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

With regard to the authority competent to transmit to the European Parliament a request to waive the immunity of a Portuguese Member, the same rule that applies to the Members of the Portuguese National Assembly should be followed, as expressly provided by Article 1 of Law 14/87 defining the Electoral Regime for Elections to the European Parliament.²⁹⁹ Consequently, it is up to the competent judge in the procedure to submit such request to the President of the National Assembly, in accordance with Article 11(5) of the Statute of Members.³⁰⁰

In an official letter sent to the President of the European Parliament,³⁰¹ 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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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.

²⁹⁹ Which 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." An English version of this law is available at: http://www.dgai.mai.gov.pt/cms/files/conteudos/LEPE_En_rev.pdf.

³⁰⁰ 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."

³⁰¹ 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 the third paragraph 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".³⁰²

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: "*Legea 90 din 26 martie 2001 privind organizarea si functionarea Guvernului Romaniei si a ministerelor*" (Law No 90 of 26 March 2001 on the organization and functioning of the Romanian government and ministries³⁰³), 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):³⁰⁴
 - a) *Viceprim-ministri* (Deputy Prime Ministers),
 - b) *Ministri de Stat* (Ministers of State),

³⁰² "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/>.

³⁰³ A non-updated version of this law, in Romanian, is available at: http://www.cdep.ro/pls/legis/legis_pck.htm?act_text?idt=26855.

³⁰⁴ Article 3, paragraph 2 of Law No 90 of 26 March 2001, as amended by Government Emergency Ordinance No 96/2012, 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*). The text of the Ordinance, which replaced the former text of Article 3(2), is available at: http://www.dreptonline.ro/legislatie/ouq_96_2012_masuri_reorganizare_administratie_publica_centrala.php.

c) Miniștri delegați cu însărcinări speciale pe lângă primul ministru (delegate ministers with special assignments to the Prime Minister).

Additionally, the *Secretarul General al Guvernului* (The Secretary General of the Government³⁰⁵), 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 Constitution³⁰⁶ 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 the second paragraph of Article 61 of the Constitution which reads as follows: "The Parliament consists of the Chamber of Deputies and the Senate."³⁰⁷

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.³⁰⁸

Implementing provisions

The provisions of the Constitution are implemented by a secondary act of law "*Legea Nr. 35/2008 pentru alegerea Camerei Deputaților și a Senatului și pentru modificarea și completarea Legii nr. 67/2004 pentru alegerea autorităților administrației publice locale, a Legii administrației publice locale nr. 215/2001 și a Legii nr. 393/2004 privind Statutul aleșilor locali*" (Law No 35/2008 for the Election of the Chamber of Deputies and the Senate and for amending and supplementing Law nr 67/2004 for the election of local public authorities, Law of local public administration nr 215/2001, and Law nr 393/2004 on the Statute of local representatives), as subsequently amended.³⁰⁹ 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.

³⁰⁵ Article 22, first paragraph of the Law No 90 of 23 March 2001 states: "The Government has a General Secretariat, led by the Secretary General of the Government, who may have the rank of minister, helped by one or several deputy secretaries general, who may have the rank of secretary of state, appointed by a decision of the Prime Minister" (*Guvernul are un Secretariat General condus de secretarul general al Guvernului, care poate avea rang de ministru, ajutat de unul sau mai mulți secretari generali adjuncți, care pot avea rang de secretar de stat, numiți prin decizie a primului-ministru*).

³⁰⁶ Article 104 of the Constitution reads as follows: "The Prime Minister, the Ministers and other members of the Government shall individually take an oath before the President of Romania, 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, miniștrii și ceilalți membri ai Guvernului vor depune individual, în fața Președintelui României, jurământul de la articolul 82. Guvernul în întregul său și fiecare membru în parte își exercită mandatul, începând de la data depunerii jurământului*).

³⁰⁷ "Parlamentul este alcătuit din Camera Deputaților și Senat."

³⁰⁸ "Camera Deputaților și Senatul sunt alese prin vot universal, egal, direct, secret și liber exprimat, potrivit legii electorale. [...] Numărul deputaților și al senatorilor se stabilește prin legea electorală, în raport cu populația țării."

³⁰⁹ A non-updated version is available at: http://www.clr.ro/rep_html/L35_2008.htm.

The organization and functioning of the Chamber of Deputies and of the Senate are regulated by their own Rules of Procedure.³¹⁰

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."³¹¹

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 the "*biroul electoral central*" (Central Election Bureau). The Validation Committee draws up a report mentioning the Deputies for whom validation, invalidation, or, as the case may be, deferral of the validation of the mandate is being suggested, with a brief reasoning of the proposals for invalidation or deferral. The Chamber of Deputies rightfully convenes on the fifth day after the setting up of the Validation Committee, in order to debate the latter's report. The Chamber of Deputies is lawfully established after the validation of two thirds of the Deputies' mandates and after the Deputies in question have taken oath.³¹² 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

³¹⁰ 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 <http://www.senat.ro/Start.aspx>.

³¹¹ "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."

³¹² Article 11 of the Rules of Procedure of the Romanian Chamber of Deputies.

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,³¹³ 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 who informs the European Parliament of cases of incompatibility, in accordance with Article 9(5) of the said law.

³¹³ *Legea privind organizarea și desfășurarea alegerilor pentru Parlamentul European*, available at: <http://www.roaep.ro/ro/section.php?id=93&l2=100>.

