

Policy Department C

Citizens Rights and Constitutional Affairs

ELECTION AND MANDATE OF MEPS

FINAL VERSION

LEGAL AFFAIRS

EUROPEAN PARLIAMENT



Directorate-General Internal Policies

Policy Department C

CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS

ELECTION AND MANDATE OF MEPS

STUDY

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Abstract:

The election and the exercise of the mandate of a Member of the European Parliament (EP) have been regulated, up to now, by legal acts of various nature, originating either in national or in European law.

The election process of the Members of the EP is regulated at present by national law, with the restriction of the minimal common provisions of the "*Act concerning the election of the representatives of the Assembly by direct universal suffrage*"¹ of 1976, as modified by the Council Decision of 25th June and 23rd September, 2002².

Art. 190 par. 4 EC entitles the EP to draw up a proposal for elections by direct universal suffrage, in accordance either with a "*uniform procedure*" or with "*principles common to all Member States*". The proposal adopted by the European Parliament on 15th July 1998 is based on this second option, introduced by the Amsterdam Treaty. This proposal led to the revision of the 1976 Act concerning the election of the representatives of the Assembly by direct universal suffrage by the Council Decision of 25th June and 23rd September, 2002³.

Art. 7 of the 1976 Act brings together a regime of European incompatibilities, which the Act regulates, and "*incompatibilities at national level*"; only the first ones are subject to the verification of credentials by the EP.

Besides a declaration on the incompatibilities set out in art. 7 of the 1976 Act, the EP Rules of Procedure (art. 3 par. 2) sets out that elected members should declare their "*professional activities and any other remunerated functions or activities*", as well as any support, notably financial support (Annex 1 of the Rules of Procedure of the European Parliament).

A mix of legal rules, combining European and national law also regulates the exercise of the mandate of a Member of the European Parliament.

By virtue of art. 291 EC, immunities granted to Members of the European Parliament are based on art. 9 and art. 10 of the Protocol on the Privileges and Immunities of the European Communities, enclosed in the Treaty of 8th April 1965⁴. Art. 10 of the Protocol submits the immunities granted to the Members of the European Parliament on the territory of their originating Member State⁵ to the regime of immunities granted by the Member States to their own parliamentarians.

By application of art. 190 par. 5 EC, on the 3rd June, 2003, the European Parliament adopted and transmitted to the Council a proposal for a single status of the Member of the European Parliament, covering all aspects in relation to the exercise of the mandate of MEPs (immunities, financial status, some other new rights such as the possibility to refuse to testify etc.), with the exception of the provisions related to the election of MEPs (notably the voting system, the

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11.

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

³ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4

⁴ Treaty establishing a single Council and a single Commission of the European Communities, OJ L 152, 13/07/1967, p. 1.

⁵ Article 10: 'During the sessions of the European Parliament, its Members shall enjoy (...) in the territory of their own State, the immunities accorded to Members of their Parliament (...).'

disqualification cases, the filling of vacancies, the verification of credentials and the incompatibilities), which constitute, together with the national immunities applicable to MEPs the subject of this study.

Acknowledgement:

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- **Klaus Offerman**, "*L'immunité parlementaire au Parlement européen*" (including an analysis of decisions on requests for waivers of immunity of MEPs since the first parliamentary term), European Parliament, Luxembourg, 2004. Updated on 31.7.2005;

- **European Centre for Parliamentary Research and Documentation (ECPRD)**, "*Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union*", European Parliament, Brussels, 2001;

- **Marilia Crespo Allen**, "*L'immunité parlementaire dans les Etats membres de l'Union européenne et au Parlement européen*", European Parliament, Luxembourg, 1999.

- **Marilia Crespo Allen**, "*Régimes nationaux de cessation anticipée du mandat parlementaire*", European Parliament, Luxembourg, 1998;

- **Marilia Crespo Allen**, "*Dispositions nationales en matière d'inéligibilités et d'incompatibilités concernant le Parlement européen*", European Parliament, Luxembourg, 1997;

- **Prof. Franc Grad**, Université de Ljubljana, "*L'immunité parlementaire en Slovénie*", contribution to the hearing held by the European Parliament's Committee on Legal Affairs on 29 November 2005 in Brussels.

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The opinions expressed in this document do not necessarily represent the official position of the European Parliament. Comments are welcome.

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PART I: COMPARATIVE ANALYSIS

The following comparative analysis is based on the information gathered during the survey carried out among national parliaments from December 2004 to March 2005 via the ECPRD network, and on additional documentary research and contributions from participants in the hearing held by the European Parliament's Committee on Legal Affairs on 29 November 2005.

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation)*¹

Of the various types of proportional representation systems, the d'Hondt system and variants thereof is the system most often used in national electoral law for the election of Members of the European Parliament.

Another system of proportional representation is the '*single transferable vote*' (STV) system used in Ireland and in the United Kingdom for Northern Ireland, and which has also been adopted by Malta. STV is a system of preferential voting in multi-member constituencies. Voters are able to rank as many candidates within and across parties as they wish in order of preference. Any of those candidates who reach a certain quota are deemed to have been elected. After the first count, the surplus votes of candidates elected on the first count, and those of candidates with fewest votes, are distributed on the basis of preference to the remaining candidates. This continues until the required number of candidates reach the quota and so are declared elected.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State*

Article 13 of the Directive of 6 December 1993², which implements the right of Community nationals to vote for the European Parliament in a Member State of which they are not nationals (Article 19(2) of the EC Treaty), provides for an exchange of information among Member States, in particular to prevent people from voting or standing more than once. The Commission has underlined the difficulties involved in the operation of this system on several occasions³. All the Member States have formally adopted a system of communicating with the other Member States with regard to the right of Community citizens to vote and stand in elections.

It nevertheless appears that the systems used vary widely in both definition and technical nature. Questions might be raised regarding certain systems for exchanging information which seem to pass on full responsibility for monitoring the ban on the double exercise of the right to vote on to local authorities alone, as in Belgium.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

³ COMMUNICATION FROM THE COMMISSION on the application of Directive 93/109/EC to the June 1999 elections to the European Parliament - right of Union citizens residing in a Member State of which they are not nationals to vote and stand in elections to the European Parliament, COM(2000)843 of 18/12/2000.

In some cases it is explicitly laid down that the Ministry of the Interior is responsible for exchanges of information (Denmark). In other Member States it is the central (Austria, Sweden, Lithuania, Malta), national (Hungary) or federal (Germany) electoral commission.

In Portugal this responsibility is conferred on the Technical Secretariat for Electoral Affairs (TSEA), which reports directly to the Minister of the Interior.

1.1.3 Election of substitutes and their status

Substitutes either figure on a **list differentiated from full candidates** on the same list (Belgium, Ireland, Portugal), or are recruited **from among the candidates who received a number of votes directly lower than those obtained by the elected candidates**: Czech Republic, Denmark, Estonia, Greece, France, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovenia, Slovakia, Spain, Finland, United Kingdom. In Portugal, if there is a list of substitutes vacancies are filled by the first full or substitute candidate who was not elected.

Where there are no longer sufficient substitutes available to fill a vacancy, in particular where substitutes are not named on a separate list, it may be necessary to follow other procedures for appointing replacements (see 1.3).

Substitutes do not have any specific status. They are not eligible for parliamentary allowances.

1.1.4 Minimal threshold of eligibility

The introduction of a **threshold of eligibility** makes it possible to reduce the fragmentation of representation, particularly in full proportional representation systems. This technique is consequently being used increasingly widely: 5% in the Czech Republic, Germany, France, Latvia, Lithuania, Hungary, Poland and Slovakia; 4% in Austria and Sweden; 3% in Greece, 1.8% in Cyprus and 16.6% in Malta (with seats distributed among the lists which won the most votes if this high threshold is not reached).

The small number of seats to be filled sometimes makes it inappropriate to lay down a threshold; this applies in particular to Denmark, Estonia and Belgium (although Belgium does have a threshold for legislative elections and elections to regional and community parliaments). Spain does not apply the 3% threshold to European elections.

There is also no threshold for lists in Ireland, Italy, the Netherlands, Portugal, Slovenia or Finland.

1.2 NATIONAL INCOMPATIBILITIES AND CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT (ARTICLE 7(3) OF THE 1976 ACT)¹

The loss of office as an MEP may result from the **loss of the conditions for eligibility**, the death or resignation of the Member or the occurrence of **incompatibilities** with the office of MEP.

One particular case of disqualification is the declaration by the German Federal Constitutional Court that a political party is **unconstitutional**, which entails the disqualification not only of

¹ Act of 1976, art. 7.3: "3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

elected Members but also of substitutes, owing to the nature of the disqualification. Such a decision means that seats remain vacant until the next elections.

However, the issue of disqualification concerns us only from the point of view of **national incompatibilities** with the office of Member of the European Parliament (Article 7(3) of the Act of 1976)¹. It is interesting to note that Spain, for example, has no provisions governing disqualification but only cases of incompatibility.

With the exception of Denmark and Sweden, the Member States have made use of the possibility offered by Article 7(3) to lay down incompatibilities with the office of Member of the European Parliament at **national level**. National legislation may also stipulate that the incompatibilities applicable to Members of the national parliament apply to MEPs from that Member State (Belgium, Poland, Portugal, Slovenia, Finland, United Kingdom).

In Slovakia there are particularly limited incompatibilities: apart from those stipulated in the 1976 Act, the office of MEP is incompatible with the office of judge at the Constitutional Court and the office of Ombudsman.

Many Member States have also introduced incompatibilities with **national public office**: official in the administration, member of the armed services, magistrate, ombudsman (Belgium, Germany, Estonia, Greece, Spain, France, Ireland, Cyprus, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Finland, Slovakia, Slovenia, United Kingdom), posts held even on a temporary basis (member of the Cabinet - Spain).

Incompatibility also covers **the office of member of a regional assembly** in Italy, but not in France. Incompatibility likewise covers the office of member of a communal chamber in Cyprus.

The office of member of **devolution parliaments and assemblies** in the United Kingdom is not incompatible with the office of Member of the European Parliament.

With regard to **local office**, the attitudes adopted by the Member States appear to vary widely, being based either on the principle or the importance of the office concerned (size of the local authority).

Limited cumulation of mandates is permitted in France, with at most one of the following local offices laid down by law: regional councillor, member of the Corsican Assembly, general councillor, Paris councillor, member of a municipal council of a municipality with at least 3500 inhabitants. In Italy, cumulation is permitted with the office of mayor of a municipality of less than 15 000 inhabitants; in Belgium, cumulation with local office is prohibited for municipalities with more than 50 000 inhabitants. Total incompatibility applies in Estonia, Cyprus, Latvia, Lithuania, Malta, Poland and Portugal.

Posts in **public sector companies** are considered incompatible in Belgium, Greece and France. A specific case in France is incompatibility with involvement in the management of companies which publicly solicit the deposit of savings and companies dealing in real estate.

¹ See the sections on individual Member States for a more detailed description of incompatibilities.

In Greece, the office of Member is explicitly ruled incompatible with the **ownership or management of a radio or television station or national newspaper**. Article 57 of the Constitution also refers to conflicts of interest resulting from involvement in public procurement. A similar incompatibility exists in Spain with the office of member of the administrative board of the public broadcasting company RTVE; the same incompatibility also applies in Italy with the post of member of the governing board of RAI.

A smaller number of Member States consider the post of Member of the European Parliament (and of the national parliament) to be incompatible with the performance of **activities in the private sector** (in Slovenia, for example, the post of member of the supervisory board of a commercial enterprise or gainful employment are ruled to be incompatible with the holding of public office), and even incompatible with the exercise of any other profession, as in Spain (principle of '*dedicación absoluta*' - Article 212 of Organic Law 5/1985¹), Greece (Article 57 of the Greek Constitution) and Lithuania².

In such cases, **academic activities** are generally permitted (see Article 56(2) of the Greek Constitution), although these activities are sometimes understood in the narrow sense, as in Spain, where membership of university management bodies is also prohibited.

In Cyprus, a specific case of incompatibility applies to representatives elected by the Turkish community, referring to any person employed by a **religious administration**.

1.3 PROCEDURE FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT SUBJECT TO A DISQUALIFICATION

Disqualification may arise automatically, as in Greece, or be established through an act or declared by the assembly in a constituent act, as in Germany. The matter has not been clearly settled in Belgium.

In most cases, substitutes are elected at the same time as full Members. Candidates may be elected on a substitutes' list, where the order of election determines the granting of office (Belgium, Ireland). In Portugal, the outgoing Member is replaced by the first candidate not elected on the list of candidates or of substitutes. Substitutes may also be candidates not elected from the same list ranked in order of votes received (Czech Republic, Denmark, Estonia, Greece, France, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Austria, Poland, Cyprus, Slovenia, Slovakia, Finland, United Kingdom). In Denmark, the appointment of the substitute must be approved by the Chamber (Folketing), and by the federal electoral authority in Austria. In Hungary, the vacant seat is filled by the candidate not elected on the same list, designated by the party, or by the following unelected candidate on the same list.

When there are no more substitutes available, by-elections must sometimes be held (Greece, Luxembourg, Slovenia, United Kingdom), but this is not systematically the case and in some cases the seat remains vacant (Germany, Czech Republic, Slovakia). The decision not to hold a by-election is sometimes taken when the term of office is due to expire shortly (Greece, Slovenia and Luxembourg - unless Luxembourg loses more than half of its representation).

¹ Article 213 exempts the management of the personal or family patrimony and literary, scientific, artistic and technical works.

² Excluding creative activities.

In Ireland, where a list of substitutes is exhausted, another candidate elected on a different list in the same constituency may be selected. In Hungary, where all the substitute candidates on a list have been exhausted, a similar system allocates the vacant seat to the list which would have won the seat if the procedure for allocating seats had been continued.

In Malta, where a seat becomes vacant, the electoral process for allocating seats among the candidates from the previous election who are still eligible is reopened; if the seat still cannot be filled, a substitute is co-opted by the House of Representatives from among the candidates who had contested the previous election.

1.4 VERIFICATION BY THE EUROPEAN PARLIAMENT OF THE CREDENTIALS OF MEMBERS ELECTED

1.4.1 Definition, content and understanding of the incompatibilities set by Article 7(1) and (2) of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²:

- **incompatibility with the office of “Member of the government of a Member State” (Article 7(1))**: this generally means ministers actively holding their post.

An interesting case is presented by the **governments of federated bodies in federal states: Belgium, Germany and Austria**, in that Article 203(1) EC does not imply that Member States' representation is restricted to members of their national governments; Article 203(1) EC merely lays down that each Member State must be represented "*at ministerial level*" and that its representative must be "*authorised to commit the government of that Member State*". It should be noted that Article 7 of the 1976 Act does not refer to a "national government" but to the "*government of a Member State*", which is a concept in Community law whose application may vary, thanks to the principle of autonomous interpretation, depending on each Member State's own constitutional organisation. However, by citing the quality of "Member State" it refers precisely to that government's participation in the formation of the Council's will.

In **Belgium**, members of regional governments are explicitly covered by the legal incompatibility laid down in Article 42(2) of the law of 23 March 1989. The same article also covers members of provincial or local governments. It nevertheless appears that these incompatibilities must be considered different in nature. Communal or regional ministers share the task of representing the Member State in the Council of Ministers on matters for which they are competent by virtue of the federal system established by the Belgian Constitution. Moreover, Article 92a(4a) of the special law on institutional reform of 8 August 1980 stipulates that the federal authority, the communities and the regions must reach cooperation agreements on Belgium's representation within international and supranational organisations. The incompatibility which applies to members of the governments of federated bodies in Belgium is thus rendered indispensable by the necessary separation of powers at European level. Other

¹ Decision of the representatives of the Member States meeting in the Council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 p. 1-4.

incompatibilities arise more from an anti-cumulation rule and should therefore be seen as "national incompatibilities" within the meaning of Article 7(3) of the 1976 Act.

In **Germany**, Article 23(6) of the Constitution delegates the exercise of the rights of the Federal Republic of Germany as a Member State - and thus the right to vote in the Council of Ministers - to a representative of the Länder nominated by the Bundesrat, with the participation of and in coordination with the federal government. Under Article 51 of the Constitution, the Bundesrat comprises members of the governments of the Länder, with as many full members being appointed as the number of seats to which the Land concerned is entitled and the remaining members of the Land government acting as substitutes. In practice, all the members of the governments of the Länder thus belong to the Bundesrat and contribute, at European level and on matters falling within their competence, to the formation of the Council's will by virtue of Article 23(6) of the Constitution. It thus appears that the incompatibility between the office of MEP and the office of member of a Land government laid down by the law on the election of representatives of the Federal Republic of Germany to the European Parliament must be interpreted as a transposition of the incompatibility between the office of MEP and the office of member of a Member State government to the German federal system.

A similar approach seems to prevail in **Austria**, where the dominant doctrine is that the incompatibility laid down by Article 7(1) of the 1976 Act covers not only members of the federal government and secretaries of state, but also members of provincial governments, on the basis of the *ratio legis* underlying Article 7, which is to prohibit the cumulation of mandates of Member of the European Parliament and Member of the Council of Ministers; here too, regional bodies may represent their Member State in matters concerning them.

The situation of a state such as **Spain**, which is "**autonomic**" but not federal, is more complex.

Article 211 of Law 5/1985 explicitly establishes incompatibility between the office of MEP and the office of member of the legislative assemblies of the autonomous communities. Article 152 of the Spanish Constitution lays down that members of the governments of the autonomous communities are elected by the autonomous assemblies "*from among their members*", which in our view represents an argument in favour of extending incompatibility to members of the autonomous governments.

But what is the nature of this incompatibility?

Even though the Member State's representation within the Council of Ministers falls within the exclusive competence of the central government (Article 149 of the Constitution), the law organises the participation of the autonomous communities in defining Spain's stance on matters under their jurisdiction. This cooperation is ensured, in particular, through the "*Conference for Affairs Related to the European Communities*", governed by Law 2/1997, and through sectoral conferences which consider Spain's position in each of the Council formations responsible for the issues concerned¹.

It thus appears logical to conclude that, by actively participating in this way in the definition of Spain's stance within the Council on matters falling within their competence, members of the governments of the autonomous communities participate in the formation of the Council's will,

¹ Source: website of Spain's Permanent Representation to the EU.

which would mean that they would also be covered, by analogy, by the incompatibility applying to members of the governments of the Member States by virtue of Article 7 of the 1976 Act.

It should also be pointed out that **Portugal** has established incompatibility with the office of member of the governments of the autonomous regions of the Azores and Madeira.

- **incompatibility with the office of ‘Member of a national parliament’ (Article 7(2))**: this provision does not pose any particular problem for unitary Member States, even where they are decentralised: only the chambers of national parliaments are concerned. In Poland, for example, only the Seim and Senate are affected.

In **federal states** it must also be concluded that the assemblies of federated or autonomous regions are covered by the incompatibility between the office of Member of the European Parliament and the office of member of a national parliament, given that those assemblies exercise competences which are not subordinated to the central power and which in many cases are covered by Community law. To the extent that the governments of federated or autonomous regions share representation within the Council with the federal or central government or participate in a wider sense in the formation of the Council's will (see above), the assemblies of federated or autonomous regions will perform their traditional task of scrutiny of the executive, including in the material field of Community law. These assemblies thus play a part in the Community legislative system. It thus appears that the incompatibility between the office of Member of the European Parliament and the office of member of a national parliament introduced into the 1976 Act by the 2002 revision must also cover the office of member of the assemblies of federated or autonomous regions.

This would be the case for **Belgium**, by virtue of Article 42(2) of the law of 23 March 1989.

In **Germany**, the incompatibility applying to members of the Bundesrat stems from the correlation with membership of a Land government (see above), which is the incompatibility explicitly laid down by German law.

Austrian law, by contrast, extends incompatibility only to the federal level (national council and federal council), and does not cover the provincial diets. This might seem to contradict to some extent the prevailing doctrine in Austria with regard to the incompatibility which applies to members of the governments, but it should be borne in mind that Austrian federalism is less extensive than the other two federal systems described.

With regard to **Spain**, Article 211 of Law 5/1985 explicitly establishes incompatibility between the office of Member of the European Parliament and the office of member of the legislative assemblies of the autonomous communities.

In other non-federal Member States with regional assemblies, incompatibility is specifically laid down by the electoral law, where appropriate, within the framework of the incompatibilities "at national level" referred to in Article 7(3) of the 1976 Act (see section 1.2 above).

It might be recalled that Council Decision (EC) 2002/772 allows MEPs who are also members of the British Parliament during the five-year term preceding election to the European Parliament in 2004 to have a dual mandate until the 2009 European Parliament elections. Similarly, members

of the Irish Parliament (*Oireachtas*) also enjoy a derogation for candidates elected in 2004 until the next general elections.

Portugal has made the office of MEP incompatible with that of member of the legislative assemblies of the autonomous regions of the Azores and Madeira.

1.4.2 *National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure and time limits)*

As is logical, where such communication is formalised - which is not always the case - it is sent directly from **one parliamentary body to the other**, from the national parliament to the European Parliament.

That communication may also be the responsibility of the national **electoral commission** (Czech Republic, Estonia, Italy, Lithuania, Portugal) or of the Foreign Ministry (Cyprus).

In some cases it is up to the Member him/herself to forward the communication to the President of the European Parliament (Germany, Hungary).

Further details on the situation in each Member State can be found in the corresponding sections on individual Member States.

2 **CONDITIONS FOR EXERCISING THE MANDATE OF A MEMBER OF THE EUROPEAN PARLIAMENT**¹

Parliamentary immunities classically fall into two categories: **non-liability** of Members of Parliament for **votes cast and opinions expressed** in the performance of their duties ("*non-liability*" or "*freedom of speech*"), and immunity in the narrow sense or "**inviolability**", which protects Members from prosecution and restrictions of their personal freedom.

The draft single statute for Members of the European Parliament provided for a recasting of the system of immunities protecting the performance of the duties of MEPs (cf. Articles 4 to 8 of the draft adopted on 3 June 2003).

With regard to immunity for votes and opinions expressed in the performance of their duties, the draft specified and provided further details based on the current provisions of Article 9 of the Protocol on Privileges and Immunities, covering both prosecution and extra-judicial action; it explicitly reserved the right for Parliament to decide what constitutes action linked to the exercise of the mandate (Article 4 of the draft).

The project also aimed to put an end to discrimination among Members based on their national origin in the field of inviolability:

- no prior authorisation for proceedings, but the European Parliament would have the right to request that they be suspended;

¹ For more information on the legal situation regarding parliamentary immunity in the European Parliament, see the note by Klaus Offerman, '*L'immunité parlementaire au Parlement européen*' (including an analysis of decisions on requests for waivers of immunity of Members of the European Parliament since the first parliamentary term), European Parliament, Luxembourg, 2004.

- any measures restricting a Member's personal freedom would require Parliament's prior consent;
- explicit protection against the seizure of a Member's documents or electronic records or the searching of his or her person, office or place of residence and the interception of his or her mail and telephone calls, which would require Parliament's consent.

The draft introduced the right for Members to refuse to give evidence (protection of sources), a right which could not be waived by Parliament. Finally, the draft confirmed the right of Members to freedom of movement on EU territory.

The text forwarded by the Council on the draft single Statute no longer included Articles 4 to 8 of the draft adopted by Parliament on 3 June 2003; this issue does not form part of the new text adopted by Parliament at its sitting of 23 June 2005, and resolving this issue will thus depend on the Member States' review of the relevant provisions of the Protocol on Privileges and Immunities, on the basis of the model approved by Parliament on 3 June 2003.

The text of the new Statute for Members of the European Parliament was approved by the Council on 18 July 2005. It will come into force at the start of the 2009-2014 parliamentary term.