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. 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.³¹⁴

2.1.2. Implementing provisions

The implementing rules of Article 72 of the Constitution are contained in Chapter 5 of Law No 96 of 21 April 2006 on the statute of Deputies and Senators.³¹⁵ Detailed procedures on the parliamentary immunities are also contained in Articles 193 to 197 of the Rules of Procedure of the Chamber of Deputies and Articles 172 to 173 of the Rules of Procedure of the Senate.

³¹⁴ "(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."

³¹⁵ *Legea privind Statutul deputaților și al senatorilor*, as amended, completed and republished, available at: http://www.clr.ro/rep_htm/L96_2006_REP2.htm.

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, paragraph 3 of the Statute of Deputies and Senators this immunity applies only during their term of office.³¹⁶

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 provisions³¹⁷, *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 or search. In the event of a flagrant crime, Deputies³¹⁸ and Senators³¹⁹ may

³¹⁶ "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." According to Art.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."

³¹⁷ Rules of Procedure of the Chamber of Deputies, Article 195, paragraph 2. Rules of Procedure of the Senate, Article 172, paragraph 6.

³¹⁸ Rules of Procedure of the Chamber of Deputies, Article 196, paragraph 1.

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 Union³²⁰. 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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³¹⁹ Rules of Procedure of the Senate, Article 172, paragraph 5.

³²⁰ 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 Slovene government is formed in accordance with the constitutional provisions, in particular Article 110 of the Constitution, which reads as follows: "The Government is composed of the president and ministers. Within the scope of their powers, the Government and individual ministers are independent and accountable to the National Assembly."³²¹

Implementing provisions

The provisions of the Constitution are implemented by the rules laid down in the Government of the Republic of Slovenia Act,³²² and in particular its Article 10, which states that "The prime minister and the ministers cannot perform functions in state bodies, courts, local authorities and other public functions, nor can they engage in other activities which are incompatible with the function of a member of Government in accordance with law."³²³

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), *Ministri* (Ministers).

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

³²¹ "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/PoliticiSistem/UstavaRepublikeSlovenije>.

³²² *Zakon o Vladi Republike Slovenije*, ZVRS-UPB1, official consolidated version, Ur.l. RS, št. 24/2005, 109/2008, 55/2009 Odl.US: U-I-294/07-16, 8/2012. The Act is available at: <http://www.uradni-list.si/1/objava.jsp?urlid=200524&stevilka=823>.

³²³ "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."

the proposal of the Prime Minister.³²⁴ The date of the beginning of the term of office of the members of the Government is thus the date of the appointment of the entire Government by the National Assembly.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Slovene Parliament

Constitution

The Slovene Parliament is officially called the National Assembly. However, the legislative process in Slovenia also involves another body - the National Council, which has a consultative role.³²⁵

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 Italian and one deputy of the Hungarian national communities shall always be elected to the National Assembly. [...]"³²⁶

According to Article 43, the right to vote shall be universal and equal. Every citizen who has attained the age of eighteen years has the right to vote and be elected. Pursuant to the first paragraph of Article 81 of the Constitution, the deputies are elected for a period of four years. Article 82 provides that deputies of the National Assembly are representatives of all the people and shall not be bound by any instructions, 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 its Rules of Procedure³²⁷ and the Deputies Act.³²⁸ Important provisions are also laid down in the Election of Members of the European Parliament from the Republic of Slovenia Act,³²⁹ whose Article 2 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

³²⁴ Additionally, in accordance with Article 113, "upon election and appointment respectively, the Prime Minister and ministers shall swear before the National Assembly the oath of office provided by Article 104."

³²⁵ 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.

³²⁶ "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."

³²⁷ *Poslovnik Državnega zbora - Uradno prečiščeno besedilo (PoDZ-1-UPB1)*, Uradni list RS 92/07, str. 12284, 10. 10. 2007. An English translation of the Rules is available at: <http://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/PristojnostiInFunkcije/RulesoftheProcedureText>.

³²⁸ *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, available at: http://www.dz-rs.si/wps/portal/en/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=555A58D1198E3E49C1257A5C0025DE3A&db=urad_prec_bes&mandat=VI.

³²⁹ *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. The Act has been recently amended, see the summary of the amendments at: http://www.vlada.si/en/media_room/government_press_releases/press_release/article/the_government_approved_the_amendments_to_the_election_of_slovenian_members_to_the_european_parliament/.

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 a Parliamentary Committee),
- *Podpredsednik odbora* (Deputy Chair of a Parliamentary Committee),
- *Člani odborov* (Members of Parliamentary Committees),
- *Vodja poslanske skupine* (Head of a Parliamentary Group),
- *Predsednik komisije* (Chair of a Parliamentary commission),
- *Podpredsednik komisije* (Deputy Chair of a Parliamentary 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.³³⁰ 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. National authority competent to communicate cases of incompatibility to the European Parliament

Under the terms of Article 24 of the Election of Members of the European Parliament from the Republic of Slovenia Act, the *Predsednik* (President of the National Assembly) shall inform the President of the European Parliament about the cessation of a 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.

³³⁰ The procedure leading to confirmation of the mandates is set out in Article 13 of the Rules of Procedure.

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. 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 are found in the Rules of Procedure of the National Assembly. Article 203 of the Rules makes clear that a deputy enjoys immunity "from the time of the confirmation of his mandate until the expiry of his term." Additionally, the Deputies Act 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.

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").

2.2.1. Non-liability principle (Article 83 (1) of the Constitution)

Pursuant to the first paragraph of Article 83 of the Constitution, a deputy cannot be made criminally liable because of the opinions expressed or votes cast in the National Assembly or its bodies. In accordance with Article 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.

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*.

A deputy enjoys this immunity from the time of the confirmation of his election until the expiry of his term.

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

With respect to the Members of the European Parliament, Article 9 of the Act on the Election of Members of the European Parliament from the Republic of Slovenia provides that, concerning immunities, the provisions of the Deputies Act and other applicable legislation shall apply, *mutatis mutandis*.

Article 204 of the Rules of Procedure of the National Assembly provides that, where there are grounds to order the detention of a deputy or 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 Mandates and Immunities Committee), which makes a proposal to the National Assembly. The latter decides to grant or not to grant immunity to the deputy without debate, 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.

In accordance with the Foreign Affairs Act and established practice, 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.³³¹

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³³¹ 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."³³²

Implementing provisions

The above-mentioned provision of the Constitution is implemented and further specified by the following act of secondary law: *Zákon o organizácii činnosti vlády a organizácii ústrednej štátnej správy* (Law No 575/2001 on the activity of the government and on the organisation of the Ministries), in particular Articles 1, 2, 3, 4 and 5.

1.1.2. Denomination of the members of the Slovak government

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

- *Predseda/Predseda vlády Slovenskej republiky* (Prime Minister),
- *Podpredseda/Podpredseda 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 appointment, the Government is obliged to

³³² "Vláda sa skladá z predsedu, podpredsedov a ministrov". An English translation of the Slovak Constitution is available at: <http://portal.concourt.sk/pages/viewpage.action?pageId=3604914>.

appear before the National Council of the Slovak Republic, to present its program, 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 composed by the *Národná* (the National Council). According to Article 72 of the Constitution, the National Council of the Slovak Republic is the sole constituent and legislative body of the Slovak Republic. The composition of the National Council is established by the first paragraph of Article 73 of the Constitution, which reads as follows: "The National Council of the Slovak Republic has 150 deputies who are elected for a four-year period."³³³

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.³³⁴

1.2.2. Denomination of the members of the Slovak Parliament

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

- *Predseda/Predsedníčka Národnej rady Slovenskej republiky* (Speaker of the National Council of the Slovak Republic),
- *Podpredseda/Podpredsedníčka Národnej rady Slovenskej republiky* (Deputy Speaker of the National Council of the Slovak Republic); *Podpredsedovia/Podpredsedníčky Národnej rady Slovenskej republiky* (Deputy Speakers of the National Council of the Slovak Republic),
- *Predseda/Predsedníčka výboru Národnej rady Slovenskej republiky* (Chairman/Chairwoman of Parliamentary Committees); *Predsedomia/Predsedníčky výborov Národnej rady Slovenskej republiky* (Chairmen/Chairwomen of Parliamentary Committees),
- *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, "Each Member shall assume his/her office and shall commence to exercise the mandate on taking the pledge". 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."

³³³ Article 73 (1): "Národná rada Slovenskej republiky má 150 poslancov, ktorí sú volení na štyri roky."

³³⁴ The text of the Act on Rules of Procedure of the Slovak National Council is available at: http://www1.worldbank.org/publicsector/civilservice/epublishdocs/immunity/legislation/SlovakiaActNationalCouncil_on_rules_of_procedure.pdf

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 35(4) of Act no. 331/2003 Coll. on Elections to the European Parliament, 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 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. Constitution

In Slovakia the parliamentary immunities are granted to the members of the national Parliament by Articles 78 and 79 of the Constitution.

Article 78

(1) A Member of Parliament may not be prosecuted for his voting in the National Council of the Slovak Republic, or its bodies; this applies also after the termination of his mandate.

(2) For statements made in the National Council of the Slovak Republic, or its body, while discharging the function of a Member of Parliament, a Member of Parliament may not be criminally prosecuted; this applies also after the termination of his mandate. A Member of Parliament is subject to the disciplinary powers of the National Council of the Slovak Republic.

(3) A Member 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.³³⁵

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.

³³⁵ Article 78, as amended, provides as follows: "Čl.78 (1) Za hlasovanie v Národnej rade Slovenskej republiky alebo v jej výboroch nemožno poslanca stíhať, a to ani po zániku jeho mandátu.

(2) Za výroky pri výkone funkcie poslanca prednesené v Národnej rade Slovenskej republiky alebo v jej orgáne nemožno poslanca trestne stíhať, a to ani po zániku jeho mandátu. Poslanec podlieha disciplinárnej právomoci Národnej rady Slovenskej republiky.

(3) Poslanca nemožno vziať do väzby bez súhlasu Národnej rady Slovenskej republiky.

(4) Ak bol poslanec pristihnutý a zadržaný pri trestnom čine, príslušný orgán je povinný to ihneď oznámiť predsedovi Národnej rady Slovenskej republiky a predsedovi Mandátového a imunitného výboru Národnej rady Slovenskej republiky. Ak mandátový a imunitný výbor Národnej rady Slovenskej republiky následný súhlas na zadržanie nedá, poslanec musí byť ihneď prepustený.

(5) Ak je poslanec vo výkone väzby, jeho mandát nezaniká, iba sa neuplatňuje."

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, Slovak Members of Parliament 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 prosecuted 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 criminally prosecuted, 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 Article 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 Article 39 (6) of the same Rules];
- major breaches of the Member's pledge.

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,³³⁶ according to which the competent authority is the General Prosecutor.