A full analysis of rules and practice relating to immunity in the European Parliament can be found in the study by **Klaus Offerman**, *"L'immunité parlementaire au Parlement européen"* (including an analysis of decisions on requests for waivers of immunity of Members of the European Parliament since the first parliamentary term, European Parliament, Luxembourg, 2004, last updated on 31.10.2006).

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO MEMBERS OF THE EUROPEAN PARLIAMENT ON THEIR NATIONAL TERRITORY

The **non-liability** of Members of the European Parliament for acts carried out and opinions expressed in the performance of their duties is governed by **Article 9 of the Protocol** on privileges and immunities, which lays down that *"Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties"*. This provides protection against civil proceedings or criminal prosecution based on acts closely linked to the performance of the Member's duties. However, this immunity does not cover Members in their political activities falling outside the performance of their duties as Member. Generally it cannot be waived and it lasts beyond the end of the term of office.

This immunity corresponds to the classical system in force in most of the Member States' legal systems.

This non-liability may also be waived by Parliament in some Member States where the Member has **abused** his freedom of expression: in Germany and Greece, non-liability may be waived for defamatory acts, for which the Member may be prosecuted with Parliament's authorisation, as is also the case in Poland; in Finland and Sweden, immunity may be waived by

a majority of five-sixths of the votes cast. In theory, it is possible for this type of immunity to be waived in Denmark, although it has never been approved in practice.

In Latvia, a Member may be prosecuted for disseminating ‘insulting information’ which the Member knows to be false or which relate to private or family life. In Hungary, the breach of State secrets, defamation and acts for which the Member bears civil-law liability are also excluded from non-liability.

Since for Members of the European Parliament the system of non-liability is entirely governed by Article 9 of the Protocol, we shall focus on the **system of parliamentary immunity in the narrow sense or “inviolability”**, given the mixed nature of this system which means that it is covered by both European and national law.

For Members, the system of parliamentary inviolability guarantees their freedom of movement to travel to Parliament’s meetings and makes it possible for them physically to carry out their duties by protecting them from measures restricting their freedom and from court proceedings which might hinder the performance of their duties.

The system of parliamentary immunities applicable at national level is of particular importance in order to determine the scope of the immunity enjoyed by Members of the European Parliament. **Article 10 of the Protocol on the privileges and immunities of the European Communities makes the immunities enjoyed by Members of the European Parliament in the territory of their own State¹ subject to the same system of immunities as that granted by the Member States to members of their national parliaments.**

Most of the Member States grant their Members of Parliament, for the duration of their term of office, immunity from repressive (criminal) proceedings and protection against measures restricting or depriving them of their freedom. Such proceedings or measures may be ordered and executed only with the consent of the assembly to which the Member belongs, with the exception of Cyprus, where this power rests with the judiciary ("High Court"). It should be noted that immunity cannot be waived in Ireland, but does not cover ‘*treason, crime and violation of law and order*’.

Special immunity

In Greece, special immunity against prosecution for political offences is granted to Members of Parliament during the period between the dissolution of Parliament and the declaration of the election of the new Parliament.

Exceptions to the immunity enjoyed by Members and flagrante delicto

Immunity does not normally cover cases of flagrante delicto; in such cases, Members may be prosecuted or arrested without prior authorisation from Parliament, although this does not mean that Parliament cannot take a decision at a later date on prosecution or arrest and request that such proceedings be suspended or indeed dropped.

¹ Article 10: "During the sessions of the European Parliament, its Members shall enjoy (...) in the territory of their own State, the immunities accorded to members of their parliament (...)" . In the territory of any other Member State, in contrast, Article 10 grants Members of the European Parliament "immunity from any measure of detention and from legal proceedings".

In Estonia, although the Constitution makes no exception for cases of *flagrante delicto*, the Code of Criminal Procedure does (Article 377(3)), stipulating that a Member may be detained as a suspect without Parliament's consent if he or she was caught in *flagrante delicto* committing a '*first-degree crime*'.

In Austria authorisation from the Nationalrat is not necessary for criminal proceedings which are "*manifestly*" not connected to the political activity of the Member in question. The Member or a third of the members of the standing committee may ask the Nationalrat to rule on the existence of such a link, in which case proceedings are suspended. Authorisation is always necessary for a Member to be arrested, except in cases of *flagrante delicto*, where the Nationalrat is nevertheless informed and may call for the Member to be released or proceedings waived.

In Cyprus, the exception made in cases of *flagrante delicto* is linked by a further condition to the nature of the punishment incurred (death penalty or imprisonment for five years or more), as in Slovenia (maximum prison sentence of more than five years). The High Court in Cyprus, and the national assembly in Slovenia, may nevertheless decide to uphold immunity at the request of the Member being prosecuted.

In Portugal, in addition to cases of *flagrante delicto*, the nature of the crime and the level of punishment incurred in themselves constitute an exception to the need to request that immunity be waived in order to arrest or detain a Member (intentional crime carrying a maximum prison sentence of more than three years).

However, these situations must also be seen in the light of Article 10(3) of the Protocol on Privileges and Immunities, which excludes cases of *flagrante delicto* from the immunity enjoyed by Members of the European Parliament. It thus appears that national legislation may not extend protection for Members of the European Parliament beyond that laid down in Article 10 of the PPI, prior waiver of immunity by the European Parliament not being necessary in such cases¹.

Exceptions apart from *flagrante delicto*

Other restrictions on immunity are sometimes provided, relating either to the nature of the acts of which Members are accused and/or their qualification as criminal offences or the extent of the punishment incurred. This is the case in Ireland, where treason, crimes and violation of law and order are excluded from parliamentary immunity.

In Portugal, waiver of immunity from criminal proceedings is automatic where there is strong evidence that a crime has been committed that is punishable with a maximum prison sentence of more than three years. Common law procedures apply in Sweden in the case of an offence punishable by a prison sentence of more than two years, as well as in cases of *flagrante delicto* and confessions.

In Poland, Members may themselves consent to criminal accountability. In Poland, moreover, a Member may be arrested without the prior consent of the House if his detention is "*necessary for securing the proper course of proceedings*". The President of Parliament (Sejm) may nevertheless order that the Member arrested be released.

¹ On this point, see Offerman, *op.cit.*, p. 10.

Parliamentary systems providing limited protection and common law systems

In Italy, the reform of Article 68 of the Constitution restricted the need for authorisation by the parliament concerned to certain specified acts: searches, arrest, measures depriving them of their freedom and detention except in cases of *flagrante delicto* and a final judgment, the surveillance of conversations or communications and correspondence. This authorisation is thus no longer needed for any criminal proceedings.

In Malta, immunity is restricted to proceedings in relation to civil debts, unless they constitute a criminal offence, which appears to be a throwback to traditional British parliamentary law ("*Freedom from arrest*").

Some Member States have an extremely restrictive system of parliamentary immunities where Members are protected only in relation to votes cast and opinions expressed in the course of their parliamentary duties (non-liability):

- in the **Netherlands**, Members of Parliament are not protected by immunity from criminal or civil proceedings during their term of office; immunity for votes cast and opinions expressed applies only for the duration of the session; for acts outside their mandate, they have had the same status as ordinary citizens since 1848. Non-liability may cover matters not directly linked to parliamentary proceedings, however;

- in the **United Kingdom**, Members of Parliament are protected only in relation to votes cast and opinions expressed, subject to the 1996 "*Defamation Act*", which enables a Member to waive his immunity in order to pursue defamation actions in the British courts. There is no immunity from criminal prosecution but only from proceedings for civil offences, originally in the area of debt (obsolete - see also the Maltese system referred to above);

- in **Finland**, as in **Sweden**, even protection for votes cast and opinions expressed (non-liability with immunity from prosecution and arrest) may be waived by a majority of five-sixths of the votes cast.

In **Finland**, the system of inviolability protects Members only against arrest or detention before the trial has commenced (which means that instituting proceedings is not subject to authorisation - cf. draft single Statute of 3 June 2003). Furthermore, Parliament's authorisation is not necessary if the Member is suspected, "*for substantial reasons*", of having committed a crime for which the maximum punishment is imprisonment for at least six months. However, the preparatory work on this latter provision suggests an interpretation of immunity which does not go beyond the exception based on the classical "*flagrante delicto*". In **Sweden**, inviolability is restricted by three exceptions: if the Member confesses, *flagrante delicto* and cases where the maximum penalty is more than two years' imprisonment.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

In most cases, this is the authority which takes the initiative in instituting proceedings.

The authority authorised to request the waiver of a Member's immunity so that proceedings may be brought is not explicitly designated in all the Member States. However, given the nature of the acts and proceedings involved, it should be deduced that this power rests with the **judiciary**.

In most Member States, this is the **public prosecution office**; in some cases, the law designates the Minister for Justice (Estonia, via the public prosecutor in Poland). In Slovakia, this power rests with the police authority alongside the **judge** and the public prosecutor.

In Austria, the **authority in charge of the proceedings** requests the waiver of immunity: the competent court in criminal matters, the competent administrative authority in administrative proceedings and the competent disciplinary board in disciplinary proceedings.

For more details, see the sections dealing with individual Member States.

PART II: ANALYSIS BY MEMBER STATE

BELGIUM

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation)*¹

The system applicable in Belgium for elections to the European Parliament is a list system of proportional representation organised into three electoral colleges (a Dutch, French and German-speaking college), with the seats being distributed in the Dutch and French colleges using the d'Hondt method (cf. Article 36 of the law of 23 March 1989 on elections to the European Parliament, which refers to Article 167 of the electoral code).

In the German-speaking electoral college, which elects only one MEP, the seat is evidently allocated to the list which has obtained the highest number of votes.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State*²

Multiple voting is chiefly prevented by the residence conditions imposed on voters: Article 1 of the above law of 23 March 1989 stipulates that any person wishing to vote in elections to the European Parliament must be registered in the population lists of a Belgian municipality.

In general, the Council ("Collège des Bourgmestres et Echevins") in each municipality is responsible for verifying the voting rights of people entered on the electoral roll; this applies both to Belgian citizens and to nationals of other Member States of the European Union resident in Belgium. As regards the latter in particular, the circular of 10 December 2003 from the Federal Public Service on Internal Matters concerning the entry of citizens of the present or future Member States of the European Union residing in Belgium as voters and, where appropriate, as candidates for the European Parliament elections of Sunday, 13 June 2004 stipulates, in point B, that *there is no need for the State of residence, in this case Belgium, to verify whether the voter is entered as a voter in his or her State of origin. In expressly stating his or her will to vote for lists and/or candidates put forward in accordance with Belgian electoral law, applicants are required to renounce their electoral rights in their State of origin. It will be for the State concerned to remove them from the electoral roll, where appropriate, on the basis of information provided by the Belgian authorities.*

Belgian citizens who have taken up residence in another Member State of the European Union may also vote for candidates on Belgian lists if they apply to the competent diplomatic or consular representation, on condition that they have not expressed their wish to exercise their voting right in their State of residence. This latter condition is verified by the diplomatic or consular representation to which the application has been submitted.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

Under Article 1(4) of the above law of 23 March 1989, anyone casting more than one vote or voting for candidates on Belgian lists and at the same time for candidates on lists of another Member State may be punished with a prison sentence of between eight and 15 days and a fine of between 26 and 200 francs (which converts to a fine of between € 143 and 1 100, taking account of additional factors).

1.1.3 Election of substitutes and their status

Anyone submitting an application to stand as a candidate for the European Parliament must at the same time, and following the same procedures, submit a list of substitutes who will appear separately on the ballot papers (voters may vote either for the list as a whole, or for one or more full candidates, or for one or more substitute candidates, or for both one or more full candidates and one or more substitute candidates). Substitutes do not have Member status and consequently do not receive a parliamentary allowance.

1.1.4 Minimal threshold of eligibility

There is no eligibility threshold for election to the European Parliament, even though such a threshold does apply for federal parliamentary elections and elections to regional and community parliaments. The reason for the absence of a threshold is the small number of MEPs to be elected in Belgium: 24, distributed between three electoral colleges (14 Members elected by the Dutch-speaking electoral college, 9 by the French-speaking electoral college and one by the German-speaking electoral college).

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

The general conditions for eligibility (in particular nationality, residence and the enjoyment of civil and political rights) must continue to be fulfilled for the entire term of office. The loss of any one of these conditions during the term of office entails the loss of the mandate (Pandectes belges, v° *éligibilité*, 106 et seq.). The question of whether the loss of mandate is automatic or must be established (by declaration) or declared (constituent act) by the assembly concerned has not yet been clearly settled. There is as yet no precedent in Belgian parliamentary history for an office-holder being stripped of his mandate, having ceased to meet a condition for eligibility during his term of office. The person concerned has always resigned, whether or not spontaneously, before the question arose.

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

There is a substitution mechanism for replacing a Member of the European Parliament who resigns or whose term of office has ended. Substitutes are elected at the same time as Members, on a separate list of candidates (see section 1.1.3. above).

1.4 VERIFICATION OF CREDENTIALS

1.4.1 *Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²*

- "*Member of the government of a Member State* ": for the Federal Government: *Minister* (among the Ministers, a distinction is made for the *Prime Minister*; there are also *Deputy Prime Ministers*) and *Secretary of State*; for the governments of communities and regions: *Member of the Government* (including the *President*) and *Secretary of State* (only for the Brussels-Capital region); the designations *ministre* and *ministre-président* are commonly used.

- "*Member of a national parliament* ": for the federal Chambers: the *Senate (Senator)* and *Chamber of Representatives (member of the Chamber, Deputy)*; for the community and regional parliaments: the Flemish Parliament (*het Vlaams Parlement*), the Parliament of the Wallonian region (*Parlement de la Région wallonne*), the Parliament of the French community (*Parlement de la Communauté française*), the Parliament of the German-speaking community (*das Parlament der Deutschsprachigen Gemeinschaft*), the Parliament of the Brussels-Capital region (*Parlement de la Région de Bruxelles-Capitale*). The official designations are *membre du Parlement de la Région wallonne*, *lid van het Vlaams Parlement*, but the designations *député wallon*, *vlaamse volksvertegenwoordiger* are commonly used.

- "*Rules at national level relating to incompatibility* ": in addition to the incompatibilities listed in the Act concerning the election of the representatives of the Assembly by direct universal suffrage, the office of Member of the European Parliament is incompatible with that of member of a community or regional parliament (the communities and regions being the two types of federated entities comprising the Belgian State), member of a community or regional government, member of a permanent delegation (provincial body), mayor, deputy mayor or chairman of the public social assistance centre in a municipality with more than 50 000 inhabitants (see Article 42(2) of the law of 23 March 1989).

Furthermore in accordance with Article 42(1) of the above law of 23 March 1989, the incompatibilities and restrictions on the cumulation of mandates applicable to Belgian parliaments by virtue of Belgian laws also apply to Members of the European Parliament. This

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...)* 2. *From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...)* 3. *In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

means that the general rules governing incompatibilities laid down in the law of 6 August 1931 establishing the incompatibilities and prohibitions relating to Ministers, former Ministers and Ministers of State and Members and former Members of the parliamentary chambers also apply to Members of the European Parliament elected in Belgium. These rules establish a whole series of incompatibilities between parliamentary office and a large number of public functions (including magistrates, serving members of the armed forces, lawyers acting for federal public administrations and Ministers of religion paid by the State; ordinary officials may be granted political leave in order to exercise a parliamentary mandate):

"The office of Member of the Chamber of Representatives or of Senator is incompatible with the following functions or mandates:

1. *official or salaried employee of the State;*
2. *Minister of religion paid by the State;*
3. *lawyer acting for federal public administrations;*
4. *official of the caissier de l'Etat;*
5. *government commissioner with limited companies;*
6. *provincial governor, vice-governor, deputy-governor, provincial councillor, provincial clerk;*
7. *district commissioner;*
8. *holder of judicial functions;*
9. *State councillor, assessor in the legislation section or member of the body of auditors, the coordination office or the registry of the Council of State;*
10. *judge, auditor or registrar at the Court of Arbitration;*
11. *member of the Court of Auditors;*
12. *serving member of the armed forces with the exception of officers in the reserve recalled to military service;*
13. *member of the board of directors of an autonomous public enterprise depending on the State.*

(Lawyers acting for federal public administrations may not plead in or follow any court case on behalf of the State, or provide it with any opinions or consultation in such cases unless this is done without payment.)¹".

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure and time limits)

The procedure applicable is governed by Articles 37, 42(2) and (3), and 43 of the above law of 23 March 1989:

Article 37. The report on the election drafted and signed by the members of the principal office of the college and the witnesses is sent immediately to the registrar of the Chamber of Representatives, together with the tables drawn up by the main provincial offices.

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.

An extract from the report of the main office of the college is sent to each person elected.

Article 42(2) and (3):

The Chamber of Representatives shall rule on the incompatibilities provided for by Belgian legislation. Its decisions shall be attached to the documents referred to in Article 37(2).

¹ The coordinated legislation is available online at the following address: http://www.juridat.be/cgi_loi/legislation.pl

A Member of the European Parliament may not accept any office or mandate incompatible with his mandate as a Member of the European Parliament unless he has first renounced that mandate.

Article 43:

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).

There is no other provision stipulating the procedure or time limits for informing the European Parliament of a case of incompatibility. Nevertheless, it should be noted that, in the Belgian parliamentary system, the term of office starts when the oath of office is taken, and that it is only then that any incompatibility would actually arise and have to be resolved. As a general rule, taking the oath of office automatically entails resignation from posts which are incompatible (see Article 1(3) of the above law of 6 August 1931: *taking the oath (...) concludes the elected Member's employment or office*), but it is nevertheless customary to resign from incompatible posts before taking the oath.

Prior to the 2004 elections, the question of incompatibility arose only from the Belgian point of view (no incompatibility with the office of member of a national parliament in the Act of 20 September 1976) and was easily resolved: a Senator or member of the Chamber of Representatives who had been elected as a Member of the European Parliament could take office as a Member of the European Parliament without having first resigned as a Senator or member of the Chamber (preserving freedom of choice for persons elected until the inaugural sitting of the European Parliament's first part-session); if the person concerned did not announce his resignation as a Senator or member of the Chamber, the Senate or Chamber deemed him to have resigned automatically and was able to appoint a replacement.

Where the inverse was the case (Member of the European Parliament elected to one of the two Chambers), he was required to resign his seat in the European Parliament beforehand (no incompatibility in the European system).

With the changes made to the Act of 20 September 1976 by the Council Decision of 25 June and 22 September 2002, first applied to the elections of 13 June 2004, the automatic incompatibility between national and European office also became the rule in European law. A number of difficulties then arose: the Chamber of Representatives, which rules on the incompatibilities laid down by Belgian law, continued to send the names of elected candidates, some of whom were holding incompatible mandates, to the European Parliament's services; these difficulties can chiefly be explained by the fact that European and regional elections are held simultaneously in Belgium, coupled with the fact that candidates stand for multiple office and the practice of appointing replacements.

2 CONDITIONS FOR EXERCISING THE MANDATE OF A MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A BELGIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

Article 58 of the Belgian Constitution establishes absolute judicial privilege and immunity from prosecution, for an unlimited duration, for votes and opinions expressed by Members of Parliament in performance of their duties (system of parliamentary inviolability).

Article 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 refers back to the provisions of national law as regards the immunities accorded to Members of the national parliament for the immunities enjoyed by MEPs in their own national territory during the sessions of the European Parliament. In Belgium, parliamentary inviolability is governed by Article 59 of the Constitution:

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

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

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

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

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

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

For a detailed description of these rules, see:

http://www.lachambre.be/kvvcr/pdf_sections/publications/jurid/violF.pdf (in French);

http://www.lachambre.be/kvvcr/pdf_sections/publications/jurid/violE.pdf (in English).

When applied to MEPs elected in Belgium, this mechanism poses one main difficulty, which is to establish which 'Chamber' is concerned: is it the European Parliament (in which case the President of the European Parliament should be present when a search is made on an MEP, although the President may not be aware of this), or should MEPs elected in Belgium be considered as being 'administratively' attached to the Chamber of Representatives (as in the first internal stage of the verification of credentials, or payment of the parliamentary allowance, which is charged to the budget of the Chamber of Representatives)? To date, no clear answer has been given to this question.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Waivers of immunity are understood as applying solely to authorisation for a Member of Parliament to be summoned or directly remanded before a court or to be arrested (as a preventive measure or to serve a sentence) during parliamentary sessions. Waiver is requested from the assembly concerned (through the President) by the Attorney-General of the competent court of appeal. More details can be found under the links given above.

CZECH REPUBLIC

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The Constitution of the Czech Republic and Act No. 62/2003 Coll., on Elections to the European Parliament, as amended (hereinafter referred to as **the Constitution** and also as **the Election Act**), are the main legal texts setting out the rules which are applicable regarding election of members of the European Parliament (hereinafter **the MEP**) in the Czech Republic.

1.1.1 *Voting systems (based on proportional representation¹)*

The voting system for the election to the European Parliament in the Czech Republic is based on proportional representation (d'Hondt method).

The mandates gained by each political party or coalition are assigned to their candidates in accordance with the candidates listed on the respective voting paper. Preferential voting is allowed; each voter has the right to a maximum two preferential votes. The voter should indicate the preferred candidate(s) (his/her number) on the voting paper of the respective political party or coalition. A candidate must obtain at least 5% of the votes gained by his/her political party or coalition to alter the first position of the voting paper.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State*

In the course of the same elections to the European Parliament, voting is only allowed in one EU Member State.

Any EU citizen may only vote for the European Parliament in the Czech Republic, if enrolled in the register of voters, which is maintained by each municipality. Czech voters are enrolled automatically according to the register of voters for elections to the Czech representative bodies (Senate, Chamber of Deputies, municipalities etc.). The citizens of another EU Member States have to file a request to the municipality of his/her permanent residence in the Czech Republic, within 40 days prior to the day of the election at the latest. A citizen must submit in his/her request the following documents: (i) a document proving his/her permanent residence in the Czech Republic, and (ii) a declaration of honour stating his/her nationality, municipality of another EU Member State where he/she was last registered in the register of voters, and that he/she will perform his/her voting right only in the Czech Republic.

The municipality, which enrolled the citizen of another EU Member State to its voters' register, must inform the respective EU Member States (its' responsible body or "Communication Centre") on enrolling its' citizen into the voters' register in the Czech Republic.

The municipality shall, on the basis of the relevant information provided by the Czech authorities, delete any Czech citizen who was registered in another EU Member State from the voters' register maintained by such municipality.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

1.1.3 Election of substitutes and their status

The candidates of the political parties or coalition to which at least 1 mandate was assigned become substitutes. If a MEP's mandate becomes vacant during the electoral term, a substitute shall be assigned by a mandate in accordance with his/her listing on the voting paper of the respective political party or coalition. This rule shall not apply in the case that the required number of preferential votes were gained by a candidate of the political party or coalition concerned; such a candidate shall then succeed.

Substitutes have no specific status.

1.1.4 Minimal threshold of eligibility

The minimal threshold of eligibility is stipulated by the Election Act as 5% of the total number of valid votes. The votes for political parties or coalitions, which did not achieve the above-mentioned margin, shall not be taken into consideration in the further allocation of mandates.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

The Election Act stipulates that an MEP shall be disqualified in the case of the limitation of the MEP's personal freedom for reasons of public health protection, or in the case of incapacity to perform legal acts.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

If an MEP's mandate becomes vacant during the electoral term, the substitute member (see above) of the political party or the coalition concerned shall succeed.

If there are no substitutes of the same political party or coalition, or in the case of such a political party's abolishment, the mandate will remain vacant until the end of the electoral term. If only one political party forming the coalition was abolished, the substitute of another party of the coalition shall succeed. If the political party concerned has been suspended, the mandate will remain vacant for the period of such suspension.

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.4 VERIFICATION OF CREDENTIALS

1.4.1 *Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²*

- "*Member of the government of a Member State*":

Member of the Government of the Czech Republic

- "*Member of a national parliament*":

Member of the Chamber of Deputies and Member of the Senate.