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³³⁶ 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 Constitution³³⁷ (*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.

The Parliament shall be in session when the Government is being appointed and when the composition of the Government is being essentially altered.

³³⁷ 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>.

Implementing provisions

There are no specific provisions for the composition of the Finnish government.³³⁸

1.1.2. Denomination of the members of the Finnish government

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

- *Pääministeri, Statsminister* (Prime Minister),
- *Ministeri, Minister* (Minister); *Ministerit, Ministrar* (Ministers).

1.1.3. Date of the beginning of the term of office

As mentioned in Section 61 of the Finnish Constitution, the term of office begins as soon as the President appoints a new government.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the Finnish Parliament

Constitution

The composition of the Finnish Parliament is set out in Sections 24 and 25 of the Finnish Constitution, which provide as follows:

Section 24

The Parliament is unicameral. It consists of two hundred Representatives, who are elected for a term of four years at a time.

The term of the Parliament begins when the results of the parliamentary elections have been confirmed and lasts until the next parliamentary elections have been held.

Section 25

The Representatives shall be elected by a direct, proportional and secret vote. Every citizen who has the right to vote has equal suffrage in the elections.

For the parliamentary elections, the country shall be divided, on the basis of the number of Finnish citizens, into at least twelve and at most eighteen constituencies. In addition, the Åland Islands shall form their own constituency for the election of one Representative.

The right to nominate candidates in parliamentary elections belongs to registered political parties and, as provided by an Act, to groups of persons who have the right to vote.

More detailed provisions on the timing of parliamentary elections, the nomination of candidates, the conduct of the elections and the constituencies are laid down by an Act.

³³⁸ The composition of the current Government of Finland is available at: <http://valtioneuvosto.fi/hallitus/jasenet/en.jsp>.

Implementing provisions

The Election Act (*Vaalilaki, Vallag*)³³⁹ provides for more detailed provisions on the elections and the electoral procedure.

1.2.2. Denomination of the members of the Finnish Parliament

Pursuant to the provisions of the Constitution, members of the Finnish Parliament are referred to as:

- *kansanedustaja, riksdagsledamot* (Member of Parliament); *kansanedustajat, riksdagsledamöter* (Members of Parliament).

1.2.3. Date of the beginning of the term of office

According to Section 24 of the Finnish Constitution, 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.

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 (*Oikeusministeriö, Justitieministeriet*).

³³⁹ The text of the Election Act (No 714/1998) is available at: <http://www.finlex.fi/fi/laki/ajantasa/1998/19980714?search%5Btype%5D=pika&search%5Bpika%5D=Vaalilaki> (in Finnish), <http://www.finlex.fi/sv/laki/ajantasa/1998/19980714> (in Swedish), and <http://www.finlex.fi/en/laki/kaannokset/1998/en19980714.pdf> (unofficial English translation, including amendments up to Act No 218/2004).

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. Constitution

The immunity of Members of the Parliament is enshrined in the Constitution of Finland. Section 30 of the Constitution contains the basic rule according to which Members of the Parliament are subject to only limited legal liability for their actions as Members. The same section guarantees members enhanced protection in criminal proceedings.

Section 30

A Representative shall not be prevented from carrying out his or her duties as a Representative.

A Representative shall not be charged in a court of law nor be deprived of liberty owing to opinions expressed by the Representative in the Parliament or owing to conduct in the consideration of a matter, unless the Parliament has consented to the same by a decision supported by at least five sixths of the votes cast.

If a Representative has been arrested or detained, the Speaker of the Parliament shall be immediately notified of this. A Representative shall not be arrested or detained before the commencement of a trial without the consent of the Parliament, unless he or she is for substantial reasons suspected of having committed a crime for which the minimum punishment is imprisonment for at least six months.

2.1.2. Implementing provisions

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

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 ("limited liability"), and the protection against arrest and taking into custody ("immunity").

2.2.1 Limited liability principle (Section 30 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 Constitution)

The enhanced protection of members in criminal proceedings established in Section 30 prevents the arrest or detention of members 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,³⁴⁰ Finnish legislation contains no provision concerning requests for waiver of the immunity of MEPs. However, in case of arrest or imprisonment, communication would be appropriate.

Pursuant to Article 10 of the Coercive Measures Act (693/1997), a detention order must be issued by an official who has the power of arrest. Once the preliminary investigation has been completed and the case has been referred to the public prosecutor, the public prosecutor decides whether to issue a detention order.

Pursuant to Article 6 of the Coercive Measures Act (450/1987, as subsequently amended), the following authorities are empowered to make arrests: the police (*Poliisi, Polisen*); the public prosecutor (*Yleinen syyttäjä, Allmänna åklagare*); customs authorities (*Tullihallitus, Tullstyrelsen*); border Guards (*Rajavartiolaitos, Gränsbevakningsväsendet*).

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³⁴⁰ See letter dated 16 April 2013.

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 *Regeringsformen*³⁴¹ (The Instrument of Government), which reads as follows: "The Government consists of the Prime Minister and other ministers. The Prime Minister is appointed in accordance with the procedure laid down in Articles 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.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the Swedish government are contained in Chapter 6, Articles 1-11, Chapter 7, Articles 1-7 of the Instrument of Government and in the Ordinance (1996:1515) with instruction for the Government offices³⁴².

1.1.2. Denomination of the members of the Swedish government

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

- *Statsministern* (Prime Minister)
- *Statsråd* (Ministers)

1.1.3. Date of the beginning of the term of office

Under the terms of Chapter 6, article 6 of the Instrument of Government³⁴³ the date of the beginning of the term of office of the members of the government shall be considered the date the Speaker of the *Riksdag* (Parliament) issues a letter of

³⁴¹ *Kungörelse (1974:152) om beslutad ny regeringsform*, http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Kungorelse-1974152-om-beslu_sfs-1974-152/?bet=1974:152.

An English translation of this instrument is available at: <http://www.riksdagen.se/en/How-the-Riksdag-works/Democracy/The-Constitution/The-Instrument-of-Government/>

³⁴² *Förordning (1996:1515) med instruktion för Regeringskansliet*, available at: http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-19961515-med-ins_sfs-1996-1515/?bet=1996:1515.

³⁴³ "When the Riksdag has approved a proposal for a new Prime Minister, he informs the Riksdag as soon as possible of the names of the ministers he has appointed. Government changes hands thereafter at a Council of State before the Head of State or, in his absence, before the Speaker. The Speaker is always summoned to attend such a Council."

appointment for the Prime Minister on the *Riksdag*'s behalf. This is done at a Council of State that the King (or, in the future, the Queen) attends, although his presence is not formally required in order to appoint the Prime Minister.

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. The distribution of the seats is established by Chapter 3, Articles 6-9 of the Instrument of Government.

Implementing provisions

More detailed provisions concerning the structure and the organisation of the *Riksdagen* are contained in *Riksdagsordningen* (The Riksdag Act)³⁴⁴, 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 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.

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

The Swedish system regarding possible incompatibilities with taking up the duty as a member of the European Parliament is based on the issuing of certificates to the person having just been appointed a member by the Election Authority (*Valmyndigheten*). It can be assumed that the national authority competent to communicate cases of incompatibilities to the European Parliament is the Election Authority (*Valmyndigheten*).

³⁴⁴ Kungörelse (1974:153) om beslutad ny riksdagsordning. An English translation is available from <http://www.riksdagen.se/en/Documents-and-laws/Laws/The-Constitution/>.

The procedure leading up to the issuing of certificates, publishing the results of the election and formally informing the European Parliament of the results is described below in detail. The Election Authority is notified by the county administrative board of the result of the counting of votes as regards elections to the European Parliament. The county administrative board and the Election Authority thereafter appoint members and substitutes according to the provisions contained in Chapter 14 of the Election Act³⁴⁵.

Chapter 14, article 25 of the Election Act states that: When the Central Election Authority has distributed seats between the parties and appointed members and substitutes, the election results shall be pronounced by being announced by public notice in *Post- och Inrikes Tidningar* (Swedish Official Gazette). The election is thereby concluded. Public notice shall also be given in *Post- och Inrikes Tidningar*, when new members and substitutes have been appointed in accordance with Sections 18–20 and 24.

For those who have been appointed as a member of the European Parliament or as a substitute, the election authority immediately issues a certificate to that effect. Such a certificate shall also be sent to the Parliament, according to Chapter 14, sections 28 and 29 of the Election Act.

The Election Review Board (*Valprövningsnämnden*), which is appointed by the *Riksdag*, 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). Members of the European Parliament shall take up their assignment when they have been appointed and their eligibility considered by the European Parliament (Chapter 15, Section 10).

³⁴⁵ *Vallag* (2005:837), English version available on http://www.val.se/pdf/2005_elections_act.pdf

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. Constitution

In Sweden the parliamentary immunities are granted to the members of the national Parliament by 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

The implementing rules of Chapter 4, article 12 of the Instrument of Government are contained in Chapter 3, Article 16 *Riksdag Act*³⁴⁶.

2.2. Scope and content of national parliamentary immunities

The system of immunity applicable to members of the *Riksdag* represents the classical model which consists in the freedom of speech of the Member of Parliament ("limited liability"), and the protection against arrest and taking into custody ("immunity").

2.2.1. Limited liability principle (Chapter 4, article 12 of the Instrument of Government)

Pursuant to Chapter 4, article 12, first sentence of the Instrument of Government, legal action can not be brought against any person who holds office, or has held office, as a member of the *Riksdag*, nor can he be deprived of his liberty, or prevented from travelling within the country, on account of his actions or statements made in the performance of his duties³⁴⁷, unless the *Riksdag* has given

³⁴⁶ An English translation is available at: <http://www.riksdagen.se/en/Documents-and-laws/>.

³⁴⁷ In the report by the Commission on Constitutional affairs (*Konstitutionsutskottets betänkande 200/01:KU11*) the notion of "*made in the performance of his duties*" has been given a restrictive interpretation and should only be confined to Members' work-related activities in the *Riksdag*.

its consent by means of a decision in which no fewer than five sixths of those present and voting have concurred.

2.2.2. Immunity (Chapter 4, article 12 of the Instrument of Government)

If a member of the *Riksdag* is suspected of having committed a criminal act, outside of their duties as Member of Parliament, the relevant rules of law concerning arrest, detention or remand are applied only if he admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for two years. However, there are no restrictions to prosecution.

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

No specific procedural rules have been adopted with regard to the request for waiver of the immunity of the Swedish members of the European Parliament. 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 Chapter 3, Article 16 of the *Riksdag* Act³⁴⁸, a written application demanding consent to prosecution or deprivation of liberty of a national Member of Parliament can be made by the prosecuting authority (*Åklagarmyndigheten*), or any other person, to the Speaker of the Parliament.