- "*Rules at national level relating to incompatibility*":

The incompatibilities, besides those stipulated by the Act of 1976, are as follows (Article 53 of the Election Act):

- the President of the Czech Republic;
- the Judge of the Czech Republic;
- the Public Prosecutor of the Czech Republic; and
- the Ombudsman of the Czech Republic.

1.4.2 *National procedure applying to the communication to the European Parliament of incompatibilities:*

The State Election Committee (hereinafter referred to as **the Committee**) is the authority who issues a decision on the discharge of a mandate of an MEP who was elected in the Czech Republic. The Committee must take a decision on such a discharge within 30 days of the discharge of the mandate concerned (i.e. within 30 days of occurrence of incompatibilities or other reasons for discharge).

Under Czech law, the Committee must inform the European Parliament on the discharge of the mandate of an MEP elected in the Czech Republic.

2 CONDITIONS FOR THE EXERCISING THE MANDATE OF A MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK REGARDING THE PRIVILEGES AND IMMUNITIES GRANTED TO A CZECH MEMBER OF THE EUROPEAN PARLIAMENT ON NATIONAL TERRITORY

Czech law has no specific national provisions concerning the privileges and immunities of an MEP on the Czech territory.

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

Within the framework of art. 10 of the Protocol on the privileges and immunities of the European Communities, the immunities, which are enjoyed by MEPs are the same as those enjoyed by members of the Czech Parliament.

The privileges and immunities of Czech members (which also shall apply to the MEPs) are defined in Article 27 of the Constitution.

1. No Deputy or Senator can be prosecuted neither for voting in the Chamber of Deputies or the Senate nor in their bodies.
2. No Deputy or Senator can be criminally prosecuted for his/her statements expressed in the Chamber of Deputies or in the Senate, or in their bodies. The Deputy or Senator may only be subject to the disciplinary jurisdiction of the Czech Parliament's chamber of which he/she is member.
3. Deputies and Senators are subject to the disciplinary jurisdiction of the Czech Parliament's chamber concerned in case of delinquency, unless otherwise stipulated by a particular act.
4. No Deputy or Senator can be prosecuted in any penal proceedings without the prior consent of the Parliament's chamber concerned.
5. A Deputy or Senator may be detained only if he/she has been apprehended when committing a criminal offence or immediately afterwards. The competent authority shall immediately notify the Chairman of the Czech Parliament's chamber concerned. If the Chairman does not give his/her consent to commit the member to trial within 24 hours of being detained, the competent authority must release him/her. The Chamber concerned shall take a final decision on the admissibility of the respective prosecution.

The above-mentioned system of immunity represents the classical model of immunities which consists in the freedom of speech of the Member of Parliament ("non-accountability"), and the protection against arrest, taking into custody and prosecution ("inviolability"), which is the only relevant for MEPs on the national territory.

Under the Czech law, the second mentioned immunity is quite extensive and there are no limits (e.g. for "*in flagrante delicto*"). There is no possibility to launch penal proceedings (or continue proceedings being launched before a person has become a Member of Parliament) without the prior consent of the chamber of which the person concerned is a member.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Under Act No. 141/1961 Coll., as amended, the Penal Proceeding's Act, Judge, Prosecutor or police bodies have the right to request the immunity of an MEP to be waived with respect to a specified penal proceeding and penal acting.

However, neither the Penal Proceeding's Act nor any other act of law of the Czech Republic specifies the procedure of requesting an MEP's immunity to be waived in more detail (namely there are no provisions regarding the person to whom the request should be addressed). Such a procedure is only specified for the waiving of immunity of a member of the Czech Parliament.¹ Notwithstanding, if applying these provisions in an analogous manner for the proceedings

¹ The request of the competent authority must be addressed to the Chairman of the chamber concerned. The Chairman must pass such requests to the respective chamber's mandate and immunity committee. This committee shall examine such requests while permitting the member of the Czech Parliament concerned to pronounce his/her opinion. The mandate and immunity committee shall then send its conclusion on the matter to the Chamber of Deputies or the Senate. The respective chamber shall take the final decision on the request for the member's immunity to be waived at its next session (Act No. 90/1995 Coll., as amended, on standing order of the Chamber of Deputies of the Czech Republic, and Act No. 107/1999 Coll., as amended, on standing order of the Senate of the Czech Republic).

regarding an MEP, the competent authorities should address the request to the Chairman of the European Parliament.

DENMARK

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

The system for electing Danish MEPs is a list system of proportional representation with provisions for effective preferential - that is personal - voting within the parties' lists. Denmark constitutes one electoral district with regard to elections to the European Parliament.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

The Ministry of the Interior and Health receives from the other member states information about the Danish citizens entered on the electoral rolls in the other member states. The Ministry examines whether the Danish citizens in questions are also entered in the electoral rolls in Denmark. If that is the case, the Danish citizens in question are deleted from the electoral rolls in Denmark and are consequently not allowed to cast their vote in the election in Denmark.

1.1.3 *Election of substitutes and their status*

Substitutes are elected at the same time as members, i.e. the non elected candidates on a party's list are substitutes for the elected members of the party list in question. They have no right to compensation as long as they have not become members.

1.1.4 *Minimal threshold of eligibility*

There is no artificial threshold for a party to gain representation; only the natural threshold which follows from the fact that only 14 members are to be elected combined with the d'Hondt method used to allocate seats to parties. As all parties have their candidates standing in parallel, candidates to fill the seats obtained by a party are selected according to the number of personal votes they have obtained.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT³

Danish national law has not extended the rules of incompatibility compared to the rules contained in Act of 1976 as amended in 2002.

A Danish member who loses his/her eligibility according to Danish national law will be replaced by the relevant substitute.

Section **6(2)**, cf. section **37(3)** of the Act governing the election of Danish members to the European Parliament stipulates that any person who has been convicted for an act which in the

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

³ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

eyes of the public makes him/her unworthy to be a member of the European Parliament is not eligible¹.

Other reasons for a MEP being disqualified are:

- becoming legally incompetent;
- being no longer resident in Denmark or in one of the other member states.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Pursuant to Sections **34** and **35** of the Act governing the election of Danish members to the European Parliament, the Minister for the Interior and Health draws up a list of substitutes after each such election. The list comprises candidates who are not elected but who are entitled to sit in the European Parliament. Where a seat in the European Parliament falls vacant during a parliamentary term, it is filled by the best placed substitute on the list pursuant to Section **43** of the Act governing the election of Danish representatives to the European Parliament, see however the provisions in Section **42** concerning the incompatibility of certain functions with that of Member of the European Parliament. The substitute in question must be approved by the Folketing. A member may at any time resign his seat.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act², as modified by the Council Decision of 25th June and 23rd September 2002³

- "*Member of the government of a Member State*":

means in Denmark the position as minister in the central government;

- "*Member of a national parliament*":

means in Denmark member of the Folketing;

- "*Rules at national level relating to incompatibility*":

Not applicable in the Danish case. Danish national law has not extended the rules of incompatibility compared to the rules contained in Act of 1976 as amended in 2002.

¹ However, pursuant to Article 6(4) of the Elections Act, a person may always stand for election. If any doubt arises as to the validity of the election of a member or as to his eligibility, the final decision is taken by the Folketing (Article 37(3) of the European Parliament Elections Act)

² Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

³ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Not applicable in the Danish case (see above).

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A DANISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

No national rules supplement the EC rules.

Immunities of members of the national parliament, the Folketing, are foreseen by section 57 of the Danish Constitution, which reads as follows:

§ 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.

The immunity regime applicable to members of the Folketing thus covers the freedom of speech or (criminal and civil) "non-liability" for votes and opinions expressed in the House and the immunity of criminal prosecution, without the consent of the House and with the exception of "in flagrante delicto" cases.

It has to be underlined that, according to section 57, the non-liability for opinions expressed in the Parliament can be waived with the consent of the House. In practice, such a consent is never given.

The Speaker of the Folketing can, in accordance with the Standing Orders of the Folketing, call a Member to order, forbid a Member to speak or exclude a Member from committee meetings or debates in the Chamber for up to 14 days. However, the last-mentioned sanction is very rarely applied.

The immunity of prosecution covers only public criminal prosecution and protection does not therefore extend to investigation, interrogation and fines, nor to civil actions or criminal cases resulting from private prosecutions.

Where the prosecution was instituted before the person in question became a Member of the Folketing the case may proceed to judgement.

The term 'imprisonment of any kind' covers any form of loss of liberty unless it involves coercive measures such as those for remedial purposes (commitment to a mental hospital).

The term 'caught in *flagrante delicto*' covers cases where a person is encountered during or in direct connection with the commission of a punishable offence.

The effect of section 57, first sentence, is that a Member of the Folketing cannot without its consent be prosecuted or imprisoned. This privilege does not apply in the following three circumstances: (1) the Folketing grants its consent to such action, (2) the Member is caught in *flagrante delicto*, (3) membership has ceased.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

It is for the chief public prosecutor to decide whether the request for waiver of immunity is to be forwarded.

Where the chief public prosecutor considers the request to be justified, it is forwarded to the Ministry of Justice which ensures that the necessary further action is taken should it be decided to proceed with the case.

GERMANY

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The election of Members of the European Parliament from the Federal Republic of Germany Act, as published on 8 March 1994 and last amended on 15 August 2003 (hereinafter referred to as **the Election Act**) is the main legal text setting the rules applicable to the election of MEPs in Germany.

1.1.1 Voting systems (based on proportional representation¹)

The elections to the European Parliament are based on the principles of proportional representation with a list of nomination. The list of nominations may be established for Länder (federal states) or as a combined Land list. Each voter shall only have one vote. The 99 MEPs are elected in general, by direct, free, equal and secret ballot.

The seats to be occupied shall be distributed among the nomination as follows. The number of votes received by a nomination in the electoral area shall multiply the total number of seats, and as such the result shall be divided by the total number of votes received by all nominations, which are to be taken into account. Each nomination shall first receive one seat for each whole number of votes cast for it. The remaining seats shall be allocated to the nominations in descending order of the decimal fractions attained in the calculation described in the second sentence. In the event of equal fractions, the Federal Returning Officer shall distribute the seat by drawing lots. If, in the distribution of seats pursuant to the rules described above, a nomination that has received more than half of the total number of votes of all nominations does not get more than one half of the seats to be awarded on the basis of decimal fractions, a further seat shall be allocated notwithstanding the previous rules.

The seats allocated to the nominations shall be occupied in the order established in the nominations. Candidates who have been elected on two lists for an individual Länder shall not be considered on the list on which they were named further down. If they are named in the same place on both lists, the Federal Returning Officer shall decide on which list they are to be elected by drawing lots. If there are more seats for a nomination than candidates, the seats in question shall remain vacant.

The seats allocated to a combined list shall be distributed among the lists involved for the individual Länder according to the general rules specified above (second paragraph of this section).

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

1.1.2 Control of the prohibition of multiple votes, including in another EU Member State

The Election Act stipulates that each person entitled to vote only has one vote; the right to vote can only be exercised once.

All nationals of the other member states of the European Union who have an abode or are otherwise permanently resident in the Federal Republic of Germany shall also be entitled to vote, provided that on the day of the election they have reached the age of 18 years and have had an abode or have otherwise been permanently resident for at least 3 months in Germany or another EU Member State.

The local authorities are responsible to notify the agency designed by the home member state on registration of its citizen in the voters' register in Germany. The Federal Returning Officer shall be the central agency responsible for receiving and forwarding information from other member states of the European Union on election participation and candidacies of German citizens in other member states of the European Union.

1.1.3 Election of substitutes and their status

A substitute candidate may be listed beside each candidate on the nomination list for election to the European Parliament. After declaring of the election's results, the names of the remaining candidates and substitute candidates are notified by the President of the German Bundestag to the President of the European Parliament.

The substitute candidates do not have any particular status.

1.1.4 Minimal threshold of eligibility

The minimal threshold of eligibility is stipulated as being 5% of the total number of valid votes cast in the electoral area (i.e. the whole territory of Germany).

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

A member shall lose his or her membership of the European Parliament

- (i) if the membership was attained on invalid grounds;
- (ii) if the election result is re-established;
- (iii) if he or she loses or fails to meet one of the prerequisites for permanent eligibility to stand for election;
- (iv) by forfeit;
- (v) if the Federal Constitutional Court finds that under Article 21, paragraph 2, second sentence of the Basic Law, the political party or sub-organisation of a party to which the member belongs is unconstitutional;
- (vi) if the political association to which he or she belongs has been banned by law in the electoral area;
- (vii) if he or she accepts election to Federal President;
- (viii) if he or she is appointed a judge at the Federal Constitutional Court;

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility (...)".

- (ix) if he or she is appointed a parliamentary state secretary;
- (x) if he or she is appointed Defence Commissioner of the German Bundestag;
- (xi) if he or she is appointed Federal Commissioner for Data Protection;
- (xii) if he or she attains membership of the German Bundestag;
- (xiii) if he or she accepts election or an appointment as a member of a Land government;
- (xiv) if he or she is appointed to a function specified in Article 6, paragraph 1 of the Act on the Introduction of General and Direct Elections of Members of the European Parliament (Federal Law Gazette 1977 II, p. 733), last amended by the decision of the Council of the European Communities of 25 June 2002 and 23 September 2002 (Federal Law Gazette 2003 II, p. 810);
- (xv) if he or she is appointed to a function that due to other statutory provisions is incompatible with membership of the European Parliament;
- (xvi) if he or she assumes the office of head of state, or of a judge at the Constitutional Court, or of a member of a government that is comparable with a German Land Government, or an office in another member state of the European Community that is comparable with that of a parliamentary state secretary in the Federal Republic of Germany.

Forfeit shall only be effective if it is declared in writing to the President of the European Parliament, certified by a notary having his or her seat in the Federal Republic of Germany or to a member of a German mission abroad who is authorised to authenticate documents. The member must transmit to the President of the European Parliament the declaration of forfeit attested by a notary or presented to a mission abroad. The declaration of forfeit shall not cover a substitute candidate or a candidate from another nomination list. The forfeit shall be irrevocable. The forfeiter shall inform the Federal Returning Officer by submitting to him or her a copy of the declaration of forfeit.

If a party or sub-organisation of a party is declared unconstitutional by the Federal Constitutional Court, the members shall lose their membership of the European Parliament and their successors on the list shall lose their candidacy if they have been members of the party or sub-organisation during the period between the filing of the application and the announcement of the decision. The seats of these members shall remain vacant.

Except in cases under points 4 and 13 above, the decision on loss shall be made by the Council of Elders of the German Bundestag. In cases falling under points 4 and 13, the European Parliament shall take the decision regarding loss of mandate.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

If an elected candidate dies or declines election, or if a member dies or otherwise later withdraws from the European Parliament, the vacant seat shall be filled by the substitute candidate. If no substitute candidate has been named or if he or she has already withdrawn or withdraws later, the seat shall go to the next candidate who was not declared elected on the nomination for which the retiring member stood at the election. In the selection of the successor, those candidates and substitute candidates who have resigned from the party or political association concerned since

the drawing up of the nomination, shall not be taken into consideration. If there are no more substitute candidates on the list, the seat shall remain vacant.

The decision on to who is to be the successor from the list shall be taken by the Federal Returning Officer. The communication to the European Parliament on the name of the successor shall be made in the same manner as the communication of the elections' results, i.e. by the President of the German Bundestag to the President of the European Parliament.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

"Member of the government of a Member State":

Member of the Government of Federal Republic of Germany or Land government

"Member of the national parliament":

Member of the German Bundestag or the Bundesrat.

"Rules at national level relating to incompatibility":

The incompatibilities, besides those stipulated by the Act of 1976, are as follows (Article 22 of the Election Act):

- the Federal President;
- the judge of the Federal Constitutional Court;
- the parliamentary state secretary;
- the Defence Commissioner of the German Bundestag; and
- the Federal Commissioner for Data Protection.

Please see Section 1.2 above.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Please see Section 1.2 above.

2 CONDITIONS TO EXERCISE THE MANDATE OF A MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A GERMAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

¹ Decision of the representatives of the Member States meeting in the Council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of members of the European Parliament shall be incompatible with that of members of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

Article 46 of the Basic Law contains provisions concerning the two forms of parliamentary immunity. Firstly, it is the non-liability, which protects Members against prosecution on the grounds of any oral or written statements made and of votes cast in the Bundestag or in its committees, with the notable exception of defamatory insults.

The second is for the immunity in the narrower sense, on the basis of which a criminal prosecution brought against a Member, arrest or any other form of restriction of the personal freedom of a Member cannot be executed without the authorisation of the Bundestag. As, according to art. 10 of the Protocol on the Privileges and Immunities of the European Communities, enclosed in the Treaty of 8th April 1965, the privileges and immunities enjoyed by the German MEPs on the national territory are of the same extent as those enjoyed by the Members of the Bundestag, and for the purpose of this report, we only specify in more details the extent of the immunity in the narrower sense.

Article 46 Indemnity and immunity of deputies

- (1) A deputy may not at any time be subjected to court proceedings or disciplinary action or otherwise called to account outside the House of Representatives for a vote cast or a statement made by him in the House of Representatives or in any of its committees. This does not apply to defamatory insults.
- (2) A deputy may not be called to account or arrested for a punishable offence except by permission of the House of Representatives, unless he is apprehended during commission of the offence or in the course of the following day.
- (3) The permission of the House of Representatives also is necessary for any other restriction of the personal liberty of a deputy or for the initiation of proceedings against a deputy under Article [18](#)
- (4) Any criminal proceedings or any proceedings under Article [18](#) against a deputy, any detention or any other restriction of his personal liberty is suspended at the demand of the House of Representatives.

Immunity in the narrower sense extends to all punishable offences which are prosecuted under criminal law by reference to an Act. It also extends to all other restrictions of the personal freedom of a Member. In such cases, the authorisation of the Bundestag (i.e. in the case of MEPs, the authorisation of the European Parliament) is required if state authorities wish to call the Member concerned to account. The authorisation is not required where he is apprehended in the act of committing a punishable offence or in the course of the following day. Where parliamentary immunity is applicable, the Member enjoys protection against prosecution under criminal and disciplinary law; in principle, this also covers inquiries and investigatory proceedings whose purpose is to examine a significant accusation under criminal or disciplinary law. Immunity in the strict sense of the word does not prohibit prosecution, it simply makes the authorisation of the Bundestag (the European Parliament) a precondition.

Criminal proceedings against a Member of the Bundestag (MEP) before a competent court may be brought only with the authorisation of the Bundestag (European Parliament). Such authorisation is granted only in respect of an individual instance of criminal proceedings, with its specific accusation under criminal law.

Members have no protection against the implementation of civil actions, as the civil judge does not 'prosecute'. This also applies to a suit for contractual penalties or the preparation of executory measures. The enforcement of executory measures, which then restricts the personal freedom of the Member, does, however, require the authorisation of the Bundestag (European Parliament). In addition to criminal prosecution, any other form of restriction of the personal freedom of the Member of Parliament by state authorities is also prohibited.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The following authorities shall be entitled to request that immunity be waived:

- (a) the public prosecutor's officers, courts, civil rights and professional disciplinary courts under public law and trade and professional associations exercising supervision by virtue of the law;
- (b) in private proceedings, the court, before it opens the main proceedings under Section 383 of the Code of Criminal Procedure;
- (c) a creditor in executory proceedings, where the court cannot act without his request;
- (d) the Committee on Electoral Scrutiny, Immunities and the Rules of Procedure.

ESTONIA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

The bases of the election system and the procedures for the election of the European Parliament are established by European Parliament Election Act, which was passed on 18 December 2002 (published in: RT² I 2003, 4, 22) and entered into force on 23 January 2003; it has been amended by the following Acts:

18.12.2003, entered into force 01.01.2004 (RT I 2003, 90, 601);

21.01.2004, entered into force 14.02.2004 (RT I 2004, 6, 32);

09.03.2004, entered into force 25.03.2004 (RT I 2004, 14, 93);

14.04.2004, entered into force 01.05.2004 (RT I 2004, 30, 208);

22.09.2004, entered into force 29.10.2004 (RT I 2004, 71, 501);

29.09.2004, entered into force 29.10.2004 (RT I 2004, 71, 503)

09.06.2005, entered into force 10.07.2005 (RT I 2005, 37, 28).

Six members to the European Parliament are elected from Estonia. The results of the elections are determined on the basis of the proportionality principle. The elections are carried out in one national electoral district.

Candidates can be nominated by political parties. In addition to this, independent candidates can take part in the elections. Political parties compile lists of up to 12 candidates. The order of the candidates in the list is specified by the political party.

Each voter gives his/her vote to one of the candidates submitted by political parties or to an independent candidate.

Mandates are distributed according to the d'Hondt method with the distribution series of 1, 2, 3, 4, etc. The total number of votes given to an independent candidate is the basic parameter for ranking candidates. The mandate shall be given to the political party or the independent candidate whose comparative number is bigger.

The candidates are re-ranked in the list of the political party according to the number of votes received by each candidate. In the updated list of the political party, the mandate is given to the candidate who received more votes and is therefore higher up in the list.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Riigi Teataja = State Gazette.

1.1.2 Control of the prohibition of multiple votes, including in another Member State¹

Every voter has one vote. This has been provided for in the procedure for registration of voters and preparation and amendment of polling lists.

Voters are registered in the population register.

The chief processor of the population register organises the preparation and printing of the polling lists for each polling division on the basis of the information held in the population register, and organises the delivery of the polling lists to the division committees by the seventh day before the start of the elections. The lists are drawn up on the basis of the information on the voters as of 30 days before the election day.

Any citizen of the European Union who does not have the Estonian citizenship shall be entered in the list of voters if his/her permanent residence is in Estonia, i.e. the address of his/her residence has been entered in the Estonian population register, and if he/she submits an application to the chief processor of the population register requesting to be entered in the list of voters by the thirtieth day before the election date. He/she is not be entered in the list of voters if, according to a communication of a competent administrative authority of a European Union Member State, he/she has wished to use his/her right to vote in another European Union Member State.

Changes are made in the list of voters only if:

- 1) a person who has not been entered in any polling list but who has the right to participate in the voting pursuant to law is to be entered in the list;
- 2) a person who does not have the right to participate in the voting is to be deleted from the list;
- 3) a person who, according to a communication of a competent administrative authority of another European Union Member State, has been entered in the polling list or register of the relevant Member State, is to be deleted from the list.

1.1.3 Election of substitutes and their status

The alternate member of a Member of the European Parliament is the first candidate not elected to the European Parliament from the candidates in the same list as the person who left the European Parliament or gave up his/her mandate.

The National Electoral Committee registers the alternate members in its decision. The candidates not elected in the list of the same political party shall be registered as alternate members, according to re-ranking based on the number of votes.

1.1.4 Minimal threshold of eligibility

There is no threshold for being elected.

¹ Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Member of the European Parliament cannot be:

- 1) Member of the Riigikogu,
- 2) President of the Republic,
- 3) Member of the Government of the Republic,
- 4) person in an office appointed by the Riigikogu, the President of the Republic, the Government of the Republic, the Prime Minister, or the head of a government agency or other state administrative agency; as an exception, he/she may be a chairman of the board or a member of the board appointed by the Riigikogu pursuant to law,
- 5) Chairman of the Board of the Bank of Estonia,
- 6) regular member of the Defence Forces,
- 7) rural municipality mayor or mayor,
- 8) member of a council of a rural municipality or city council,
- 9) Member of the Commission of the European Communities,
- 10) judge, advocate-general or registrar in the European Court of Justice or in the Court of First Instance of the European Communities,
- 11) Member of the Board of the European Central Bank,
- 12) Member of the European Court of Auditors,
- 13) Ombudsman of the European Communities,
- 14) Member of the Economic and Social Committee of the European Economic Community and the European Atomic Energy Community,
- 15) Member of the Committee of the Regions,
- 16) member of a committee or another body founded with the objective of managing community funds or completing an immediate administrative task, on the basis of the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community,
- 17) Member of the Board, the Administrative Committee or the staff of the European Investment Bank,
- 18) an official or a public servant in the institutions of the European Communities or specialised agencies affiliated with these, or in the European Central Bank.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

The elected candidate who at the time of the announcement of the results of the elections is holding an office mentioned in subsections 2, 4, 5, 7 or 8, must within ten days from the date of the announcement inform the National Electoral Committee whether he/she is willing to participate in the work of the European Parliament or whether he/she wishes to continue in his/her present office and give up the mandate. If the candidate is willing to participate in the work of the European Parliament, he/she must submit to the National Electoral Committee a copy of the letter of resignation from the office held at the time.