According to an official letter³⁴⁹ sent to the President of the European Parliament by the Permanent Representation of Sweden to the European Union, the Swedish Prosecution Authority (*svenska 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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³⁴⁸ "If a prosecutor calls for the consent of the *Riksdag* under Chapter 4, Article 12, paragraph one of the Instrument of Government to take legal action against a member of the *Riksdag* or deprive him of his personal liberty, the prosecutor shall make a written application to the Speaker to this effect. The same procedure shall apply if any other person seeks the consent of the *Riksdag* to the prosecution of a member of the *Riksdag* on grounds of his or her actions."

³⁴⁹ See letter dated 11 April 2013.

UNITED KINGDOM

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 United Kingdom government

Constitution

The United Kingdom doesn't have a single, written constitution. But this doesn't mean that the UK has an 'unwritten constitution'. In fact, it is mostly written – but instead of being one formal document, the British constitution is formed from various sources including statute law, case law made by judges, and international treaties. There are also some unwritten sources, including parliamentary conventions and royal prerogatives.

The UK is a parliamentary democracy with a constitutional monarch. A king or queen is the head of state, and a prime minister is the head of government. By strict convention, the monarch will ask the leader of the dominant party in the House of Commons³⁵⁰ to form a government. The Prime Minister then selects the other Ministers which make up the Government and act as political heads of the various government departments. About twenty of the most senior government ministers make up the Cabinet, and the government is composed of approximately 100 ministers in total.

1.1.2. Denomination of the members of the United Kingdom government

Members of the United Kingdom government (sometimes also referred to as Her Majesty's Government or HMG) are the following:

- *Prime Minister*, who heads the UK government.
- *Cabinet Ministers* are the highest-ranking ministers in the government, and most government departments have one Cabinet minister (or more). Most Cabinet ministers are titled '*Secretary of State*' – although some have traditional titles, such as the *Chancellor of the Exchequer*, the *Leader of the House of Commons*, or the *Leader of the House of Lords*. Certain ministers also attend cabinet, and a further category of ministers attends cabinet only when their ministerial responsibilities are on the agenda.
- further titles of members of the UK government include:
 - *Minister of State*,
 - *Attorney General*,
 - *Parliamentary under-Secretary of State*,

³⁵⁰ If there is no dominant party, the leader most likely to be able to form a coalition government.

- *Parliamentary Secretary.*

The UK being a parliamentary democracy, members of the government are usually also members of one of the two Houses of Parliament (the House of Commons and the House of Lords) – although there are rare exceptions to this rule.

The House of Commons publishes an updated list of members of the UK government online. The Cabinet Office also publishes a list of ministerial responsibilities.³⁵¹

1.1.3. Date of the beginning of the term of office

The appointment of the prime minister is a royal prerogative exercised by the monarch.

By tradition, before a new Prime Minister can enter his official residence (10 Downing Street) for the first time as its occupant, he is required to announce to the country and the world that he has kissed hands with the reigning monarch, and thus has become Prime Minister. This is usually done by saying words to the effect of: "Her Majesty the Queen has asked me to form a government and I have accepted."

The term of office of a minister takes effect from the date of appointment by the Prime Minister.

1.2. Member of a national parliament

1.2.1. Legal provisions on the composition of the United Kingdom Parliament

There are many rules about how the UK Parliament runs. Some of these are written down and are called Standing Orders. Other rules are set out in resolutions of both Houses. However, much of how Parliament does its business is not determined by rules but has become established through continued use over the centuries - this is sometimes known as "custom and practice."³⁵²

Whereas all (currently 650) members of the House of Commons are elected, the House of Lords is currently composed of four different categories of members: Life Peers (about 700), 26 Archbishops and Bishops, and 92 "Elected hereditary Members."³⁵³

1.2.2. Denomination of the members of the United Kingdom Parliament

From its appearance in the fourteenth century, the UK Parliament has been a bicameral legislature consisting of the House of Commons and the House of Lords.

A Member of the House of Commons is referred to as a *Member of Parliament* (MP for short)

A Member of the House of Lords is referred to by his title: "*The Lord (...) of (...)*", or more formally "*The Baron (...) of (...)*", or "*The Earl (...)*" or "*The Viscount (...)*" or "*The Duke of (...)*"; or "*The Lady (...)*" or "*The Baroness (...)*".

³⁵¹ The House of Commons list is available at: <http://www.parliament.uk/mps-lords-and-offices/government-and-opposition1/her-majestys-government/>. The Cabinet Office list is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264918/Final_LMR_Dec_2013.pdf (December 2013 version).

³⁵² <http://www.parliament.uk/about/how/role/customs/>.

³⁵³ See *inter alia* Peerages Act 1963, amended and repealed in part by the House of Lords Act 1999.

1.2.3. Date of the beginning of the term of office

House of Commons

At the beginning of the new Parliament, the Clerk of the Crown in Chancery will deliver a Return Book to the Clerk of the House of Commons (the most senior official of that house); in practice, the Return Book is handed to the Clerk Assistant below the Bar of the House. This book contains the names of Members returned to serve in the Parliament and is sufficient evidence that a Member won a constituency seat at the General Election, and has the right to represent that constituency in Parliament. The delivery of this book is recorded in *Hansard* (the Official Report), which is the edited verbatim report of proceedings in both Houses.³⁵⁴

After the Speaker has been duly elected by the House and taken the Oath, Members (led by the Government and Opposition Front Benches) approach the Table of the House. Here they swear the Oath or take the Affirmation and sign the Test Roll. After signing the Test Roll, Members are introduced to the Speaker by the Clerk of the House. Once the majority of Members have been sworn in (this usually takes a few days), the House is properly constituted and ready to process to the House of Lords and hear the Queen's Speech.³⁵⁵

House of Lords

Membership of the House of Lords is effective once a series of traditional formalities is completed.

The Announcement is made by No. 10 Downing Street. Announcements of appointments to represent political parties, or to act as ministers, are decided by the Prime Minister and peerages are conferred by the Queen. Appointments as non-political peers are generally recommended to the Queen by the Appointments Commission.³⁵⁶ Before anyone becomes a Member, a title has to be agreed, and documents—the Writ of Summons and Letters Patent—have to be prepared. This takes several weeks.

Letters Patent are issued by the Queen under the royal prerogative. They create a life peerage. Recipients become Members of the House automatically when Letters Patent are received. However, they cannot sit or vote until their Introduction.

The Writ of Summons is the document which calls the Member to the House and then acts as their 'entry ticket'. A new writ is issued for every Member at the beginning of each Parliament. A writ accompanies the Letters Patent to a new Member.

The Introduction is a short ceremony lasting about five minutes which takes place at the beginning of business.

The Oath of Allegiance must be taken, or a solemn affirmation made, by all Members before they can sit and vote in the House. Members need to take the Oath on Introduction, in every new Parliament and on the accession of a monarch. On

³⁵⁴ See for example Hansard, Tuesday 18 May 2010, column 1. Also see House of Commons Factsheet M7 on Parliamentary Elections (revised May 2010), available at: <http://www.parliament.uk/documents/commons-information-office/m07.pdf>.

³⁵⁵ House of Commons Factsheet M 7, "Parliamentary elections", May 2010, p.4.

³⁵⁶ See <http://lordsappointments.independent.gov.uk/>.

taking the oath, peers also sign an undertaking to abide by the House of Lords' Code of Conduct in carrying out their parliamentary duties.³⁵⁷

Until the 2009 European Parliament election, dual membership of the UK Parliament and the European Parliament was possible. Although this rule (a derogation from the general incompatibility between the office of Member of the European Parliament and that of Member of a National Parliament) has been amended, the UK Parliament is still subjected to some special rules. In particular, the *European Parliament (House of Lords Disqualification) Regulations 2008*³⁵⁸ make provision for a life peer who is elected to the office of member of the European Parliament to be disqualified from sitting and voting in the House of Lords for the duration of their membership of the European Parliament.

The explanatory note to the Regulations states that, taking effect from the 2009 European Parliamentary elections, they will allow a life peer to be elected and serve as a member of the European Parliament, without breaching the prohibition on dual mandates. The Regulations have the effect of disqualifying the life peer at any time during which he remains a Member of the European Parliament from sitting or voting in the House of Lords and from sitting or voting in a committee of the House of Lords or a joint committee of both Houses of Parliament. Hereditary peers are not mentioned, presumably due to plans to reform the House of Lords to remove the 92 remaining elected hereditary peers in the chamber. However, the Government have indicated they have no plans to continue with any comprehensive reform until at least 2015.³⁵⁹

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

No provisions clearly setting out the national authority competent to communicate cases of incompatibility to the European Parliament could be found. However, section 10 of the European Parliamentary Elections Act 2002³⁶⁰ covers cases of incompatibilities. Section 11 of the same act clarifies that the following courts are competent to rule on applications for declarations in cases of disqualification:

- For England, Wales and Gibraltar: the High Court;
- For Scotland: the Court of Session;
- For Northern Ireland: the High Court of Justice in Northern Ireland.

³⁵⁷ For a brief description of the rules on appointments at the House of Lords, see the House of Lords Briefing on Membership, available at: <http://www.parliament.uk/documents/lords-information-office/lords-briefing-papers/15595HoLBriefing-membership.pdf>.

³⁵⁸ Statutory instrument 2008 No. 1647, date of entry into force: 15 July 2008. Available at: http://www.opsi.gov.uk/si/si2008/ukSI_20081647_en_1.

³⁵⁹ See House of Commons Library Standard Note 06405 House of Lords Reform Bill 2012-13: Decision not to proceed.

³⁶⁰ Available at: <http://www.legislation.gov.uk/ukpga/2002/24/contents>.

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

As mentioned above (1.1.1.), the legal provisions derive from a mixture of written and unwritten sources, and a combination of statutes, common law and conventions.

2.2. Scope and content of national parliamentary immunity

The national system of immunity consist in the freedom of speech of the Members of Parliament ("non-liability principle"), which is called "Parliamentary Privilege" and includes the exercise by Parliament of control over its own affairs. There is no protection against arrest, taking into custody and prosecution ("immunity").

2.2.1. Non-liability principle (Article 9 of the Bill of Rights 1689)

Parliamentary privilege, which comprises Parliament's constitutional rights and immunities, has two main components:³⁶¹

- *Freedom of speech*, which is guaranteed by Article 9 of the *Bill of Rights 1689*, and
- The exercise by Parliament of control over its own affairs.

Being derived from centuries of practice and custom, parliamentary privilege is inevitably "a mirror of the times when (it) was gained."³⁶²

The public interest in the freedom of speech in the proceedings of Parliament, and the maintenance of the separation of powers between the legislature and the judiciary, are both considered to be of a high order. The privilege of freedom of speech protects what is said in the debates in either House. Article 9 of the *Bill of Rights 1689* states that:

"The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

The word "proceedings" is interpreted widely to mean what is said and done in the formal proceedings of either House or their committees, together with conversations, letters and other documentation directly connected with those proceedings.