A Member of the Riigikogu is considered to have submitted a letter of resignation if he/she does not inform the National Electoral Committee within ten days of the announcement of the results

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

of the elections of his/her wish to continue in his/her present office and to give up the mandate of the Member of the European Parliament.

A Minister is considered to have submitted a letter of resignation if he/she does not inform the National Electoral Committee within ten days of the announcement of the results of the elections of his/her wish to continue in his/her present office and to give up the mandate of the Member of the European Parliament.

If the elected candidate gives up his/her mandate to the European Parliament, his/her mandate is taken up by an alternate member. Substitution of the elected candidate is formulated by a decision of the National Electoral Committee, which is forwarded to the European Parliament. The same procedure is applied when a Member of the European Parliament assumes an office not compatible with the mandate of a Member of the European Parliament (cf. the above list).

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "*Member of the government of a Member State*":

for the purposes of the European Parliament Election Act, a Member of the Government of the Republic is Prime Minister or Minister.

- "*Member of a national parliament*":

for the purposes of the European Parliament Election Act, this denotes a member of the unicameral parliament of the Republic of Estonia – the Riigikogu.

- "*Rules at national level relating to incompatibility*":

for the purposes of the European Parliament Election Act, the President of the Republic as the Head of State of the Republic of Estonia; the phrase "Person in an office appointed by the Riigikogu, the President of the Republic, the Government of the Republic, the Prime Minister, or the head of a government agency or other state administrative agency, as an exception, he/she may be a chairman of the board or a member of the board appointed by the Riigikogu and pursuant to law" signifies being employed in the public service, whereas it is permitted to be a chairman or a member of the board of a legal person in public law (e.g. National Library); Chairman of the Board of the Bank of Estonia as the chairman of the highest supervisory organ of the central bank of the Republic of Estonia; a regular member of the Defence Forces as a person in contractual active service; a rural municipality mayor or a mayor as the chairman of the local government council, elected by rural municipality or city council; a member of rural municipality or city council as a member of the assembly of a local government, elected in free, general, uniform and direct elections.

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

The National Electoral Committee will immediately notify the European Parliament if a Member of the European Parliament assumes an office not compatible with the mandate of a Member of the European Parliament.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO AN ESTONIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

The immunities granted to a member of the Riigikogu are provided for in Articles 62 and 76 of the Constitution of the Republic of Estonia.

According to Article 62 a member of the Riigikogu shall not be held legally liable for his/her votes or political statements which he/she has made in the Riigikogu or in any of its bodies (non-liability).

According to Article 76 a member of the Riigikogu enjoys immunity: a member of the Riigikogu may be charged with the criminal offence only on proposal by the Chancellor of Justice and with the consent of the majority of the members of the Riigikogu. Although the Constitution does not provide for the exception for *in flagrante delicto*, such an exception is stipulated in Article 377 paragraph 3 of the Criminal Procedure Act: without the consent of the Riigikogu a member of the Riigikogu may be detained as a suspect in a case when he/she has been caught in commitment of the crime of the first degree.

Constitution of the Republic of Estonia

§ 62.

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

§ 76.

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

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

According to the Chancellor of Justice Act (Article 1 paragraph 31) the Chancellor of Justice is the national authority empowered to request the immunity of a member of the European Parliament elected in Estonia to be waived.

GREECE

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The legal framework on the election of MEPs is provided by the Greek Constitution (art.56,57,58, 100) Statute law 1180/1981 and Presidential decree 351/2003.

1.1.1 *Voting systems (based on proportional representation¹)*

The electoral (voting) system in Greece is that of simple proportionality in a unique constituency. The parliamentary seats for each political group go to the candidates according to their rank on the list and their nomination. The MEPs are elected through direct, universal and secret ballot. Crossing of candidates is not required (list system).

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

To avoid multiple votes, citizens who have the right to vote (electors) are enrolled in the electoral registers of their municipality or community and receive a specific voting number which is unique. Upon arrival to the electoral station they present their passport, ID-card or other public document to prove their identity.

1.1.3 *Election of substitutes and their status*

The election of substitutes is not provided in the Greek legislation. The parliamentary seats go to the candidates of each parliamentary group according to their rank on the list and their nomination. If an MEP passes away or resigns, the vacant seat goes to the first in line of the candidates not elected. The judicial decision declaring the elected MEPs is dispatched from the Public Prosecutor to the Ministry of Interior, which subsequently communicates the judicial decision to the European Parliament and the Hellenic Parliament.

1.1.4 *Minimal threshold of eligibility*

Political groups, which have received in the elections percentage below 3%, do not get any seat. To be elected one must have the legal capacity to vote and have attained the age of 25 on the day of the election.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT³

Salaried civil functionaries and servants, other servants of the State, persons serving in the armed forces and the security corps, servants of local government agencies or of other public law legal persons, elected single-member organs of local government agencies, governors, deputy governors or chairmen of the boards of directors or managing or executive directors of public

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

³ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

law legal persons or of state-controlled legal entities of private law or of public enterprises or of enterprises whose management the State appoints directly or indirectly by administrative act or by virtue of its capacity as shareholder, or of local government enterprises, may neither stand for election nor be elected to Parliament if they do not resign prior to their nomination as candidates. Resignation is effective merely upon being submitted in writing (article 56 par.1 of the Constitution).

Should the aforementioned wish to be put forward as candidates they have to resign before their nomination as candidates for the European Parliament. This disqualification is also valid for MPs of the Hellenic Parliament.

Should the elections for the European Parliament take place in the meantime between the dissolution of the Hellenic Parliament and the holding of the general elections, one is entitled to be put forward as candidate in both elections.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

In case a parliamentary seat becomes vacant, this is filled by an alternate MEP (see 1.1.3 above) and should there be no other MEP on the list or the entire number of alternate MEPs on the list is exhausted, then a by-election takes place. At this by-election the political groups which participate therein, include in their ballots a number of candidates up to the triple of the vacant seats. The parliamentary seats, however, of the Greek MEPs which became vacant in the last year of the parliamentary term of the European Parliament were not filled as the whole number of vacant seats did not exceed the $\frac{1}{4}$ of the total number of Greek MEPs

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

" *Member of the government of a Member State* ":

according to article 81 of the Constitution, the Cabinet which is composed of the Prime Minister and the Ministers constitutes the Government. The composition and functioning of the Cabinet is specified by law. One or more Ministers may be appointed Vice Presidents of the Cabinet. Article 1 of statute 1558/1985 provides that the Cabinet consists of the Prime Minister and the Ministers, including the Deputy Ministers and the Ministers without portfolio. The Vice President of the Government are also members of the Cabinet. The Under-secretaries are not members of the Cabinet.

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

- "*Member of a national parliament*":

refers to the Chamber in the Hellenic Parliament (Chamber of Deputies). It consists of 300 members elected according to article 51 of the Constitution through direct, universal and secret suffrage by all citizens who have the right to vote according to law.

- "*Rules at national level relating to incompatibility*":

The incompatibilities of MEPs – in addition to those provided by article 6 of the Act of 1976 – are those provided for national MPs of the Hellenic Parliament in article 57 of the Constitution. In precise article 57 of the Constitution reads: “The duties of Member of Parliament are incompatible with the job or the capacity of owner or partner or shareholder or governor or administrator or member of the board of directors or general manager or a deputy thereof, of an enterprise that:

- a) Undertakes Public works or studies or procurements or the provision of services to the State or concludes with the State similar contracts of a developmental or investment nature.
- b) Enjoys special privileges.
- c) Owns or manages a radio or television station or publishes a newspaper of country-wide circulation in Greece.
- d) Exercises by concession a public service or a public enterprise or a public utility enterprise.
- e) Rents for commercial purposes real estate owned by the State. For the purposes of the application of this paragraph, local government agencies, other public law legal persons, state-owned private law legal persons, public enterprises, enterprises of local government agencies and other enterprises whose management the State appoints directly or indirectly by administrative act or by virtue of its capacity as shareholder, are equated to the State. A shareholder of an enterprise falling within the restrictions of this paragraph is every person possessing more than 1% of its share capital.

The duties of Member of Parliament are also incompatible with the exercise of any profession”.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Any objections / suits against the validity of the elections which refer either to the electoral violations or to the lack of legal qualifications of the elected and candidate MEPs are judged by the Special Highest Court provided in article 100 of the Constitution. The right to lodge an objection/suit is recognised to the political parties, the candidates and all citizens having the right to vote and being registered in the electoral registers. The application (objection/suit) is submitted within 15 days as from the publication of the decision declaring the MEPs. The application for the forfeiture of an MEP who exercises activities incompatible with his parliamentary office has no time limit and may be submitted anytime.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A GREEK MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

The regime of privileges and immunities granted to the members of the national parliament is laid down in articles 61 and 62 of the Greek Constitution.

These provisions describe a classical combination of non-liability system as regards opinions and votes of parliamentarians in the execution of their duties and immunity from criminal prosecution, with the exception of "*in flagrante delicto*". Special immunity is also foreseen from prosecution for political crimes during the period between the dissolution of Parliament and the declaration of the election of the members of the new Parliament. However, the inviolability does not prevent the carrying-out of acts of investigation for the gathering of proof.

It has however to be noted that, as a restriction to the non-liability regime, members can be prosecuted, with the authorisation of the House, in case of libel. If the House refuses to grant authorisation, or if 45 days have passed without any decision being taken, the act concerned is deemed to be no longer a possible subject of proceedings.

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 forty-five days from the date the charges have been submitted to the Speaker. In case of refusal to grant leave or if the time-limit lapses without action, no charge can be brought for the act committed by the Member of Parliament.

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

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

Article 62

During the parliamentary term the Members of Parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. Likewise, a member of a dissolved Parliament shall not be prosecuted for political crimes during the period between the dissolution of Parliament and the declaration of the election of the members of the new Parliament. Leave shall be deemed not granted if Parliament does not decide within three months of the date the request for prosecution by the public prosecutor was transmitted to the Speaker.

The three month limit is suspended during the Parliament's recess.

No leave is required when Members of Parliament are caught in the act of committing a felony.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The public prosecutor can request the waiving of the immunity to the speaker of the parliament.

SPAIN

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

National provisions of the law applicable to the election of members of the European Parliament: Part VI of the Organic Law 5/1985, 19th July, of the General Electoral System (Sections 210-227).

1.1.1 Voting systems (based on proportional representation¹)

Proportional representation, according to the d'Hondt system (Sections 216⁽ⁱ⁾ and 163⁽ⁱⁱ⁾).

⁽ⁱ⁾ Article 216

Seats are allocated according to the outcome of the elections and in accordance with the provisions of Article 163 of this law, with the exception of the provisions of paragraph 1(a) and paragraph 2 of that article.

⁽ⁱⁱ⁾ Article 163

1. Seats are allocated according to the outcome of the elections and in accordance with the following rules:
 - (a) Candidatures which have not obtained at least 3% of the valid votes cast in the constituency are discounted.
 - (b) The number of votes obtained by the remaining candidatures are listed in one column from highest to lowest.
 - (c) The number of votes obtained by each candidature is divided by 1, 2, 3, and so on until a number is reached which is equal to the number of seats for the constituency, forming a table similar to that given in the practical example. Seats are allocated to the candidatures which have obtained the highest quotients in the table in decreasing order. (...)
 - (d) Where two quotients corresponding to different candidatures coincide, the seat is allocated to the candidature which has obtained the highest total number of votes. If two candidatures have obtained an equal total number of votes, the first tie is resolved by lots and following ties alternately.
 - (e) The seats corresponding to each candidature are allocated to the candidates listed on it, in the order in which they appear.
2. In the constituencies of Ceuta and Melilla, the candidate who has obtained the highest number of votes shall be declared elected.

1.1.2 Control of the prohibition of multiple votes, including in another Member State²

Art. 210 par. 2 explicitly prohibits the double vote.

1.1.3 Election of substitutes and their status

Article 217 of the Electoral Law provides for the automatic replacement of a deceased, disqualified or resigning MEP by the candidate (or, where appropriate, the substitute) from the relevant list, in order of ranking.

1.1.4 Minimal threshold of eligibility

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

According to art. 216 of the law applicable to the election of members of the European Parliament, the 3% threshold foreseen in art. 163 of the Organic Law 5/1985 does not apply to the election of members of the European Parliament.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

According to art. 211 of the Organic Law, there are no special provisions for disqualification, but only incompatibilities cases (see Sections 211-213 of the Organic Law), which are described under section 1.4.1

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Should a Member of the European Parliament be appointed or elected to a position or office the holding of which creates an incompatibility or renders him ineligible for membership of the European Parliament, he shall be obliged to choose between that position or office and his membership of the European Parliament. In the case of members of the Cortes or members of the legislative assemblies of the Autonomous Communities, the incompatibility shall be resolved in favour of the parliamentary status more recently acquired (Organic Law, Article 211(3)). When one of the conditions for ineligibility referred to under 1(b) above arises during a Member's term of office, this shall normally lead to the suspension or cessation of his mandate. The Organic Law does not include any specific provisions for Members of the European Parliament relating to the procedure governing cessation of the mandate of a Member elected in Spain who is in this situation.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 *Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act², as modified by the Council Decision of 25th June and 23rd September 2002³*

- "*Member of the government of a Member State*":
no specific provision;

- "*Members of a national parliament*":
"*miembros de las Cortes Generales*"; "*miembros de las Asambleas Legislativas de las Comunidades Autónomas*" (art. 211 Organic Law). According to art. 211.3 the latest acquired mandate takes priority on the other.

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

² Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3..In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

³ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

- " Rules at national level relating to incompatibility ":

In addition to the incompatibilities set by the European Law (see above), art. 211 declares incompatible with the mandate of MEP the functions described in *art. 155.2 of the Organic Law* ⁽ⁱ⁾, which are:

- president of the competition court;
- members of the board of the public broadcasting company, RTVE;
- members of the cabinet of president of the government or of any other minister or secretary of state;
- delegates of the government in the autonomous ports, the hydrographic confederations, the motorway companies, COPLACO;
- the presidents of the board , councillors, administrators, directors general, managers of public enterprises, state monopolies and enterprises with a main public participation , direct or indirect under whatever legal form and of the public saving banks (also refer to art. 212.3).

⁽ⁱ⁾Article 155

2. *The following are also incompatible:*

(a) president of the competition court.

(b) members of the board of the public broadcasting company, RTVE.

(c) members of the cabinet of president of the government or of any other minister or secretary of state.

(d) delegates of the government in the autonomous ports, the hydrographic confederations, the motorway companies, COPLACO and the bodies mentioned in the following paragraph.

(e) the presidents of the board , councillors, administrators, directors general, managers of public enterprises, state monopolies and enterprises with a main public participation , direct or indirect under whatever legal form and of the public saving banks.

Moreover, art. 212 ⁽ⁱ⁾ extends the application of the principle of "*dedicacion absoluta*" (full time activity), set by art. 157 and 158 of the Organic Law for national deputies and senators, to the exercise of a mandate of Member of the European Parliament. This means that the mandate of MEP is incompatible with the exercise of another remunerated public or private activity with the exception of professor in a university on an extraordinary basis and with the exception of the participation in the managing of the institution.

Furthermore, art. 158 ⁽ⁱⁱ⁾ prevents the perception by deputies and senators of more than one remuneration discharged by a public body. During their mandate, art. 158.2 also suspends the perception of any pension, be it from public or private origin.

⁽ⁱ⁾Article 212

1. *The mandate of Members of the European Parliament shall be exercised as a full-time activity on the same conditions as those laid down for deputies and senators in this law.*

2. *By virtue of the previous paragraph, Articles 157 and 158 of this law shall apply to Members of the European Parliament, who may not receive any payment from the budgets of the State, autonomous or local public sector, with the exception of payments to which they may be entitled as MEPs.*

3. *Members of the European Parliament may not belong to management bodies or boards of public bodies or enterprises with a main public participation, direct or indirect.*

⁽ⁱⁱ⁾Article 158

1. *Deputies and senators may not receive more than one remuneration paid from the budgets of constitutional bodies or public administrations, their autonomous bodies, public entities and enterprises with a main public participation, direct or indirect, and may not opt for payments corresponding to incompatible posts, without prejudice to the payments and allowances corresponding to compatible posts*

2. *In particular, deputies and senators may not receive pensions from passive entitlements or any public and compulsory social security scheme. The right to the amounts accruing from such pensions shall be recovered automatically from the time when the person concerned ceases to hold the post of deputy or senator.*

Art. 213⁽ⁱ⁾ however authorises the exercise by MEPs of private activities listed in art. 159.3⁽ⁱⁱ⁾, which are those related to the management of the personal or family patrimony and the production, creation and publishing of literary, scientific, artistic, technical works.

⁽ⁱ⁾ Article 213

Members of the European Parliament may exercise only the private activities listed in Article 159(3)(a) and (b) of this law, in addition to those not covered by paragraph 2 of that article.

⁽ⁱⁱ⁾ Article 159.3

3. The following only shall be exempt from the ban on exercising public and private activities referred to in Article 157(2) and in this article:

(a) The simple administration of personal or family property. However, this may on no account be considered as covering private activities where the person concerned, his or her spouse or cohabiting partner or relatives in the descending line who are still minors have a joint or separate participation exceeding 10% in business or professional activities of any kind under agreements, concessions or contracts with bodies or enterprises in the public sector at State, autonomous or local level.

(b) The production and creation of literary, scientific, artistic or technical works, and publications relating thereto, provided that such activity falls outside the scope of any of the provisions of Article 157(2) or paragraphs 1 and 2 of this article.

(c) Private activities other than those referred to in paragraph 2 of this article which have been authorised by the corresponding committee in each Chamber following an express application by the person concerned. The application and authorisation granted shall be entered in the register of interests referred to in Article 160.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Information not available.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A SPANISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

Section 71 of the Spanish Constitution, which reads as follows, combines non-liability and inviolability privileges:

"(1) Members of Congress and Senators shall enjoy freedom of speech for opinions expressed in the exercise of their functions. (Senate Standing Orders, section 21).

(2) 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 in flagrante delicto (to catch somebody in act). They may be neither indicted nor tried without prior authorisation of their respective House. (Senate Standing Orders, section 22).

(3) In criminal proceedings brought against Members of Congress and Senators, the competent court shall be the Criminal Section of the Supreme Court. (...)"

Inviolability implies legal non-liability of a Member of Parliament (criminal, civil and disciplinary) for opinions expressed and votes cast in Parliament. Its purpose is to ensure, through the freedom of speech of Members of Parliament, the free formulation of the wishes of the legislative body. The opinions concerned need not to be only those expressed orally, but all those which can be fairly deemed to be directed towards the formulation of the wishes of Parliament. Consequently, all acts which, although carried out within the context of meetings, do not have the above-mentioned purpose, such as any kind of violence to persons or things, are excluded.

Immunity *stricto sensu*, to which refers art. 10 of the Protocol on Privileges and immunities, constitutes a privilege which protects the personal freedom of Deputies and Senators, sheltering them from detentions and legal proceedings, thereby ensuring that the composition and running of Parliament are not unduly affected.

According to a decision of the Constitutional Court of 18 January 1990²⁹, the prior authorisation required under Article 71 of the Constitution in order that deputies and senators may be charged or be subject to legal proceedings cannot be requested for the admission, examination and settlement of civil claims which can in no way affect their personal freedom.

Immunity provides a specific protection and safeguard in criminal matters: except in the case of *in flagrante delicto*, no Member of Parliament may be detained and the charging or bringing of legal proceedings against Deputies or Senators is subject to the prior authorisation of their respective Chambers.

The examining magistrate is responsible for determining the existence of *in flagrante delicto*, by virtue of the law of 9 February 1912.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

A request for the waiving of parliamentary immunity is passed on by the President of the Supreme Court (whose 'Sala de lo Penal', according to Article 71(3) of the Constitution, which is competent as regards proceedings against Deputies or Senators³⁰) to the President of the Chamber in question. The prior authorisation of the Chamber does not constitute a legal measure, but a political act which, in turn, represents a mandatory procedural condition: any verdict opposing this constitutional procedure would be rendered absolutely null and void.

FRANCE

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

Elections are held using a list-based proportional representation system in the different constituencies, without vote-splitting or preferential voting.

The European elections are held in eight constituencies:

- for metropolitan France, constituencies formed by a number of regions,
- for the overseas departments and territories, a single constituency representing the DOM-TOM as a whole.

Seats are allocated, within the constituency, between lists which have received at least 5% of votes cast using a proportional representation system following the highest average rule. If several lists have the same average when the last seat is to be allocated, that seat is allocated to the list having obtained the highest number of votes. Where the number of votes is equal, the seat is allocated to the list with the highest average age.

Seats are allocated to candidates in the order in which they appear on each list.

(Law No 77-729 of 7 July 1977 on the election of representatives to the European Parliament, Art. 3 as amended by Article 15 of Law No 2003-327 of 11 April 2003).

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

In accordance with Article 2(2) of Law No 77-729 of 7 July 1977 on the election of representatives to the European Parliament, French voters resident in another Member State of the European Union may not vote in the elections in France if they have been accorded the right to vote in the election of representatives to the European Parliament in their State of residence.

Furthermore, Article 2(1) of that law stipulates that nationals of a Member State of the European Union other than France who are resident on French territory may take part in the election of representatives of France to the European Union on the same conditions as French voters.

Article 2(4) stipulates that nationals of other Member States wishing to exercise their right to vote in France must make a declaration undertaking to exercise their right to vote only in France (Article 2(4)(4)).

Article 2(8) stipulates that anyone taking advantage of multiple registration to vote more than once in the same ballot for elections to the European Parliament shall be punished with the penalties provided for in Article L 92 of the electoral code.

1.1.3 *Election of substitutes and their status*

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

There are no substitutes. The candidate immediately after the last candidate elected on the list is called upon to replace the representative elected from that list and whose seat becomes vacant for whatever reason.

1.1.4 Minimal threshold of eligibility

Any lists which have not obtained at least 5% of the votes cast are not allocated any seats.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Art. L.O. 128. - Any person who has failed to lodge one of the declarations required under Article L.O. 135(1) is ineligible for one year. (Two months after taking office, Members are required to lodge a declaration certified on their honour to be accurate and made in good faith setting out their financial and property situation and including all their own assets, those belonging to the community and assets deemed indivisible pursuant to Article 1538 of the civil code to the Commission for financial transparency in political life. These assets are assessed as from the date when the declaration is required).

Any person who has failed to deposit their campaign accounts under the conditions and within the time limit stipulated under Article L. 52-12 is also ineligible for one year, as is any person whose campaign accounts have been rejected with good reason. Any person who exceeds the limit for election expenses pursuant to Article L. 52-11 may also be declared ineligible for the same period.

Art. L.O. 129. - Any person who has been convicted and who is consequently permanently debarred from being entered on an electoral roll is ineligible.

Art. L.O. 130. - Persons who are temporarily debarred from being entered on the electoral roll on account of a conviction are ineligible for twice the period of that debarment.

The following are also ineligible:

1. Persons who have been deprived of their right to stand for election by a court decision pursuant to the relevant legislation;
2. Persons who have been placed under guardianship.

Art. L.O. 130-1. - The Ombudsman is ineligible in all the constituencies.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Where ineligibility arises during the term of office, it ends the Member's mandate. This fact is proclaimed by decree (Law No 77-729 of 7 July 1977 on the election of representatives to the European Parliament, Article 5(2)).

MEPs whose term of office has been ended in this way are replaced as follows pursuant to Article 24 and 24(1) of Law No 77-729 of 7 July 1977:

Art. 24. - The candidate appearing on a list immediately after the last candidate elected is called upon to replace the elected representative on that list whose seat becomes vacant for whatever reason.

If the candidate thus called to replace the representative holds a post which is incompatible pursuant to Articles 6-1 to 6-5, he has a period of 30 days from the time when the vacancy was established by the European Parliament to resolve the incompatibility by resigning from one of his mandates or posts.

If he fails to do so within the time limit, the next candidate on the list is called as the replacement.

The term of office of the person who has replaced the representative whose seat became vacant expires on the date when the term of office of the initial holder would have been due for renewal.

Where a representative dies or resigns, any representative who has accepted the duties referred to in Articles L.O. 176-1.

Art. 24-1. - Where the elections are cancelled in a constituency, a by-election is held within three months.

However, no by-elections are held in the year preceding elections to the European Parliament.

Where the provisions of Article 24 can no longer be applied, the seat remains vacant until the next elections to the European Parliament.

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²:

- " Member of the government of a Member State ":
Minister...

- " Member of a national parliament ":
Deputy or Senator

- "incompatibilities applicable at national level " :

The office of Member of the European Parliament is incompatible with the following posts at national level (cf. Articles 6 to 6-1 of Law No 77-729 of 7 July 1977 on the election of representatives to the European Parliament):

- member of the Economic and Social Council
- magistrate or judge in a commercial court
- unelected public office, except certain posts in higher education, the Church and government delegates in Church administrations in the departments of Haut-Rhin, Bas-Rhin and Moselle (cf. Art. 142(2) L.O.)
- the performance of duties conferred by a foreign State or international organisation and paid from their funds
- temporary missions of more than six months on behalf of the government
- president, member of the board of directors, director-general, deputy director-general or permanent advisor in national enterprises and national public establishments, unless these duties flow from their office as Member or local elected office
- company director, president of the board of directors, president, member of the executive board, president of the supervisory council, managing director, director-general, deputy director-general, manager in law or de facto or through an intermediary in:
 1. companies, enterprises or establishments which receive subsidies in the form of interest guarantees or equivalent advantages from the State or a public body, except where these advantages arise from the automatic application of general legislation or rules;
 2. companies whose purpose is purely financial and which publicly solicit the deposit of savings, as well as civil law companies authorised to issue public appeals for the deposit of savings and their management or administration bodies;
 3. companies or enterprises whose main activity is carrying out works, providing supplies or rendering services on behalf or under the control of the State, a public body or establishment or a national enterprise or foreign State;
 4. profit-making companies or enterprises set up for the purpose of purchasing or selling building plots, of whatever kind, or which develop real estate or construct property with a view to sale;
 5. companies where more than half of their capital consists of share-holdings in companies, enterprises or establishments referred to in points 1, 2, 3 and 4 above.

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

All Members of Parliament are banned from accepting, during their term of office, a post as member of the board of directors or supervisory board in any of these establishments, companies or enterprises.

Exception: Members of Parliament who belong to a regional council, general council or municipal council may be appointed by these councils to represent the region, department or municipality in regional or local bodies on condition that the purpose of those bodies is not to make or distribute profits and that the persons concerned do not hold a paid post. Furthermore, Members of Parliament who are not members of a regional, general or municipal council may also perform the duties of president of the board of directors, administrator-delegate or member of the board of directors of semi-public companies rendering services at regional or local level, or companies with an exclusively social purpose where these duties are unpaid.

- a post as advisor which the Member did not hold before the start of his term of office, except for regulated liberal professions and professions whose title is protected
- member of the constitutional Council
- more than one of the following offices: regional councillor, member of the Corsican Assembly, general councillor, Paris councillor, member of a municipal council of a municipality with at least 3 500 inhabitants
- member of the monetary policy council of the Bank of France

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Information not available.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A FRENCH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

Article 26 of the Constitution, as amended by constitutional law No 95-880 of 4 August 1995, defines a system of absolute and permanent inviolability for votes and opinions expressed by Members of Parliament.

As regards the immunities enjoyed by Members of the national parliaments, Article 26 stipulates that ‘(...) 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 authorisation (...) of the assembly of which he is a member. Such authorisation shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or a final sentence. The detention, subjection to custodial or semi-custodial measures, or prosecution of a Member of Parliament shall be suspended for the duration of the session if the assembly of which he is a member so requires. (...)’.

This article defines a system of immunity in opposition to any custodial or semi-custodial measures to which a Member of Parliament might be subjected.

Immunity is restricted to the penal sphere and excludes cases of *flagrante delicto* and cases where a final sentence has already been handed down against the Member (where no further appeal is possible).

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Information not available.

IRELAND

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

The Irish members of the European Parliament are elected by secret ballot in 4 constituencies under the single transferable vote system of proportional representation.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

With the exception of British citizens, other EU citizens not registered to vote in Ireland must apply for registration and complete a statutory declaration, which is sent to the home Member State of the elector to guard against double voting.

1.1.3 *Election of substitutes and their status*

Casual vacancies in the EP are filled from lists of replacement candidates presented at the election.

The replacement list presented by a registered political party may contain up to 4 names more than the number of candidates presented by the party in the constituency; the replacement list of a non-party candidate may contain up to 3 names. A replacement candidate who is a national of a Member State other than Ireland or the United Kingdom must make a statutory declaration and provide the necessary attestation from their home Member State certifying that he/ she has not been deprived, through an individual crime or civil law decision, of the right to stand as a candidate at the European election in the home State.

A casual vacancy is filled by the person whose name stands highest on the relevant list of replacement candidates and who is eligible and willing to become an MEP. If no replacement candidate's list was presented in respect of the MEP who won the seat at the election or if it is not possible to fill the vacancy from the relevant list, *Dail Eireann* (House of representatives) may select a person to fill the vacancy from replacement candidates list presented for that constituency at the election (for the replacement procedure see 1.3).

1.1.4 *Minimal threshold of eligibility*

No.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Pursuant to section 11(5) of the European Parliament Election Act (1997), a person elected as a representative in the European Parliament who becomes subject to any of the disqualification applicable to membership of the *Dáil Eireann* (members of the *Garda Síochána*, whole time members of the Defence Forces, or civil servants who are not by the terms of their employment expressly permitted to be Members of the *Dáil*) or becomes the holder of an office as a Judge, Comptroller, Auditor General, Attorney General or becomes the holder of an office referred to under point 1.4.1, ceases to be a Member of the European Parliament.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Under Part XI11 of the Second Schedule of the *European Parliament Elections Act, 1997* : "...the Clerk of the *Dail*, shall, as soon as may be after the casual vacancy occurs, by letter request the person (if any) whose name stands first or, as may be appropriate, alone on the [replacement candidates] list to make and deliver to the said Clerk, within 20 days from the day on which the request is made, a statutory declaration, in such form as the Minister may direct, that a) the person is the person whose name stands (whether alone or otherwise on the list), b) the person is eligible and willing to assume the office of representative in the Parliament, and c) in case the relevant representative so elected was at such election a candidate of a registered political party, the person is a member of the registered political party concerned" (rule 96).

If the person of whom this request was made fails or refuses to comply with the request, the Clerk of the *Dail* shall, by letter, make the same request to the person (if any) whose name stands next on the relevant list (rule 96, (2)).

Where the Clerk of the *Dail* receives the requested statutory declaration, he shall cause a statement of the declarant's name and address together with a copy of the statutory declaration to be laid before each House of the *Oireachtas*, and published in *Irish Oifisiliil* (rule 96 (3)).

"The person named therein shall, upon the expiration of the period of 7 days beginning on the day on which the statement and copy of the statutory declaration are so published in *Irish Oifisiuil*, be regarded as having been elected under this Act to the Parliament" (rule 96).

In case the persons of whom a request was made under the said rule fail or refuse to comply with the request, or the relevant replacement candidates list is exhausted, "the *Dail* may select a person whose name is on any replacement candidates list in respect of the constituency concerned, being a list of which public notice was given pursuant to the said rule 49 [of the European Parliament Elections Act, 1997] or, as may be appropriate, the sole such list presented at the last preceding European election in respect of the constituency and, in case the *Dail* makes a selection under this rule, it shall by resolution specify the person so selected" (rule 97).

"The person specified in the resolution shall thereupon be regarded as having been so elected under this Act to the Parliament" (rule 97).

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "Member of the government of a Member State":
Minister and Minister of State
- "Member of a national parliament":
Member of the House of the Oireachtas derogation for candidates elected in 2004 until next general election)
- "Rules at national level relating to incompatibility":

Disqualifications applicable to membership of Dáil Eireann and the office of Attorney General (see 1.2).

The legislation governing the establishment of specific State-sponsored bodies generally provides that Board members shall cease to hold such office when nominated as candidates for election to the Parliament. Generally, the legislation also provides that employees of such bodies who stand as candidates for election to the Parliament stand seconded from that employment for the period of their candidacy and membership of the Parliament.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Information not available.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO AN IRISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

Irish Constitution - art. 15

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.

Immunity protects Members of Parliament against any legal action likely to reduce their freedom of speech and action. Article 15(13) of the Constitution, however, specifies exceptions for serious offences (treason, crimes, violation of law and order).

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

The Constitution (Article 15) makes a distinction between the immunity of acts of Parliament ('Oireachtas') and that associated with the Members of the two Houses of which it is composed.

Immunity covers all official reports and publications of Parliament or of the Houses, as well as statement made within a House, regardless of where they were made public. As for Members of Parliament, they enjoy freedom of movement to go to Parliament unless they have to answer for crimes referred to by name in Article 15(13). The Members of both Houses are protected from any legal measure for opinions expressed but may be called upon to answer for them before the House where they expressed those opinions.

Similar legislative provisions exist for parliamentary committees. It should be noted that, within parliamentary committees, immunity covers not only their members but also any officials and experts. The privileges and immunities conferred on persons who are directed by parliamentary committees to attend as witnesses are those enjoyed by a witness before the High Court and include, principally, the privilege of immunity from legal action in defamation and also a form of privilege against self-incrimination.

Immunity does not extend to acts done outside the parliamentary mandate, unless those acts can in any way be connected with the privileges established by the Constitution and by law for Parliament and its committees. It should be noted that a Member of Parliament accused of having abused his immunity for defamatory acts may repeat his statements outside the House or the place in which the committee meetings so as to submit voluntarily to legal proceedings.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

N / A. Immunity cannot be waived.

ITALY

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 Voting systems (based on proportional representation¹)

Law n. 18, of 24 January 1979 supplemented by decree law n. 408 of 24 June 1994, (confirmed, as emended, by Law n.483 of 3 August 1994) and most recently amended by Law n. 78 of 27 March 2004 and Law n. 90 of 8 April 2004.

Italy has adopted the proportional electoral system.

Seats are attributed to lists of candidates presented in the five districts and apportioned by a single national Constituency.

Electors may vote for only one of the lists presented in one of the districts and may express a preference for one candidate or more. A maximum of three preferences may be expressed.

Seats are attributed using the method of the natural quotient and highest remainders.

1.1.2 Control of the prohibition of multiple votes, including in another Member State²

In order to be eligible to vote, electors must exhibit electoral certificates.

The following are eligible to vote (Article 3, Law 18/1979):

- Italian citizens who are at least 18 years old on the day fixed for elections and who are registered in the electoral rolls;
- Citizens of other European Member States resident in Italy who, at least 90 days prior to the election date, present a request to that effect to the Mayor of their municipality of residence and are on that municipality's electoral rolls.

Italian electors residing in a European Union Member State other than Italy can exercise their right to vote *in situ* by casting a ballot for any candidate to the European Parliament who may be running there. Should they decide not to avail themselves of that right, they may, in their country of residence, vote for Italian representatives to the European Parliament at the Italian polling stations set up at Italian Consulates or other appropriate venues. Whoever, during elections to the European Parliament, simultaneously participates in the vote to elect MEPs representing Italy and MEPs representing another European Union member is punishable by imprisonment from one to three years and by a fine of 51 to 258 Euros.

Also applicable are the terms of the consolidated text of the laws governing elections to the Chamber of Deputies (Decree of the President of the Republic of 30 March 1957 n.361, art.103) under which anyone voting under another name in an electoral district or voting in more than one

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

district of the same constituency or of different constituencies, is punishable by imprisonment from three to five years and by a fine from 258 to 1,291 Euros.

The following are eligible to stand for election:

- Italian citizens or citizens of other Member States who are at least 25 years old on the day fixed for elections and who are registered in the electoral rolls (Article 4, Law 18/1979).

1.1.3 Election of substitutes and their status

A seat remaining vacant for any reason whatsoever in the course of a mandate is attributed by the national electoral Office to the runner-up of the MEP last elected in that list and constituency.

1.1.4 Minimal threshold of eligibility

There is no minimal threshold of eligibility in Italy.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Apart from the grounds for incompatibility with membership of the European Parliament listed for all Member States in the 1976 Act of Brussels, article 6 of law n. 18 of 1979 establishes that the European Parliament mandate is incompatible with the offices of:

- president of a regional Council;
- regional chief councillor;
- regional councillor;
- president of a province;
- mayor of a municipality with more than 15,000 inhabitants.

Other grounds for incompatibility with membership of the European Parliament are also set out in specific laws.

We would, for example, recall the following incompatibilities specifically mentioned under the law:

- President and member of the National Council on Economy and Labour (Law n. 936 of 30 December 1986, *Provisions governing the National Council on Economy and Labour*, art. 8, paragraph 2);
- member of the Governing Board of the company holding the concession for public radio and television broadcasting - RAI (Law n. 206 of 25 June 1993, art. 2, paragraph 1).

It should also be noted that the law generally views holding certain offices as incompatible with public office of any kind, i.e. elected public office (as is the case with judges of the Constitutional Court and members of Independent Authorities).

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

See point 1.1.3. above.

When one of those situations of incompatibility occurs - not later than 30 days - the member of the European Parliament has to declare to the National Electoral Board which office he wants to choose. If he doesn't make the choice, the Board declares his disqualification, and it replaces him with the first unelected candidate on the same list and constituency.

The law n.18/1979 doesn't settle anything about the communication to the European Parliament's offices concerning the incompatibility of the elected members. In the cases of legal controversies, it settles that The National Electoral Board informs the Secretary of European Parliament about the subrogations decided by sentences concerning the incompatibilities' disputes.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "*Member of the government of a Member State*":

should be understood as "member of a national government", and more precisely anyone holding one of the following offices: Prime Minister, Minister, deputy-Minister and Under-secretary of State.

- "*Member of a national parliament*":

should be understood as "Member of the Chamber of Deputies", (i.e. Deputy) and "Member of the Senate of the Republic" (i.e. Senator).

- "*Rules at national level relating to incompatibility*":

see 1.2

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

As regards incompatibility between the offices of Member of the European Parliament and those of deputy or senator, art. 44 of Law 18 of 1979 re-iterates the provisions of Article 66 of the Constitution under which "*each House verifies the credentials of its members*".

For judgements regarding the conditions of eligibility and compatibility established under Italian law, the responsibility rests in the first instance with the **Court of Appeal** where the electoral

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1.The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3..In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

office has been established, which proclaimed the election or succession, while the Court of Cassation is responsible in the second instance (arts. 44 and 45 of Law n. 18 del 1979).

Legal action may be initiated by any elector, following which the Court President issues a decree setting a date for the case to be debated as a matter of urgency, and appoints a judge-rapporteur. Actions must be initiated within 60 days of the names of elected MEPs being published in the Official Gazette.

Such actions, together with the decree setting the date of the audience, must be notified by the plaintiff to the elected members, whose election is being contested within 10 days of the President's decree being communicated. The party against whom an action is directed must, if he or she intends to oppose it, lodge a counter-action to be deposited with the Office of the Court Clerk, together with relative acts and documents, within 15 days of receipt of notification.

Sentences issued by the Court of Appeal may be challenged before the Court of Cassation by the losing party and by the Chief Prosecutor before the Court of Appeal within five days of the sentence being read at a public audience.

The appeal, together with the grounds for appeal, must be deposited in the Court Clerk's Office within 20 days of reception of notification that the sentence has been deposited.

The sentence is published immediately and transmitted by the Clerk to the President of the National Electoral Office for execution.

The National Electoral Office then informs the European Parliament's secretariat of the successions determined on the basis of the sentences, which represent an irrevocable settlement of controversy on the incompatibility or ineligibility of elected members.

After the National Electoral Office has received the sentences irrevocably settling the disputed electoral operations, it corrects the election results and substitutes candidates rightly entitled to election for those whose victory was illegitimately announced, informing the interested parties thereof as well as the European Parliament's secretariat.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO AN ITALIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

In Italian legislation, the legal basis of parliamentary immunity is formed by Article 68 of the Constitution. The first paragraph of this article establishes the non-liability of Members of Parliament, who cannot be made answerable for opinions expressed and votes cast in the performance of their duties. On the other hand, the second and third paragraphs of Article 68 lay down rules governing what is termed parliamentary 'inviolability'.

Pursuant to art. 10 of the European Union's Protocol on privilege and immunity, on the national territory, the same immunities as the ones covering national MPs apply to Members of the European Parliament.

Art. 68, paragraphs 2 and 3, of the Italian Constitution stipulates: *“Without the authorisation of their respective House, Members of Parliament may not be submitted to personal or home search, nor may they be arrested or otherwise deprived of their personal freedom, nor held in detention, except when a final court sentence is enforced, or when the Member is apprehended in the act of committing an offence (“in flagrante delicto”) for which arrest is mandatory. The same authorisation is required for Members of Parliament to be submitted to the surveillance of their conversations or communication, in any form, and to the seizure of their correspondence”.*

The authorisation of the Chamber to which the Member belongs is thus no longer needed in order to subject a Member of Parliament to criminal proceedings but only in order to:

- (a) *search* his person or home;
- (b) *arrest him or otherwise deprive him of personal liberty or keep him in detention*, except in the execution of a final conviction or unless he is caught in the act of committing an offence, *in flagrante delicto*, for which an order of arrest is compulsory;
- (c) subject him to *interception*, by any means, of his conversations or communications;
- (d) *sequester his correspondence*.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The Judiciary power: the Decree law n° 555 of 23 October 1996 specified that authorisation was to be requested by the judicial authority *which had issued* the provision to be executed (and hence the Public Prosecutor's Office in the case of searches and sequestration, the judge in the case of preliminary investigations, or the relevant judicial authority in the case of other measures restricting personal freedom and involving the interception of communications). This interpretation has likewise been confirmed by the practice followed since the Decree law lapsed. Enforcement of the measure is suspended pending authorisation.

CYPRUS

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

For the purposes of the E.P. elections, the whole territory of the Republic shall constitute a single constituency (article 3)

1.1.2 *Control of the prohibition of multiple votes, including in another Member State*

Any elector must be registered on a special electoral register of electors and community electors must be registered in a special register of community electors. A community elector who wishes to be registered on the special register for community electors shall present a valid identity document and file an application with the appropriate Registrar of Electors, accompanied by a formal declaration stating:

- his/her nationality
- that he/she has not been deprived of his right to elect in his home Member State
- where applicable, the electoral list or register on which hi/her name was last entered
- his/her address in Cyprus
- the date from which he/she has been resident in Cyprus or in any other Member State
- that he/she will only exercise his/her right to vote in Cyprus.

The Act on European Parliament's election (the **Act**) stipulates that competent authority shall transmit to the home Member State, on the basis of the-above specified formal declaration, information concerning its citizens who are registered on the special registers of community electors.

The Act stipulates that if the competent authority is informed by another Member State that a Cypriot citizen, who is resident therein, intends to exercise his/her right to elect in that Member State, it shall take all necessary measures to avoid any double voting. However, no more details on such measures and competent authorities are available.

1.1.3 *Election of substitutes and their status*

The first non-elected candidate is the substitute.

1.1.4 *Minimal threshold of eligibility*

The minimal threshold is of 1,8 % of total valid votes.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT²

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- " Member of the government of a Member State " :
Minister;

- " Member of a national parliament " :
Member of the Chamber of Representatives;

- " Rules at national level relating to incompatibility " :
Article 16 of the 2004 law on the election of Members of the European Parliament refers to:

a) Article 6 of the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage:

- President of the Republic
- member of the government of a Member State
- member of a national government
- member of the European Commission
- judge or advocate-general of the Court of Justice or the Court of First Instance of the European Union
- Ombudsman of the European Communities
- member of the Court of Auditors
- member of the European Investment Bank
- member of the board of governors of the European Central Bank
- active official or servant of the European institutions or of the bodies or agencies attached to them, or of the European Central Bank

b) Article 70⁽ⁱ⁾ of the Constitution

- Minister
- member of a communal chamber or municipal council, including mayor
- member of the armed or security forces of the Republic
- any person holding public or municipal office or, in the case of a representative elected by the Turkish community, any person employed by a religious administration (din Adami). (Article 70, appendix D, Part IV, of the Constitution).

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

⁽¹⁾ **ARTICLE 70**

The office of a Representative shall be incompatible with that of a Minister or of a member of a Communal Chamber or of a member of any municipal council including a Mayor or of a member of the armed or security forces of the Republic or with a public or municipal office or, in the case of a Representative elected by the Turkish Community, of a religious functionary (din Adami).

For the purposes of this Article " public office " means any office of profit in the service of the Republic or of a Communal Chamber the emoluments of which are under the control either of the Republic or of a Communal Chamber, and includes any office in any public corporation or public utility body.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

The competent authority is the Ministry of Foreign Affairs.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A MEMBER OF THE EUROPEAN PARLIAMENT FROM CYPRUS ON THE NATIONAL TERRITORY

The legal protection of the exercise of the mandate of deputies applicable at national level is laid down in article 83 of the Constitution of Cyprus for the members of the House of Representatives. A similar protection is granted in identical terms for the members of the Communal Chamber, who represents the communities in Cyprus.

The regime organised by those provisions is a combination of non-accountability for the statements and votes in the House and a suspension of criminal prosecutions for the duration of the mandate ("inviolability").

Concerning the non-liability, it is to be mentioned the restriction to the votes and statements performed in the House itself. In comparison, the immunity granted to MEPs by art. 9 of the Protocol on the Privileges and Immunities of the European Communities, enclosed in the Treaty of 8th April 1965, is linked to the performance of the functions of the MEP.

The immunity of prosecution can be lifted by the High Court and not by the House itself, which seems to be an exception among European parliamentary laws.

Restrictions:

- The immunity is limited to the criminal proceedings and for the duration of the mandate of the representative.
- Prosecutions are allowed in case of *in flagrante delicto*, but this restriction is itself limited to the offences punishable with death or imprisonment for five years or more.

Similar restrictions apply for the members of the Communal Chamber.

ARTICLE 83

1. Representatives shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives.

2. A Representative cannot, without the **leave of the High Court**, be prosecuted, arrested or imprisoned so long as he continues to be a Representative. Such leave is not required in the case of an offence punishable with death or imprisonment for five years

or more in case the offender is taken in the act. In such a case the High Court being notified forthwith by the competent authority decides whether it should grant or refuse leave for the continuation of the prosecution or detention so long as he continues to be a Representative.

3. If the High Court refuses to grant leave for the prosecution of a Representative, the period during which the Representative cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question.

4. If the High Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court, the enforcement of such sentence shall be postponed until he ceases to be a Representative.