However, parliamentary privilege does not apply to things said outside Parliament - for example, in carrying out constituency duties or in communicating with government. Likewise, no immunity attaches to statements made outside Parliament, even if they amount to a repetition of statements made during the course of Parliamentary debates on matters of public interest. Nor does any

³⁶¹ There are also several other statutory privileges which are not covered here as they are considered obsolete (e.g. immunity from arrest in civil cases).

³⁶² Australian Select Committee on parliamentary privilege (1984).

immunity attach to a member's press statements published prior to parliamentary debates, even if their contents are repeated subsequently in the debate itself.

The effect of this privilege was described by Lord Chief Justice Cockburn in *Ex parte Watson* (1869):³⁶³

"It is clear that statements made by Members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third party."

The Joint Committee on Parliamentary Privilege set out the modern interpretation of Article 9 in 1999, as follows:

"The modern interpretation is now well established: that Article 9 and the constitutional principle it encapsulates protect members of both Houses from being subjected to any penalty, civil or criminal, in any court or tribunal for what they have said in the course of proceedings in Parliament."³⁶⁴

The degree of protection afforded by Article 9 is absolute. It applies notwithstanding the presence of malice or fraudulent purpose. Abuse of parliamentary freedom of speech is a matter for internal self-regulation by Parliament, not a matter for investigation and regulation by the courts. Additionally, the privilege extends to statements made in either House, or in their committees, by individuals who are not Members of Parliament (for instance, individuals who are called as witnesses and questioned by members of a Committee).³⁶⁵

A specific procedure for waiver of this privilege by individual members in defamation cases was introduced by statute in 1996³⁶⁶ - until then there was no provision for disapplying or waiving a statutory privilege such as freedom of speech.

A reform and codification of parliamentary privilege was proposed by a joint committee of both houses of Parliament in 1999, which called for a *Parliamentary Privileges Act*, but has not yet been put into practice.³⁶⁷

The compatibility of parliamentary privilege with Article 6(1) of the European Convention on Human Rights was examined by the European Court of Human Rights in 2003. The Court found that absolute privilege did not violate the Convention, and that the creation of exceptions to that principle would seriously undermine the legitimate aim of the doctrine.³⁶⁸

³⁶³ Queen's Bench Reports 573 at 576.

³⁶⁴ Joint Committee on Parliamentary Privilege, *Report*, 9 April 1999, HC 214-I 1998-99, para 37. Available at: <http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4305.htm>.

³⁶⁵ See *Goffin v. Donnelly* (1881), 6 Q.B.D. 307.

³⁶⁶ Article 9 caused difficulty when a member was defamed outside Parliament regarding the manner in which he carried out his parliamentary duties. The truth of the defamatory allegations could not be decided in court, since this would involve examining parliamentary proceedings. Unlike any other citizen, the member was therefore unable to clear his name. Section 13 of the *Defamation Act 1996* was passed to remedy this situation. This section enables a person to waive parliamentary privilege so far as he is concerned, for the purpose of defamation proceedings. The section has been subject to criticism on the grounds that parliamentary privilege belongs to the House as a whole and not to its individual members.

³⁶⁷ Joint Committee on Parliamentary Privilege, *Report*, 9 April 1999, para. 376.

³⁶⁸ Judgment of 17 December 2002, *A. v. United Kingdom*, at paragraph 88.

Statements made by Members outside the Houses of Parliament are subject to the ordinary laws of defamation and breach of confidence, save where they are protected by the common law doctrine of qualified privilege.³⁶⁹

2.2.2. Immunity

Individual members of the UK Parliament do not have immunity from criminal or civil prosecution. The *1999 Joint Committee on Parliamentary Privileges* summarised the applicable rules:

"If a member is charged with a criminal offence, no waiver of immunity is required. If [a member] is imprisoned and cannot attend the House, the two Houses expect only to be informed of the fact. The same principle applies to the premises in which Parliament meets. A criminal offence committed in the precincts is triable in the courts. A member may be arrested within the precincts."³⁷⁰

However, Article 9 of the *Bill of Rights 1689* prevents parliamentary proceedings from being used in evidence against Members when prosecutions are undertaken.

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

According to an official letter of 22 June 2005 of the Permanent Representative of the United Kingdom to the European Union, the following authorities are designated by the UK as the competent authority under Rule 6(2) of the European Parliament's rules of procedure:

- for Scotland: the Lord Advocate
- for Gibraltar: the Attorney General of Gibraltar
- for the rest of the UK: the Attorney General

Recent practice seems to have been that the Attorney General's request is submitted to the European Parliament by the United Kingdom's Permanent Representative to the European Union.³⁷¹

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³⁶⁹ See House of Commons Library Note SN/PC/02024, 24 May 2011, Parliamentary privilege and qualified privilege, available at: <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-02024.pdf>; and House of Commons Library Note SN/PC/06390, 18 July 2012, Parliamentary Privilege: Current Issues, available at: <http://www.parliament.uk/briefing-papers/SN06390>.

³⁷⁰ Joint Committee on Parliamentary Privilege, *Report*, 9 April 1999, at paragraph 242.

³⁷¹ European Parliament resolution on the request for waiver of the immunity of Ashley Mote, 2005/2037(IMM).

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