ARTICLE 106

1. A member of a Communal Chamber shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by him in the Chamber.

2. A member of a Communal Chamber cannot without the leave of the High Court, be prosecuted, arrested or imprisoned, so long as he continues to be a member. Such leave is not required in the case of an offence punishable with death or imprisonment for five years or more in case the offender is taken in the act. In such a case the High Court, being notified forthwith by the competent authority, decides whether it should grant or refuse leave for the continuation of the prosecution or detention, as the case may be, so long as he continues to be a member.

3. If the High Court refuses to grant leave for the prosecution of a member of a Communal Chamber, the period during which such member cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question.

4. If the High Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a member of a Communal Chamber by a competent court, the enforcement of such sentence shall be postponed until he ceases to be such member.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The High Court is competent for granting leave for the prosecution of a national representative. The authority competent for requesting the immunity of an MEP to be waived is the Attorney-General.

LATVIA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 Voting systems (based on proportional representation¹)

List system. Proportional representation according to D'Hondt method, whose application is described in section 44 of the EP Elections Law.

Section 44. (1) The elected deputies shall be named by the Central Election Commission. Distribution of deputies seats shall not involve voters' lists that obtained less than five per cent of the total number of given votes. The total number of votes shall be taken as the total number of valid voting envelopes.

(2) In order to distribute the European Parliament deputy seats among other nominated candidates, the following procedures shall be applied:

1) the number of valid voting papers given in favour of each list of candidates shall be established;

2) the number of voting papers given in favour of each list of candidates shall be consecutively divided by 1, 3, 5, 7 and so on until number of divisions (quotients) becomes equal to the number of candidates nominated on the list of candidates;

3) all thus obtained quotients on all lists of candidates shall be numbered in a total descending sequence;

4) deputies' seats shall, in a consecutive order, be obtained by those lists of candidates, to whom greater quotients correspond. If a quotient, the consecutive number of which is equal to the number of deputies to be elected, is equal to one or several next quotients, the deputy seat shall be obtained by the list of candidates that has been registered first.

1.1.2 Control of the prohibition of multiple votes, including in another Member State²

The principle "one voter – one vote" is ensured in the Article 14 of the *Voters' Register law* and the section 6 of the *EP Election law*.

Voters' Register law

Article 14. (1) A voter shall vote at a voting station, on the voters' list of which he/she is included in accordance with data contained in the Register.

EP election law

Section 6. (1) If a citizen of the European Union votes or is a candidate at elections to the European Parliament in another member country of the European Union, then, in the Republic of Latvia, such a person shall lose the right to vote or run as a candidate and be elected to the European Parliament, respectively.

(2) If a citizen of the European Union who is not a citizen of Latvia wishes to fulfil his/her right to vote at elections to a citizen of the European Union, then not later than 30 days prior to the elections he/she shall have to submit, either personally or by mail,

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

an application of a wish to vote in the Republic of Latvia and an obligation not to fulfil the right to a vote in another member country of the European Union. This application must be submitted to the Central Election Commission.

(4) The Central Election Commission shall examine such applications and shall inform such a person of the decision taken. If the person is refused participation in the elections, the Central Election Commission's decision may be appealed in accordance with procedures provided by the Administrative Procedure Law.

(5) The Central Election Commission shall have the right to verify in the country of nationality whether the person's right to elect to the European Parliament is restricted or not.

(6) The Central Election Commission shall deliver the necessary information on a citizen of Latvia in a corresponding member country of the European Union where he/she wishes to realise his/her right to vote at elections to the European Parliament if such information is requested by the corresponding member country.

1.1.3 Election of substitutes and their status

Substitutes of MEP's of the European Parliament are not elected. Procedure of replacement of MEP's, who has died, refused or for other reasons lost his mandate or tendered a resignation, is mentioned in section 1.3.

1.1.4 Minimal threshold of eligibility

5 %, according to section 44 of the EP Election Law

"Section 44. (1) *The elected deputies shall be named by the Central Election Commission. Distribution of deputies' seats shall not involve voters' lists that obtained less than five per cent of the total number of given votes. (...)*"

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Elected member of the European Parliament can lose his mandate, if after election it is found that any of the restrictions of EP Election law's section 5 refers to him.

EP election law

Section 5. (1) *A person may be neither nominated for candidacy in elections to the European Parliament nor elected to the European Parliament if in the Republic of Latvia such a person:*

1) *is found incompetent pursuant to procedures prescribed by law;*

2) *is serving a prison sentence;*

3) *has been convicted of a serious crime or a particularly serious crime and the conviction has not been quashed or struck off record, except for cases when the person is rehabilitated;*

4) *at the time of the said offence under Criminal Law was in a state of irresponsibility, limited responsibility, or after committing the offence fell ill with a mental illness that deprived him of the ability to understand or control his own actions, and, in connection with this, medical measures of compulsion were applied to such a person or the case was dismissed without exercise of such coercive measures.*

(2) *A citizen of the European Union may be neither nominated for candidacy in elections to the European Parliament in the Republic of Latvia nor elected to the European Parliament if such a person is barred from the right to be nominated for candidacy or be elected in a country of the European Union of which he is a citizen.*

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

According to sections 46 and 47 of the *EP election law*:

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

"Chapter V Section 46. If a Deputy of the European Parliament has died, refused or for other reasons lost his mandate or tendered a resignation, his post shall be occupied by the next candidate on the same list of candidates from which the previous deputy was elected.

Section 47. If for reasons mentioned in Section 46 of this Law a list of candidates is short of candidates, then a list of candidates from which to choose the next deputy shall be specified in accordance with procedures provided by Section 44 of this Law" (see point 1.1.1)

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "*Member of the government of a Member State*":

refers to the Central government / Member of the Cabinet of Ministers of the Republic of Latvia.

Art. 55 of the Latvian Constitution provides that "The Cabinet (is) composed of the Prime Minister and the Ministers chosen by the Prime Minister".

- "*Member of a national parliament*":

means Member of the National Parliament - "Saeima".

- "*Rules at national level relating to incompatibility*":

Functions, incompatible with the mandate of the member of the EP, are determined in the Section 7 of the *EP Election law*

Chapter I Section 7. The State President, a Deputy of the Saeima, a Member of the Cabinet, a deputy of a town/city council, district council, county council or parish council may be nominated for candidacy at elections to the European Parliament. However, if the corresponding person is elected, such a person shall lose the post of state official as well as the corresponding mandate of deputy.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

There is no special procedure in Latvian legislation applying to the communication to the EP of incompatibilities.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A LATVIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...)* 2. *From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...)* 3. *In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

There are no special legal framework for the privileges and immunities granted to a Member of the European Parliament on the territory of Latvia.

The non-liability regime of the members of Saeima is governed by art. 28 to 31 of the Latvian Constitution:

"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.

It should be noticed that the immunity for opinions expressed in the course of the mandate is not absolute, in opposition to the regime set out by art. 9 of the Protocol.

According to art. 10 of the Protocol on the Privileges and Immunities of the European Communities, enclosed in the Treaty of 8th April 1965,¹ to which also refers art. 6 par. 2 of the 1976 Act, Members of the European Parliament should be granted, on the national territory the same immunities than the Members of the national Parliament of their own Member State.

As far as the immunity of the Latvian Members of the European Parliament is concerned, it should be referred to art. 29 to 31 of the Latvian Constitution:

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.

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

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.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

¹ Treaty establishing a single Council and a single Commission of the European Communities, OJ L 152, 13/07/1967, p. 1.

Latvian legislation does not determine national authorities empowered to request the immunity of Member of the EP to be waived. The writing of art. 29 of the Constitution suggests that the judiciary power is the only authority entitled to request the immunity of a member to be waived.

EP ELECTION LAW

[HTTP://WEB.CVK.LV/PUB/?DOC_ID=28615](http://web.cvk.lv/pub/?doc_id=28615)

Voters' Register law

http://web.cvk.lv/pub/?doc_id=28606

LITHUANIA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 Voting systems (based on proportional representation¹)

Members of the European Parliament are elected for a term of five years in one multi-member constituency, comprising the whole territory of the State, on the basis of *proportional representation, by preferential voting*.

1.1.2 Control of the prohibition of multiple votes, including in another Member State²

In accordance with Article 25 of the Law on Elections to the European Parliament (20 November 2003, No. IX-1837), in order to avoid double voting, the Central Electoral Committee of the Republic of Lithuania maintains relations with the institutions of other Member States of the European Union, holding elections to the European Parliament, and notifies them about the entry or removal of the citizens of their States from the electoral roll of the Republic of Lithuania, and about the striking-off of the citizens of the Republic of Lithuania who will vote in any other Member State of the European Union, from the electoral roll of the Republic of Lithuania.

1.1.3 Election of substitutes and their status

Substitutes of Members of the European Parliament are not elected in Lithuania.

1.1.4 Minimal threshold of eligibility

Article 86 of the Law on Elections to the European Parliament stipulates that *a list of candidates of the party or a joint list of candidates may receive mandates of members of the European Parliament (takes part in the distribution of mandates) only if not less than 5 percent of the voters participating in the elections voted for it. If less than 60 percent of all voters who participated in the election have voted for the lists of candidates, the list of candidates (lists of candidates if an equal amount of votes has been cast for them) which has not taken part in the distribution of mandates up till then, for whom the majority of voters have voted shall acquire the right to take part in the distribution of mandates. The number of lists of candidates which have the right to participate in the distribution of mandates shall be further increased in the same manner until not less than 60 percent of all the voters who participated in the election shall have voted for the lists of candidates participating in the distribution of mandates.*

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT³

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

³ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

Following Article 91 of the Law on Elections, *the Central Electoral Committee recognises the lapse of the powers of a member of the European Parliament not later than within 15 days after the occurrence of a cause for it:*

when the court declares a member of the European Parliament legally incompetent - according to the effective decision of the court;

when the European Parliament withdraws a mandate of Member of the European Parliament in accordance with the procedure established by the regulations of the European Parliament – in accordance with the effective decision of the European Parliament;

when a mandate of Member of the European Parliament is lost because of the failure to disclose the candidate's collaboration with the special services of other states, or the sentence imposed by court judgement according to Article 93 of this Law, or the incompatibility of a mandate of Member of the European Parliament and the duties according to Article 94 of this Law.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Article 92 of the above Law specifies the procedure for filling a vacant seat in the European Parliament:

Upon the recognition of the lapse of the powers of a member of the European Parliament, a seat falls vacant in the European Parliament. The first candidate, who has not received the mandate of Member of the European Parliament, from the list of candidates according to which the former member of the European Parliament was elected shall become a member of the European Parliament. If there are no candidates on this list of candidates who have not received mandates of members of the European Parliament, the mandate of Member of the European Parliament shall be transferred to another list according to the sequence of the lists of candidates which was established after the election for the distribution of mandates by the method of remainders, that is to the list following the list which was the last to receive the mandate according to this sequence. So the first candidate, who has not received the mandate of Member of the European Parliament, on the list, which has newly received a mandate, shall become a member of the European Parliament. The Central Electoral Committee must adopt the decision concerning recognition of the mandate of Member of the European Parliament for a new member of the European Parliament not later than within 7 days after the a seat falls vacant in the European Parliament.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- " Member of the government of a Member State " / " Member of a national parliament ":

Article 94 of the Law on Elections to the European Parliament provides the following definition of the incompatibility between a mandate of member of the European Parliament with certain duties:

- 1. A mandate of Member of the European Parliament shall be incompatible with the duties of Member of the Seimas of the Republic of Lithuania and the duties of a member of the Government of the Republic of Lithuania. Moreover, a mandate of Member of the European Parliament shall be incompatible with the office held in the institutions of the European Union specified in legal acts of the European Union.*
- 2. The person performing the duties specified in paragraph 1 of this Article, elected a member of the European*

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

Parliament or upon becoming such member by filling a vacant seat in the European Parliament, must decide and resign from the office which is incompatible with a mandate of Member of the European Parliament, or resign from the office of Member of the European Parliament. A person who has been elected to the European Parliament or has become a member of the European Parliament by filling a vacant seat, and who decides to resign from the office of Member of the European Parliament, must resign in accordance with the procedure established in subparagraph 2 of Article 91 of this Law not 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 Committee adopted a decision regarding the acknowledgement of his mandate.

- " Rules at national level relating to incompatibility ":

Article 5 "Compatibility of the Duties of a Member of the European Parliament" of the Law on the Status and Working Conditions of the Members of the European Parliament Elected in the Republic of Lithuania (17 February 2004, No IX-2025) stipulates that:

1. *The duties of a Member of the European Parliament, except his duties in the European Parliament, shall be incompatible with any other duties in State or municipal institutions or agencies of the Republic of Lithuania. The duties of a Member of the European Parliament shall also be incompatible with any other activities under an employment contract, save for the exception provided for in paragraph 2 of this Article.*
2. *A Member of the European Parliament may engage in creative activities and receive payment for them.*

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

According to Article 94 of the Law on Elections to the European Parliament,

3. *Where a person elected to the European Parliament fails to resign during the set time limit or a person referred to in paragraph 1 of this Article (see above) assumed the duties of Member of the European Parliament, the Central Electoral Committee must, within 5 working days after it became aware of the incompatibility between a mandate of Member of the European Parliament with the office held, acknowledge by a reasoned decision that such person has lost a mandate of Member of the European Parliament, and must announce the said fact in the Internet and the next issue of the "Valstybės žinios" (the Official Gazette), as well as notify the European Parliament about this. A vacant seat of a member of the European Parliament shall be filled in accordance with the procedure established in Article 92 of this Law.*

4. *Complaints concerning the loss of a mandate of Member of the European Parliament shall be filed with the Higher Administrative Court of Lithuania within 10 days of the publication of an announcement of the Central Electoral Committee in the Valstybės žinios (the Official Gazette), and must be considered not later than within 3 days of the receipt thereof. Complaints filed with the court after the expiration of the time limit shall not be considered. Court decision regarding the said issues shall become effective from the date of their adoption.*

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE IMMUNITIES GRANTED TO A LITHUANIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

By application of art. 10 of the Protocol on the Privileges and Immunities of the European Communities, article 4 entitled "Immunity of a Member of the European Parliament" of the Law on the Status and Working Conditions of the Members of the European Parliament elected in the Republic of Lithuania indicates that "a Member of the European Parliament shall enjoy the same personal immunity in the territory of the Republic of Lithuania as a Member of the Seimas of the Republic of Lithuania, unless otherwise provided for in the European Union legislation".

Article 22 "Immunity of a Member of the Seimas" of the Statute of the Seimas of the Republic of Lithuania stipulates that *criminal proceedings may not be instituted against a Seimas Member, 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 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 “Deprivation of the Inviolability of a Seimas Member” clarifies that *after the hearing of the report of the Prosecutor General concerning the crime committed by a Seimas Member, the Seimas sitting shall be adjourned for the period of not less than one hour and not more than two hours. After the adjournment the Seimas shall adopt one of the decisions specified in the rules of procedure.*

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The Prosecutor General (see 2.1).

LUXEMBOURG

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

Luxembourg forms a single electoral constituency (electoral law of 18 February 2003, Art. 290).

The election system is one of list-based proportional representation. Political groupings must draw up lists of candidates containing twice as many names as the total number of Members to be elected (6 MEPs – 12 candidates). Each voter has as many votes as there are seats to be filled, i.e. 6. Votes may be cast for a list as a whole or for individual candidates.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

Information not available.

1.1.3 *Election of substitutes and their status*

Pursuant to **Art. 167 of the electoral law of 18 February 2003**, the candidates appearing on each list after those who have been proclaimed elected are called upon to complete the term of Members from that list whose seats become vacant by choice or following resignation, death or for any other reason.

Notification of this call for substitutes is made by the President of the Chamber of Deputies within 15 days from the event which gave rise to the vacancy.

1.1.4 *Minimal threshold of eligibility*

None.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT³

Art. 285.

(1) In order to be eligible a person must:

1. be a Luxembourg citizen or national of another Member State of the European Union;
2. enjoy civil rights and not have been deprived of political rights in the Grand-Duchy of Luxembourg or in the Member State of origin;
3. be aged 18 years or over on the day of the election;
4. for Luxembourg citizens: be resident in the Grand-Duchy of Luxembourg;
- for nationals of another Member State of the European Union, be resident on Luxembourg territory and have resided there for at least five years at the time when the list of candidates is deposited; however, eligible Community citizens who have lost their right to eligibility in their Member State of origin owing to their residence outside that State or the duration thereof are not subject to this five-year residence condition.

Art. 286.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

³ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

The following are not eligible:

1. people who have been deprived of their right of eligibility following conviction;
2. persons who have been excluded from the electoral register by the provisions of Article 6 of the same law.

The term of office ends if one of the conditions for eligibility is no longer met.

Art. 6.

The following are excluded from the electoral register and may not vote:

1. persons who have been convicted of a criminal offence;
2. persons who have been deprived of the right to vote as part of a penalty handed down by the courts;
3. adults who are under guardianship.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Pursuant to **Art. 325** of the electoral law of 18 February 2003, the candidates appearing on each list after those who have been proclaimed elected are called upon to complete the term of Members from that list whose seats become vacant by choice or following resignation, death or for any other reason.

Notification of this call for substitutes is made by the President of the European Parliament.

Art. 326 stipulates that, if there are no more substitutes on the list to which the holder of the vacant seat belonged, supplementary elections are held. However, no supplementary elections are held in the 12 months preceding the general elections unless Luxembourg has lost more than half of its Members.

Art. 289 of the same law stipulates that a Member of the European Parliament who has been called upon to perform the duties of Member of the government and who relinquishes these duties is automatically reinstated as first substitute on the list on which he was elected. The same applies to the substitute representative who, called upon to perform the duties of Member of the government, renounces the mandate as Member devolving upon him in the course of these duties. In the event of a contest between two or more rightful claimants, reinstatement shall follow the order of the number of votes polled in the elections. Where the number of votes polled is equal, the order of substitutes shall be decided by lots to be drawn by the President of the main voting office.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 *Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²*

- "*Member of the government of a Member State*":

Member of the government;

- "*Member of a national parliament*":

Deputy;

- "*incompatibilities applicable at national level*":

Luxembourg Constitution, Art. 54: 1) The deputy's mandate is incompatible with:

1. the duties of member of the Government;
2. those of member of the Council of State;
3. those of member of the judiciary;
4. those of member of the Audit Chamber;
5. those of district commissioner;
6. those of State collector or accounting officer;
7. those of career soldier on active service. (...)

Electoral law of 18 February 2003, Art. 287: (1) Without prejudice to the provisions of Article 54 of the Constitution, the office of Member of the European Parliament is incompatible with the post of official, employee or worker carrying out a professional activity paid by the State, by a public body subject to government supervision, by a municipality, syndicate of municipalities or public body placed under the supervision of a municipality.

1.4.2 *National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)*

Art. 283.

The European Parliament verifies the credentials of representatives and rules on any objections which might be raised on the basis of the provisions of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage.

However, objections relating to the national provisions to which this Act refers are settled by the Chamber of Deputies.

The President of the Chamber of Deputies shall send the President of the European Parliament the documents necessary for the verification of the credentials of representatives of the Grand-Duchy of Luxembourg.

Art. 284.

The European Parliament shall receive the resignation of its Members.

Electoral law of 18 February 2003, Art. 287: (2) In the event that they accept the office of Member of the European Parliament, established by their taking of the parliamentary oath, members of the government and Council of State are automatically considered to have resigned from their post.

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE IMMUNITIES GRANTED TO A LUXEMBOURG MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

Art. 68 of the Constitution defines a system of inviolability for opinions and votes expressed: ‘No deputy may be prosecuted or investigated on account of opinions expressed or votes cast by him in the course of his duties’.

Case law: Deputies, civil law

Under Article 68 of the Constitution, no deputy may be prosecuted or investigated on account of opinions expressed or votes cast by him in the course of his duties.

It must be concluded that this immunity prevents Members from being exposed to repressive sanctions or pecuniary redress; on the other hand, it must be deduced from the words ‘in the course of his duties’ that, if a Member voluntarily departs from the restricted area in which impunity is guaranteed, he is no longer covered by the special case provided for in the Constitution.

It follows that, if a Member is summoned as a civil party in a press case, he may not invoke his immunity to paralyse the rights of defence of a person being sued by him. (Court (appeal) 25 March 1904, Section 8, p. 395).

With regard to the system of inviolability relating to the application of Art. 10 of the Protocol on Privileges and Immunities, **Art. 69** of the Constitution stipulates that: ‘*No deputy can be prosecuted or arrested in a repressive matter in the course of a session, without the Chamber's authorisation, unless caught in the act of committing a serious offence. None of its members may be imprisoned for debt during the session without the same authorisation. The detention or prosecution of a deputy is suspended during and throughout the session if the Chamber so demands*’.

Inviolability is thus restricted to criminal matters; its effect is to suspend the detention and prosecution measures not authorised by the Chamber, except in cases of *flagrante delicto*.

Case law:

Suspension of prosecution

The prescription on public legal action against a Member is suspended as from the time when the party qualified to prosecute has explicitly stated their intention to prosecute by referring a request for authorisation of prosecution to the Chamber of Deputies, through the official channels. This suspension takes effect from the date when the State Ministry formulates its request and sends it to the Chamber of Deputies through the official channels, and lasts until the date when the Member's mandate has expired (Court 2 July 1959, Pas. 18, p. 123).

Press cases -Statement by the Member

Any unauthorised prosecution against a Member of Parliament except in cases of *flagrante delicto* is deemed null and void.

A summons to make a statement made by a defendant who is being prosecuted as the printer of a newspaper following an alleged violation of the press laws does not constitute prosecution where the defendant confines himself to seeking a statement, after due hearing of the civil parties and

the person named as the author of the incriminated article, confirming the accuracy of his statement, provided that neither party has concluded that the author called to give a statement should be either sentenced or taken into custody.

Such a summons to make a statement addressed to a Member of Parliament does not affect the rights guaranteed to Members by the Constitution, which prohibits only actual prosecution (Court 21 October 1960, Pas. 18, p. 164).

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The Luxembourg Public Prosecutor's Office.

HUNGARY

Act LVII of 2004 on the Legal Status of the Hungarian Members of the European Parliament adopted on 21st June, 2004

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

The election to the European Parliament takes place in a proportional election and list voting system. The territory of the Republic of Hungary shall constitute a single constituency.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

The National Election Office (NEO) shall inform the citizens of other Member States of the European Union having domicile in Hungary by mail, not later than March 1 of the year of the election, on the conditions and way of exercising their right of vote, and sends them the form necessary for being included in the register of voters. The citizens of other Member States may request their record to the register of voters no later than April 30 of the election year. The head of local election office (LEO) shall take the decision of such request by May 4 of the election year. The head of LEO shall forward the data required by the law (i.e. name, ID number, place of birth etc. of the respective EU Member States' citizens) to the Central Office of Particulars and Address Register, no later than May 10 of the election year. Based on this information of this Office, the National Election Office shall notify the competent bodies of other EU Member States about their citizens included in the register, no later than May 20 of the election year.

Based on notifications received concerning Hungarian citizens entered in the registers of other EU Member States, the citizens concerned shall be entered in the records of citizens exercising their right of vote abroad. These records shall be kept by the Central Office of Particulars and Address Register in compliance with the regulations established for the management of the registration of citizens of legal age not having right of vote, but separately from the latter. Based on the data provided regularly by Central Office of Particulars and Address Register, the head of the LEO shall make sure that citizens included in the records of citizens exercising their right of vote abroad are

- a) not included in the register, or
- b) deleted from the register and notified immediately thereof at their domicile in Hungary.

1.1.3 *Election of substitutes and their status*

The substitutes have no particular status.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

In the event the mandate of a representative having won a seat has ceased, the seat will be taken by a candidate, out of the candidates originally included in the list, named by the party from the original list, or for lack of it, the next candidate in the list.

If there is no other candidate in the list, the seat will be won by the list that would have won the next mandate accordingly to the standard procedure of allocation of the mandates.

1.1.4 Minimal threshold of eligibility

Minimal threshold of eligibility is stipulated to as 5 % of the total valid votes.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Article 4. The mandate of a Member of the European Parliament ends if he or she (...) (d) is declared to be in a conflict of interest (...).

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Article 9. (1) It is in the competence of the European Parliament to terminate the mandate of a Member of the European Parliament on the grounds of conflict of interest.

(2) A Member of European Parliament shall eliminate the cause that constitutes a conflict of interest within sixty days of the confirmation of his or her mandate or the emergence of the situation that causes the conflict of interest or of the day when he or she learns about that case of affairs.

(3) After the time limit as defined at item (2) above expires, the Member of European Parliament concerned shall notify the President of the European Parliament about the conflict of interest without delay.

(4) Anyone may notify in writing the President of the European Parliament on that a Member of the European Parliament is in a situation of conflict of interest. Such notification shall exactly define the name of the Member of European Parliament concerned and the cause of the conflict of interest.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act², as modified by the Council Decision of 25th June and 23rd September 2002³

- "Member of the government of a Member State":

the President of the Hungarian Republic, member of the Hungarian Government, a Political, Administrative, Titular or Deputy State Secretary

- "Member of a national parliament":

Member of the Hungarian Parliament

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

² Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1.The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3..In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

³ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

- " Rules at national level relating to incompatibility ":

- a member of the Constitutional Court,
- the Parliamentary Commissioner for Human Rights and his or her deputy, the Parliamentary Commissioner for National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection,
- the President, Vice-President and Comptroller of the State Audit Office,
- President or a Vice-President of the National Bank of Hungary, or a member of the Monetary Council,
- a judge,
- a public prosecutor,
- a member of the staff of the Ministry of Justice, a civil servant or employee of an agency of public administration,
- a career or contractual member of the armed forces, or a career member of the police or the civil national security agencies.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

see 1.3

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO AN HUNGARIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

According to art. 20 (3) of the Hungarian Constitution Members of Parliament are granted parliamentary immunity, in accordance with the regulations of the law defining the legal status of Members of Parliament.

Act LVII of 2004 on the Legal Status of the Hungarian Members of the European Parliament provides that:

"Article 10. (1) The Members of the European Parliament are entitled to the privileges and immunities that are enshrined in the Protocol on the Privileges and Immunities of the European Communities, which is attached to the Treaty Establishing a Single Commission of the European Communities (8 April 1965).

(2) The Members of the European Parliament are entitled to immunity from the day of their election.

(3) The present and former Members of the European Parliament enjoy immunity; they shall not be held liable before a court or other authority for votes they cast and for facts or opinions they let others know in the course of exercising their mandate. Such immunity shall not cover breach of a state secret, defamation and acts for which the Members of the European Parliament bear civil-law liability.

Article 11. (1) A Member of the European Parliament may only be arrested if caught in the act; and criminal procedure or petty offence proceedings may only be initiated or conducted, or criminal law coercive measures taken, against him or her with the prior approval of the European Parliament.

(2) No Member of the European Parliament shall be compelled to give evidence before a court concerning data, facts or circumstances that he or she accessed confidentially in the course of exercising his or her mandate.

(3) A Member of the European Parliament shall not be compelled to give evidence or act as an expert before a court on a day or at a time that would hinder him or her in discharging his or her parliamentary functions. The Member of the European Parliament shall be given the opportunity to make a statement in writing or in some other form that does not obstruct him or her in any way from fulfilling his or her parliamentary functions.

(4) Persons who are verified as European Parliament candidates shall enjoy the same immunity as if they were Members of the European Parliament."

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The Chief Public Prosecutor and, in private actions, the court itself.

Article 12. (1) Until an indictment is submitted, a proposal to suspend immunity shall be tabled by the Chief Public Prosecutor, after that, and in cases subject to private action, by the court to the President of the European Parliament. In case a Member of the European Parliament is caught in the act, such proposal shall be presented without delay.

(2) In cases of petty offence the proposal to suspend immunity shall be submitted to the President of the European Parliament by the Chief Public Prosecutor upon the recommendation of the authority that has competence in cases of petty offence.

(3) A decision to suspend immunity shall only refer to the case in whose relation the proposal was made.

(4) The authority that submits the proposal to suspend immunity shall supply all information to the European Parliament and its Mandate and Immunity Committee that the European Parliament and its committee concerned deem necessary to form an opinion on suspending the immunity of a Member of the European Parliament.

(5) Provided the immunity of a Member of the European Parliament is suspended, the court or other authority passing a decision in the wake of such suspension shall inform the President of the European Parliament without delay.

(6) With the exception of a petty offence procedure, a Member of the European Parliament may not renounce his or her immunity.

(7) Suspension of the immunity of a European Parliament candidate shall be in the competence of the Hungarian National Election Committee. A proposal to that effect may be submitted to the Chairperson of the National Election Committee.

MALTA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 Voting systems (based on proportional representation¹)

The electoral system is based on the principle of proportional representation by means of the single transferable vote (art. 7 of the European Elections Act). The election is organised on the basis of one single constituency for the whole country (art. 8).

1.1.2 Control of the prohibition of multiple votes, including in another Member State²

While the law clearly establishes the rule that no person may vote in Malta and in another Member State, the prevention of multiple votes is an administrative function fulfilled by the Electoral Commission. The commission fulfils this role locally by issuing voting documents and ensuring that no single person votes more than one, and on an European Level through communication and coordination with the competent authorities of the other Member States. Particularly the Commission is required to verify all information provided by any foreign national with the competent authority of the national's home Member State; as well as to inform these authorities with a list of their nationals opting to cast their vote in Malta.

The electoral commission is to ensure that all such persons who are registered to vote in another Member State will be struck off from the relevant electoral register in Malta.

This matter is regulated by art. 17 of the European Parliament Elections Act, which reads as follows:

" 17. (1) No person shall in an election of members of the European Parliament cast his vote in Malta and in another Member State (...)

(3) For the purpose of ensuring compliance with subarticle (1) the Electoral Commission shall, sufficiently in advance of the day fixed for voting, inform the competent authority in the Home Member State of any person listed in the European Union Electoral Register who has opted to cast his vote in Malta.

(4) Where the Electoral Commission received information from the competent authority of another Member State that a person, whose name is entered in the Electoral Register or the European Union Electoral Register, has been registered in the Electoral Roll of such state, it shall for the purposes of the election of members of the European Parliament strike off that person's name from the Electoral Register, or the European Union Electoral Register, as the case may be."

Section 17(2) of the European Parliaments Election Act also makes it an offence for any person to breach (or attempt to breach) this provision. Such offence is punishable with *imprisonment for not more than six months or to a fine (multa) of not more than ten thousand liri or to both such fine and imprisonment.*

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

1.1.3 Election of substitutes and their status

Should a seat of a Member of the European Parliament become vacant, the vacancy will be filled through the election of a substitute who will fill the office fully and enjoy the complete state of a Member of the European Parliament.

The procedure used is identical to that for the election of substitutes in the House of Representatives, the Maltese Parliament (art. 22 of the European Parliament Elections Act).¹

The current procedure² is that of reopening the election. In the sense that upon receive notice of a vacancy, the Electoral Commission shall give notice of an election within 5 working days. All persons who were candidates at the last election, and who remain eligible will, upon their consent, be nominated as candidates.

The next stage is to open the sealed parcel of the vacating member, examine the ballot papers and transfer to the validly nominated candidates first available in order of preference shown upon such papers, crediting each validly nominated candidate with one vote in respect of each paper transferred.

If there is only one validly nominated candidate then he will be elected simply by receiving enough votes to equal or exceed half the number of papers in the parcel of the vacating Member.

If there are two or more validly nominated candidates then the procedure is to exclude the candidate credited with the lowest number of votes and to transfer his votes according to the next available preferences as shown in the ballot paper for the continuing candidates. This process of excluding the lowest candidate and recounting is continued until (a) either one candidate is credited with votes exceeding the combined total of votes of all other candidates, and at the same time equal to or exceeding half the number of papers in the parcel of the vacating Member; and is thereby elected. OR (b) one candidate remains. This candidate will only be elected if he has received a number of votes equal or exceeding half the number of papers in the parcel.

If no candidate is elected with this procedure, or no candidate was validly nominated or the seat becoming vacant had already been subject to this procedure, then the substitute will be elected by means of co-option, *'by the House of Representatives from among the candidates who had contested the same election.'*³ Nothing is provided for the remote situation where all candidates who had contested the original election are ineligible for election as a substitute.

1.1.4 Minimal threshold of eligibility

Minimum threshold of eligibility (at the moment with 5 seats in EP) is 16.6% on final count of STV system. Final seats may be attributed to the highest amount of votes obtained, in case of non reaching of the 16.6% quota.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT⁴

¹ Section 22 of the European Parliaments Election Act

² As stated in sections 18 to 22 of the Thirteenth Schedule of the General Election Act (Chap 353)

³ Section 22 (proviso) of the European Parliaments Election Act

⁴ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to.incompatibility(...)".

All persons of 'sound mind', are eligible to vote, except for those who have lost their right (temporarily or otherwise) as a result of a conviction to a criminal offence. Where the criminal offence the person is convicted of is one connected to elections for Local Councils, the House of Representatives, and the European Parliament then the interdiction is permanent. Given the Community wide application these prohibitions are couched in wide terms so as to look at the effect rather than the title given to declaration by a competent Authority of another Member State.

Although all persons eligible and registered to vote are in principle eligible to become Members of the European Parliament, certain classes of public officers may be restricted from doing so in terms of the Public Service Management Code.¹

Furthermore the person must not be subject to one of the causes of disqualification found in section 19 of the European Parliament Elections Act, which stipulates a series of conditions of eligibility and of incompatibilities with the elective function of Member of the European Parliament, which also constitutes causes for disqualification.

19. " (1) Without prejudice to the provisions of the Act, no person shall be qualified to stand for election as a member of the European Parliament or, if elected, to remain a member thereof if, whether in Malta or in any other Member State:

(a) he is a member of any **disciplined force** as defined in article 47(1) of the Constitution⁽ⁱ⁾ or of a corresponding force of another Member State;

⁽ⁱ⁾ **Constitution, art. 47.1:**

"(...) disciplined force" means:

(a) a naval, military or air force of the Government of Malta;

(b) the Malta Police Force;

(c) any other police force established by law in Malta;

(d) the Malta prison service (...)"

(b) he holds any office the functions of which involve any responsibility for or in connection with the **conduct of elections of members of the European Parliament** or the compilation or revision of any Electoral Roll;

(c) he is an undischarged **bankrupt** having been adjudged or otherwise declared bankrupt under any law in force;

(d) he is **interdicted or incapacitated** for any mental infirmity or for prodigality by a court or is otherwise determined to be of unsound mind;

(e) he is serving a sentence of **imprisonment** (by whatever name called) exceeding twelve months imposed on him by a court in a Member State or is under such a sentence of imprisonment the execution of which has been suspended;

(f) he is a **member of the judiciary**;

(g) he has been **disqualified** for standing for the election of members of the European Parliament in terms of any law in force;

(h) he is standing as a **candidate** for the election of members of the European Parliament in the same election **in another Member State**.

(2) The office of member of the European Parliament shall be incompatible with that of **member of the House of Representatives or of member of a Local Council** under the Local Councils Act or of any other similar institution or organ in another Member State, and where a person who holds one of the said offices is elected to a second such office that person shall, within five working days of the publication of the results of the election to such second office, renounce one of these offices (...)"

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

¹ Section 18 the Public Service Management Code

Art. 19.2 of the European Parliament Elections Act reads as follows, " Provided that where a person fails to renounce one of these offices (see above) within the said term of five working days, he shall be deemed to have renounced the office of member of the European Parliament ". In such cases the office becomes vacant and a substitute will be elected according to the rules for appointing a substitute as already described in para 1.1.3. .

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- " Member of the government of a Member State ":

Besides a cabinet made of the **Prime Minister** and **Ministers**³, art. 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*".

The Maltese President may also appoint **Parliamentary Secretaries** from among the members of the House of Representatives to assist Ministers in the performance of their duties⁴.

- " Member of a national parliament ":

Art. 19 of the European Parliament Elections Act explicitly excludes a double mandate with the mandate of member of the House of Representatives (see 1.2)

- " Rules at national level relating to incompatibility ":

Besides the incompatibility with the mandate of member of the House of Representatives, art. 19 of the European Parliament Elections Act also declares as incompatible with the mandate of MEP, the mandate of *member of a Local Council* under the Local Councils Act or of any other similar institution or organ in another Member State. The extension to the other EU Member States has to be noticed. Another incompatibility relates to civil servants. Indeed, art. 18 of the European Parliament Elections Act indicates that " (...) *public officers or any class or classes thereof may be restricted from standing for election as members of the European Parliament by the Public Service Management Code or such other regulations, rules or norms applicable from time to time to the Public Service*". Other incompatibilities are set in art. 19 (a), (b), (f), (h) (see point 1.2)

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. *The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

³ Art. 79 of the Constitution

⁴ Art. 88 of the Constitution

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Section 19(2) of the European Parliament Election Act provides for the automatic renunciation of the office of Member of the European Parliament should a person fail to renounce one of his offices (and therefore regularise his position) within five working days. The Act does not provide for a specific formal system of communication to the European Parliament seemingly on the basis that the situation would regulate itself, and any person having an interest would inform the European Parliament.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A MEMBER OF THE EUROPEAN PARLIAMENT FROM MALTA ON THE NATIONAL TERRITORY

Art. 65.3 of the Maltese constitution establishes the freedom of speech of Members of the House (non-liability regime in civil or criminal proceedings) for statements - orally or by written - made in the course of the activities of the member in the House of representatives. It does not seem to concern activities of the Member performed outside the House.

Art. 65.4 restricts the parliamentary immunity of the members to civil proceedings, with the exception of the contraction of debts, which is a criminal offence. *A contrario*, this exception seems to indicate the exclusion of criminal proceedings from the immunity regime of the Members of the House of Representatives.

The House of Representatives (Privileges and Powers) Ordinance confirms 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*".

Article 65

(3) No civil or criminal proceedings may be instituted against any member of the House of Representatives for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.

(4) For the duration of any session members of the House of Representatives shall enjoy freedom from arrest for any civil debt except a debt the contraction of which constitutes a criminal offence.

(5) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the House of Representatives while the House is sitting or through the Speaker, the Clerk or any officer of the House.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Information not available.

THE NETHERLANDS

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

Voting system with full proportional representation.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State*

Dutch voters may with an effective residence in another Member State may be registered in the Netherlands as voters only for the EP election provided they make a declaration stating they will not take part in the vote in the other Member State².

Pursuant art. Y 32.8 of the Franchise Act ("*Kieswet*"), the local authority is in charge of the communication of the registration of the voter to the competent authority of his/ her Member State.

1.1.3 *Election of substitutes and their status*

Vacant seats are allocated to the next candidates on the list (see 1.3).

1.1.4 *Minimal threshold of eligibility*

No list threshold. Individual candidates must have reached 10% of the "electoral divisor" on a preferential basis.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT

A Member can be disqualified if he loses an eligibility condition or if he accepts a position incompatible with the mandate of MEP (see 1.4.1)

Pursuant to art. Y4 of the Franchise Act ("*Kieswet*³"), the conditions set for the eligibility to the European Parliament are the same as to the national Parliament ("*Staten-Generaal*"), laid down in art. 56 of the Dutch Fundamental Law ("*Grondwet*"): Dutch nationality, 18 years old and not disqualified from the franchise.

Pursuant to art. B.5 of the Franchise Act, shall be debarred from the franchise:

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² *Kieswet* (electoral law) of 28 September 1989 containing new provisions on electoral law and elections, version applicable as from 7 March 2002, Art. Y6.

³ *op. cit.*

a. those whose franchise has been suspended by an irrevocable court order. This supplementary penalty may be imposed in the case of certain offences if a custodial sentence of more than one year is handed down;

b. those who have been declared incapable of entering into legal transactions on grounds of mental illness, by an irrevocable court order. Debarment shall be determined by the situation which obtains on the date of candidacy.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Vacant seats are allocated to the next candidates on the list.

Art. Y 28 (Franchise Act - *Kieswet*)

As soon as it has been irrevocably established that a Member of the European Parliament does not fulfil one of the membership requirements referred to in Article Y 4 or holds a post incompatible with membership pursuant to national provisions, his membership shall lapse. The Speaker of the Lower House of Parliament shall immediately inform the President of the European Parliament and the Chief Electoral Officer of the Central Polling Station hereof.

Art. Y 29(Franchise Act - *Kieswet*)

1. If either of the circumstances referred to in Article Y 28 applies to a Member of the European Parliament, he shall immediately inform the Speaker of the Lower House, stating the reason.
2. If the notification has not been given and the Speaker of the Lower House considers that either of the circumstances referred to in Article Y 28 applies to a Member of the European Parliament, he shall inform the person concerned in writing.
3. The latter shall be at liberty to submit the matter to the judgment of the Lower House not later than the eighth day following the date of the communication referred to in paragraph 2.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "*Member of the government of a Member State*":

minister; state secretary (junior minister).

The Netherlands has 13 Ministries (General Affairs; Foreign Affairs and Development Co-operation; Interior and Kingdom Relations; Justice; Education, Culture and Science; Finance; Health, Welfare and Sport; Defence; Economic Affairs; Housing, Spatial Planning and the Environment; Social Affairs and Employment; Transport, Public Works and Water Management; Agriculture, Nature Management and Fisheries). Each Ministry is headed by a Minister, who bears political responsibility for the policy pursued by that Ministry. He or she is supported in this task by one or occasionally two State Secretaries.

- "*Member of a national parliament*":

the Dutch Parliament, called "Staten-Generaal" consists of two houses, the "Eerste

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...)* 2. *From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...)* 3. *In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

Kamer" (first house), representing the provinces, and a Twede Kamer" (second house), directly elected by voters.

- " Rules at national level relating to incompatibility ":

Pursuant to art. 21 of the States-General and European Parliament Incompatibilities Act, a Member of the European Parliament elected in the Netherlands cannot simultaneously be:

1. (a. a minister);
(b. a state secretary (junior minister);
c. a member of the Council of State;
d. a member of the General Chamber of Audit;
e. a member of the Supreme Court or Procurator-General, Deputy Procurator-General or Advocate-General thereat;
f. National Ombudsman or Deputy Ombudsman.
2. The following posts cannot be held during membership of the European Parliament:
 - a. King's Commissioner;
 - b. member of the armed forces on active service;
 - c. official of the Council of State, the General Chamber of Audit or the Office of the National Ombudsman;
 - d. official of a ministry, including the agencies, services and businesses falling thereunder;
3. 'Official' as referred to in paragraph 2(c) and (d) shall also be deemed to refer to persons employed under a civil-law contract.
4. A Member of the European Parliament cannot simultaneously be a conscript on active service or a recognised conscientious objector undertaking alternative service.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

see 1.3

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A DUTCH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

The matter of immunise is regulated by art. 71 of the Grondwet (Dutch fundamental law).

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.

The immunity is strictly limited to the opinions and votes expressed in the course of the mandate ("freedom of speech" or "non-liability"). It may also concern facts which are not directly connected with the subjects discussed, in plenary session or during committee meeting, inside or outside the Parliament.

It covers both criminal and civil proceedings but is limited in time to the duration of the sessions of the parliament.

On the other hand, acts which cannot be linked to the exercise of the parliamentary mandate are excluded from immunity. No protection is instituted to protect deputies from criminal proceedings during the course of their mandate.

Since 1848, the authorisation of Parliament has not been necessary for the bringing of proceedings against a Member of Parliament who has abused his mandate. Furthermore, a law of 1884 gave Members of Parliament the same status as ordinary citizens as regards proceedings and enforcement of a sentence for offences under common law. On the other hand, as regards offences committed by Members of Parliament in connection with the performance of their duties, the Supreme Court ("Hoge Raad") is responsible for adjudicating on them (art. 119 of the Grondwet).

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

There is no specific procedure for waiver of parliamentary immunity. The immunity provided for in Article 71 of the Constitution does not include any limitation to the conditions required for action to be taken against a Member of Parliament, since it simply establishes his non-liability.

AUSTRIA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

Under art 23a⁽ⁱ⁾ of the Austrian Federal Constitution, the members to be delegated to the European Parliament by the Republic of Austria are elected in accordance with the principles of proportional representation on the basis on equal, direct, secret, and personal suffrage for men and women who have completed their 18th year of life on the day of the election and are either endowed with Austrian nationality and not excluded from suffrage under the provisions of the European Union law or endowed with the nationality of another member state of the European Union and qualified to vote under the provisions of European Union law. The more detailed provisions about the electoral procedure are laid down in the Federal Act on the Election of the Members of the European Parliament to be Delegated by the Republic of Austria (in short European Elections Act, “*Europawahlordnung*”).

⁽ⁱ⁾Federal Constitutional Law, art. 23a.

(1) The members to be delegated to the European Parliament by the Republic of Austria shall be elected in accordance with the principles of proportional representation on the basis of equal, direct, secret and personal suffrage for men and women who have completed their eighteenth year of life before 1 January of the election year and on the day appointed for election are either endowed with Austrian nationality and not excluded from suffrage under the provisos of European Union law or endowed with the nationality of another member state of the European Union and qualified to vote under the provisos of European Union Law. The more detailed provisions about the electoral procedure will be made by Federal law.

(2) Federal territory constitutes for elections to the European Parliament a single electoral body.

(3) Eligible for election are all men and women who have completed their nineteenth year of life before 1 January of the election year and on the day appointed for election are either endowed with Austrian nationality and not excluded from suffrage under the provisos of European Union law or endowed with the nationality of another member state of the European Union and qualified to vote under the provisos of European Union Law. The more detailed provisions about the electoral procedure will be made by Federal law.

(4) Exclusion from the right to vote and from eligibility can only ensue from a sentence by the courts.

(5) The implementation and conduct of elections to the European Parliament devolves upon the electoral boards appointed for elections to the National Council. Voting abroad need not take place before an electoral board. The more detailed provisions about voting abroad can only be passed in the presence of at least half the National Council's members and by a two thirds majority of the votes cast.

(6) The electoral registers will be drawn up by the municipalities as part of their assigned sphere of competence.

1.1.1 Voting systems (based on proportional representation¹)

The voting system is based on proportional representation and a list system with the opportunity of preference voting provided for by section 63 of the European Elections Act.

1.1.2 Control of the prohibition of multiple votes, including in another Member State²

Section 13 of the European Electoral Records Act (“*Europa-Wählerevidenzgesetz*”⁽ⁱ⁾) provides for exchange of information at European level to prohibit multiple votes.

⁽ⁱ⁾Central European electoral records

§ 13. (1) The Federal Minister for Home Affairs is authorised to keep a central European electoral record for the purpose of

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

exchanging information with the authorities responsible for exchanges of information under the national laws of the Member States of the European Union. The exchange of information concerns:

1. the exercise of the right to vote by Austrians whose main residence is in another Member State of the European Union, 2. the exercise of the right to vote by Union citizens whose main residence is in Austria and who do not have Austrian citizenship. (2) To this end, the municipalities must forward information pursuant to paragraph 1 once a year by 31 December to the Land, and in addition immediately after the date set for elections to the European Parliament. If changes are made to the European electoral record after the electoral rolls have been closed (§ 22 of the European Elections Act - - EuWO, BGBl. No 117/1996), these changes must be notified to the Land without delay. (3) Municipalities which keep computerised European electoral records or call on other entities to perform data-related services must forward these data (paragraph 2) by means of machine-readable data carriers or remote data processing. Information pursuant to paragraph 1 is to be identified as such. (4) Municipalities which do not keep computerised electoral records and do not use other entities to perform data-related services must forward the data relating to the persons referred to in paragraph 1(1) and (2) separately. (5) The Länder must forward the data from the municipalities to the Federal Minister for Home Affairs by 15 January and on the corresponding dates with regard to paragraph 2 by means of remote data processing. (6) The data entry for persons listed in the central European electoral record must include all the data referred to in § 1, paragraph 3. Provision must be made for selecting these data from the entirety of stored data by name or nationality only. (7) The Federal Minister for Home Affairs must forward the data relating to their nationals stored in the European electoral record to all the authorities responsible for exchanging information under the national laws of the Member States of the European Union before each election to the European Parliament through the Federal Ministry for Foreign Affairs. In addition, data may be forwarded, including to other Member States, only for the purpose of exchanging information pursuant to paragraph 1. (8) Data in the European electoral record may be linked to data in the central electoral record (§ 3, paragraph 4 of the Electoral Records Act 1973).

1.1.3 Election of substitutes and their status

Election of substitutes is not foreseen in Austrian electoral law.

1.1.4 Minimal threshold of eligibility

Under section 77 par. 2 of the European Elections Act, parties obtaining less than 4 % of the valid votes cast in the entire national territory are not entitled to any allocation of seats.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Art. 23 a (4) stipulates that "*the exclusion from the right to vote and from eligibility can only ensue from a sentence by the courts*". Pursuant to Article 3 of the European Electoral Roll Updating Act, any person is debarred from voting - and hence from standing for election - who, on account of a criminal offence committed in Austria, '(1) ... has been validly sentenced to a custodial sentence of more than one year by an Austrian court on account of one or more crimes committed with malice aforethought. This debarment shall lapse after six months. The period of debarment shall begin as soon as the sentence has been served and any preventive measures associated with custody have been carried out or have lapsed; if the sentence has been served purely through pre-trial detention, the period of debarment shall begin when the judgment acquires legal force; (2) if other statutory provisions preclude legal consequences, or if the legal consequences have lapsed or the offender has been excused all legal consequences or debarment from the right to vote, he shall not be disqualified from voting. Debarment from voting shall also not take effect if the court has conditionally suspended the sentence. If the conditional suspension is revoked, the debarment from voting shall take effect as of the date when this decision becomes effective. '

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

Under section 81 par. 2 in accordance with section 77 of the European Elections Act, in case a seat has fallen vacant, a nominee from the respective party list is to be appointed by the Federal Electoral Authority following the order of appointment as provided for by section 77 par. 7 and 8.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "*Member of the government of a Member State*":

As regards art. 7 par. 1 of the act concerning the election of the representatives of the assembly by direct universal suffrage, the prevailing opinion in Austria is that incompatibility covers the members of the Federal Government and the State Secretaries as well as the members of the provincial governments. The main reason is the purpose of the regulation, viz. incompatibility of membership in the European Parliament and in the Council (since representation of member states in the Council by State Secretaries is accepted, and even members of provincial governments are entitled to represent a member state in the Council under art. 203 of the EC Treaty).

- "*Member of a national parliament*":

As regards art. 7 par. 2, the use of the term "national parliament" suggests that incompatibility covers just the members of the National Council and the Federal Council but not those of the provincial diets (since this term within the framework of European primary legislation is systematically used in that meaning).

- "*Rules at national level relating to incompatibility*":

Under art. 59 of the Federal Constitution, membership in the European Parliament is incompatible with membership in the National Council or the Federal Council. Beyond that, art. 23b par. 3 of the Federal Constitution stipulates the incompatibility of membership in the European Parliament with all functions incompatible with membership in the National Council under other provisions of the Federal Constitution; this provision refers to the functions of the Federal President (art. 61), President of the Court of Audit (art. 122 par. 5), President, Vice-President, and Member of the Supreme Court (art. 92 par. 2), of the Administrative Court (art. 134 par. 4), and of the Constitutional Court (art. 147 par. 4), as well as Ombudsman (art. 148g par. 5). The provisions of the Incompatibility Act on economic incompatibilities

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

do not apply to the Members of the European Parliament delegated by the Republic of Austria.

1.4.2 *National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)*

There is no particular national procedure been implemented up to now (and there has not yet been an occasion).

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO AN AUSTRIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

The immunity system described hereunder 2.1 applies to the members of the Austrian National Council and Federal Council as well as the provincial diets.

Art. 57 of the Austrian Federal Constitutional Law organises a classical system of immunities combining the non-accountability for votes and opinions in the exercise of the parliamentary mandate (also known as "*professional immunity*") and the immunity of criminal prosecution ("*extra-professional immunity*" also known as "*inviolability*") with the exception of a "*in flagrante delicto*" action.

Another exception to the immunity regime concerns an action manifestly not connected to the political activity of the member in question. Art. 57 par. 3 however provides that "*The authority concerned must seek a ruling by the House of Representatives on the existence of such a connection if the member in question or a third of the members belonging to the Standing Committee entrusted with these matters so demands*".

Unlike "professional immunity", "extra-professional immunity" is not a ground for exemption from prosecution but an obstacle to prosecution which lapses with the end of the term of office.

In theory and in parliamentary practice, extra-professional immunity is also an obstacle to action being taken against Members under disciplinary law. It does not, however, afford them any protection against civil proceedings in a court of law.

Nor does the scope of extra-professional immunity prevent a Member from being cross-examined as a witness (provided that he is not the accused); it is debatable whether the immunity of a Member who refuses to give evidence in a case relating to his political activities must be waived before coercive measures (coercive penalties) within the meaning of Sections 159 and 160 of the Code of Criminal Procedure and Section 333 of the Code of Civil Procedure may be imposed.

Professional immunity covers all votes cast and oral and written statements made by Members of the Nationalrat and Bundesrat within the scope of the GOG and GO-BR, i.e. during the proceedings of the plenary Nationalrat and Bundesrat and the committees, during parliamentary inquiries and in written statements recorded in parliamentary documents.

Extra-professional immunity covers acts punishable by a court of law and acts governed by administrative criminal law (and, in theory and practice, acts amenable to prosecution under disciplinary law) provided that they have been committed in connection with the political activities of the Member concerned. In such cases, too, the representative body may, of course, consent to the prosecution of the Member by an authority.

A Member may be arrested only with the consent of the representative body even if the offence is obviously unrelated to his political activities; the only exception to this rule arises where a Member is caught in the act of committing a crime, but even then the representative body may request his release.

Article 57 [Indemnity, Immunity]

- (1) The members of the House of Representatives may never be made responsible for votes cast in the exercise of their function and only by the House of Representatives on the grounds of oral or written utterances made in the course of their function.
- (2) The members of the House of Representatives may, on the ground of a criminal offence -- except for apprehension *in flagrante delicto* -- be arrested only with the consent of the House of Representatives. Searches of the home of House of Representatives members likewise require the House of Representatives' consent.
- (3) Other legal action on the ground of a criminal offence may be taken against members of the House of Representatives without the House of Representatives' consent only if it is manifestly not connected to the political activity of the member in question. The authority concerned must seek a ruling by the House of Representatives on the existence of such a connection if the member in question or a third of the members belonging to the Standing Committee entrusted with these matters so demands. Every act of legal process shall in the case of such a demand immediately cease or be discontinued.
- (4) In all these instances the consent of the House of Representatives counts as granted if within eight weeks it has not given a ruling on an appropriate request by the authority competent for the institution of legal action; the President, with a view to the House of Representatives' adoption of a resolution in good time, shall at the latest put such a request to the vote on the day but one before expiry of the deadline. The latter does not include the period when the House of Representatives is not in session.
- (5) In case of a member's apprehension in the act of committing a crime, the authority concerned must immediately notify the President of the House of Representatives of the occurrence of the arrest. If the House of Representatives 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 members ends with the day of the meeting of the newly elected House of Representatives, that of functionaries of the House of Representatives whose tenure of office extends beyond this date on the expiry of this term of office.
- (7) The detailed provisions are settled by the federal law on the House of Representatives' Standing Orders.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The authority empowered to request the parliamentary immunity to be waived is the authority competent for the legal action to be taken against the Member in the respective case, i.e. in case of criminal proceedings the competent court, in case of administrative proceedings the competent administrative authority, and in case of disciplinary proceedings the competent disciplinary board.

POLAND

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The election of Members of the European Parliament in Poland is currently governed by the law of 23 January 2004: law on the election of representatives to the European Parliament (the electoral law) and the law of 30 July 2004 on the allowance for Members of the European Parliament elected in Poland, and the Regulation of the Ministry of Home Affairs and Administration of 11 March 2004 on the electoral register and the procedure for the forwarding of this information by the Republic of Poland to the remaining Member States of the European Union (Dziennik Ustaw of 15 March 2004).

1.1.1 *Voting systems (based on proportional representation)*

Preferential-list system of proportional representation with constituencies (Act of 23rd January 2004 on Elections to the European Parliament).

- proportional election (Article 2.1) and list system – 5/10 candidates on a constituency list of an election committee;
- multi-mandate electoral constituencies (Article 45) ;
- an election committee has the right to submit only one constituency list of candidates for deputies in every electoral constituency (Article 59);
- the voter casts his vote for one constituency list by indicating one of the candidates from the list and by doing so he indicates a priority for such candidate in the allocation of seats (Article 107);
- only those constituency lists of election committees participate in the allocation of seats which, across the nation, have gained at least 5% of valid votes (Article 125.2).

1.1.2 *Control of the prohibition of multiple votes, including in another Member State*

- a voter is allowed to vote only once (Article 2.2) for the election of substitute members and their status;
- registration in the register of voters is required in order to allow the right to exercise the election of deputies to the EP; a person may be registered on one register of voters only (Article 32);
- detailed rules for maintaining and updating the register of voters are provided for in the Act on Elections to the EP (Chapter 5) and in the regulations implementing the Act;
- on election day, before casting his/her vote, a voter shall produce proof of his/her identity to the ward electoral committee. The ward electoral committee adds a voter to the register of voters only on the condition that he produces the appropriate documents (Article 108);

- register of voters are prepared on the basis of permanent register of voters. A new voter shall have his/her permanent residence within the territory of the constituency and shall be registered in one register only (Article 183);
- European Union citizens, other than Polish citizens, are also registered in a permanent register. The Ministry of Internal Affairs is responsible for forwarding information regarding voters to the competent authorities of the other Member States (Article 183);
- The Ministry of Internal Affairs is also responsible for the sending of information on Polish citizens wishing to vote in another Member State (Article 183);
- The supervision of observance of electoral law is one of the duties of : the National Electoral Committee, the Constituency Electoral Committee, the Regional Electoral Committee, the ward electoral committee (Articles: 13.1.1, 16.1.1., 19.1.1, and 24.1.1).

Any voter who votes more than once in the same elections to the European Parliament shall be fined (Article 155).

1.1.3 Election of substitutes and their status

- There is no election of substitutes;
- If the Supreme Court invalidates the election in a constituency or the election of a Member of the European Parliament (in the case of a protest regarding the election), it may decide to repeat the elections (Article 139);
- In the case of a vacancy for the seat of an MEP, or in case of forfeiture of a mandate, the Marshall of the Sejm notifies a candidate from the same constituency list, of his priority right to the seat. The candidate may surrender his priority right to the seat for the benefit of the next entitled candidate from the same list. If there is no candidate on the list, the Marshall notifies a candidate from another constituency list from the same election committee who has gained the highest number of votes of his priority right to the seat (Article 144).

1.1.4 Minimal threshold of eligibility

The constituency lists of election committees participate in the allocation of the seats provided they have gained at least 5% of valid votes cast across the nation (Article 125). Reasons for the disqualification of a Member of the European Parliament¹ Art. 23 a (4) stipulates that "*the exclusion from the right to vote and from eligibility can only ensue from a sentence by the courts*".

1.1.5 Options and procedure set by national law for the substitution of a Member of the European Parliament, subject to a disqualification foreseen by national law

- The loss of the right of eligibility or ineligibility on the day of the election (Art. 142, paragraph 1.1 of the electoral law). An individual shall be eligible to vote in the elections to the European Parliament which take place in the Republic of Poland if he has the right to elect Members of the European Parliament ; a Polish citizen, who is not deprived of his/her public rights by a final

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to. incompatibility(...)".

ruling of the court, and who is not deprived of his/her electoral rights by a final ruling of the Tribunal of State, and who is not deprived of his/her legal capacity by a final ruling of a court ; or is a citizen of the European Union but is not a citizen of Poland, and is listed in a permanent register of voters, who is not deprived of his/her electoral rights in the elections to the European Parliament in a Member State of the European Union of which he is a citizen – and has reached the age of at least 21 years on voting day, who has not punished for a crime committed intentionally and who has not been prosecuted by indictment, residents of the Republic of Poland or of another Member State of the European Union of which he has been a citizen for at least five years (Article 9);

- the invalidation of the Member's election to the European Parliament (Art. 141.1, paragraph 4 of the electoral law). The Supreme Court may determine the invalidity of the election of a deputy, during the course of examining a protest about an election concerning an offence committed against the elections, or is in violation of the Act, if it influenced the result of the election (Articles > 134, 139 and 140) ;

- representatives who, on the day of their election, hold an office ruled incompatible pursuant to Article 5 and Article 6(2) of the electoral law:

Art. 5 The office of representative in the European Parliament is incompatible with the performance of the duties listed in EU law

Art. 6.1 The office of Member of the European Parliament is incompatible with that of member of the Sejm and Senator

Art. 6.2 The office of Member of the European Parliament is incompatible with that of member of the Council of Ministers or Secretary of State. MEPs may not perform duties which are incompatible with the office of member of the Sejm or Senator in accordance with the Constitution of the Republic of Poland and other acts.

The office of Member of the European Parliament is incompatible with that of councillor in a municipal or 'Powiat' Council and with that of councillor in the Parliament of the Regions.

- The end of the term of office as a consequence of election to the Polish Parliament (Sejm or Senate) (Art. 141.1., para. 3 of the electoral law).

- Members of the European Parliament must make a formal declaration to the Marshall (President) of the Sejm within 14 days of the election results being proclaimed, resigning from all other offices. Failure to make this declaration entails the end of the term of office (Art. 142.2).

- The end of the term of office of an MEP is proclaimed by the Marshall (President) of the Sejm and published in the official journal of the Republic of Poland – Monitor Polski. The decision is forwarded without delay to the State election commission and the President of the European Parliament (Art. 143).

1.2 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW.

- whenever the Supreme Court invalidates the election in a constituency or the election of an MEP, it may decide to repeat the elections (Article 139);

- in the case of a vacancy for the seat of an MEP or forfeiture of the mandate, the Marshall of the Sejm notifies a candidate from the same constituency list, of his priority right to the seat. The candidate may surrender his priority right to the seat for the benefit to the next entitled candidate from the same list. If there is no candidate on the list, the Marshall notifies a candidate from another constituency list from the same election committee who has gained the highest number of votes of his priority right to the seat (Article 144).

1.3 VERIFICATION OF CREDENTIALS

1.3.1 *Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²*

- "*Member of the government of a Member State*":

according to Article 6 of the electoral law, 'a Member of the European Parliament may not simultaneously occupy, in the Republic of Poland, the position of a member of the Council of Ministers, or a Secretary of State' (Article 6). The members of the central government are: the President of the Council of Ministers, the Vice-President of the Council of Ministers, Ministers, Secretaries of State and under Secretaries of State (Article 147 of the Constitution of the Republic of Poland).

- '*Member of a national parliament*':

The mandate of a Member of the European Parliament may not be performed simultaneously with the mandate of a deputy to the Sejm or a member of parliament' (**Sejm and Senate**) (Article 6). Only the national parliament – both chambers – is thus covered by the provision.

- *Rules at national level relating to incompatibility*':

A Member of the European Parliament 'shall not occupy any post nor fulfil functions which, in accordance with the provisions of the Constitution or laws of the Republic of Poland, may not be simultaneously performed with the mandate of a deputy to the Sejm or a member of parliament' (Article 6). These posts and functions are : the President of the Republic (Article 132 of the Constitution), the office of the President of the National Bank of Poland, the President of the Supreme Chamber of Control, the Commissioner for Citizens' Rights, the Commissioner for Children's Rights or their deputies, a member of the Council for Monetary Policy, a member of the National Council of Radio Broadcasting and Television, ambassador, employment in the Chancellery of the Sejm, Chancellery of the Senate, Chancellery of the President of the Republic, employment in government administration (Article 103 of the Constitution). No judge, public prosecutor, officer of the civil service, soldier on active military service or functionary of the police or of the services of State protection shall exercise the mandate of an MEP (Article 103 of the Constitution).

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. *The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...)* 2. *From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...)* 3. *In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to. incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

1.3.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

- The seat of a Member of the European Parliament who, on voting day holds a post or function during his term in office, or has been appointed to a post or function incompatible with the mandate of an MEP shall become vacant, if he fails to submit to the Marshall of the Sejm, within fourteen days following the announcement by the National Electoral Commission of the results of elections to the European Parliament or appointment to the post or function incompatible with the mandate of a deputy to the EP – a declaration of his surrender from such post or function (Article 142);
- A member of the European Parliament, who during his term in office was elected to the Sejm or Senate, shall forfeit his or her mandate to the EP on the day of the publication of the results of the elections to the Sejm or to the Senate of the Republic of Poland (Article 142);
- If a member of the European Parliament received the mandate of a deputy to the Sejm of the Republic of Poland on the basis of substitution (because of a vacancy), he shall forfeit the mandate of a Member of the European Parliament on the date of issue of the decision of the Marshall of the Sejm, on assigning the mandate of a deputy to the Sejm of the Republic of Poland (Article 142);
- The Marshall of the Sejm shall notify to the President of the European Parliament the forfeiture of the seat of a Member of the European Parliament immediately (Article 143).

2 CONDITIONS REQUIRED TO EXERCISE THE MANDATE OF A MEMBER OF THE EUROPEAN PARLIAMENT

2.1.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A POLISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

- There is no particular national law (statute) granting to the Member of the European Parliament privileges and immunities on the territory of the Republic of Poland that extends privileges and immunities stated in the Protocol on the Privileges and Immunities of the European Communities;
- European MEPs from Poland enjoy the privileges and immunities provided for Members of the Polish Parliament (Sejm and Senate) on their country's territory. Article 105 of the Constitution defines the principles of inviolability for activities linked to the performance of the parliamentary mandate and immunity from criminal prosecution during a Member's term of office.

This article combines:

- inviolability for acts carried out as part of the parliamentary mandate, for an unlimited period, although waiver is possible in the event of a violation of the rights of third parties (defamation and slander), and
- immunity from criminal prosecution and detention for the duration of the term of office.

In addition to cases of flagrante delicto, this latter immunity is bound by two more specific restrictions:

- the consent of the Member himself to prosecution;
- where the Member's arrest is essential for the proper course of proceedings.

'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 paras. 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'.

2.1 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The Minister for Justice (Public Prosecutor)

PORTUGAL

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The election of members of the European Parliament is ruled by the electoral law for the European Parliament (Law 14/87, 29 April as amended by Law no. 4/94, of 9 March, by Organic Law no. 1/99, of 22 June and by Organic Law no. 1/2005, of 5 January), by the applicable Community rules (Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom of the Council of 20 September 1976, amended by the decisions taken by the Council of 1 February 1993, of 1 January 1995, of 25 July 2002 and of 23 September 2002 and by the Treaty of Amsterdam – Article 5), and in any part not foreseen or in which European rules refer to national legislation, by the rules on the election of members of the Portuguese Parliament (Assembly of the Republic), with the necessary adaptations.

1.1.1 *Voting systems (based on proportional representation¹)*

The voting system is that of closed or rigid list – the sequence of candidates can not be changed. Voters are entitled to one single vote in the entire list. The members of Parliament are elected through plurinominal lists presented to suffrage, the elector being entitled to one single vote in the list.

The lists of each party is approved and presented by the organs of the relevant party.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

Both national and community rules determine that no one can vote more than once in the same election.

In accordance with the electoral law, as a rule, the right to vote must be exercised directly and in person by the electing citizen who can not vote several times in the same election. Any person who votes simultaneously in the elections of the European Parliament in Portugal or in another Member state can be punished with a prison sentence or fine.

The STAPE – Technical Secretariat for the Affairs on the Electoral Process – is the service directly depending from the Minister for Home Affairs, having the objective to promote the organisation, support, execution and studies on electoral matters.

In what concerns the election of the European Parliament and aiming at monitoring the fulfilment of electoral rules, the STAPE keeps a direct and permanent contact with analogous bodies in other Member States, through the exchange of information. The national elector citizen who wishes to vote in another Member State must fill in a register form, in which he or she declares, under signature, the country where he will exercise his right to vote. This information is then sent to the respective country.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

1.1.3 Election of substitutes and their status

Under the terms of the electoral law, the number of effective candidates in the lists proposed for the election must equal the number of MPs to be elected, no less than three and no more than eight substitutes.

The sequence of order of candidates in the lists is of major importance on the election day when the mandates are distributed as well as after the election when substitutions take place in the event of possible vacancies.

Those vacancies will be filled by the next unelected effective or substitute candidate in the respective order in the list to which belonged the holder of the vacant seat and who is not impeded to take the mandate.

Substitute candidates have no proper statute or a specific remuneration.

1.1.4 Minimal threshold of eligibility

The electoral law does not establish a minimal threshold of eligibility.

The electoral system laid down by the Constitution and the by the law is in accordance with the proportional representation system and using d'Hondt's highest-average rule. The mandates shall be conferred to candidates according to the order in the respective list.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

The Statute of Members of the European Parliament elected in Portugal is ruled by the EU provisions in force and by the Statute of Members of the Assembly of the Republic (Statute of Deputies, approved by Law no. 7/93, of 1 March, as amended by Law no. 24/95, of 18 August, Law no. 55/98, of 18 August, Law no. 8/99, of 10 February, Law no. 45/99, of 16 June, Law no. 3/2001, of 23 February, and Law no. 24/2003, of 4 July).

Article 8 of this Statute establishes that MPs lose their seat when:

- They break any of the incapacities or incompatibility forms established in the law (see answer to question 1.4.1, below);
- They join a different political party from that for which they were elected;
- They are indicted for participation in organisations with a fascist or racist ideology;
- They do not present, within a period of 30 days after notification, their income declaration.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

As aforementioned, the replacement is set by the list of candidates. The candidate is replaced by the first effective or substitute unelected candidate in the respective order of precedence in the same list.

The administrative procedure falls upon the CNE – National Elections Committee – which is the competent body that disciplines and controls every electoral act for elective bodies.

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

After the election of the European Parliament, the President of CNE informs the President of the European Parliament, of the results of the election and indicates the respective elected MPs. Should substitutions occur afterwards, the President of the European Parliament requests the President of the CNE the indication of the substitute candidate(s) according to the lists deposited in the Constitutional Court.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "*Member of the government of a Member State*":

Prime Minister, Deputy-Prime Minister, Ministers, Secretaries of State and Subsecretaries of State (Primeiro Ministro, Vice-Primeiro Ministro, Ministro, Secretário de Estado, Subsecretário de Estado);

- "*Member of a national parliament*":

Deputies (Deputados);

- "*Rules at national level relating to incompatibility*":

The Statute of Members of the national Parliament (Assembly of the Republic) clearly sets the fact that the incompatibilities and impediments provided for Portuguese national MPs apply for Members to the European Parliament elected in Portugal. In addition to members of Government and Members of Parliament, the following shall not exercise their duties whilst they exercise the mandate of a Member of the Assembly of the Republic (and, as above mentioned, as member of the European Parliament):

- President of the Republic;
- Member of the Constitutional Court, the Supreme Court of Justice, the Audit Court, the Superior Council for the Judiciary, the Superior Council for the Administrative and Fiscal Courts,
- Attorney-General;
- Ombudsman;
- Member of the Government of the Autonomous Regions of Azores and Madeira (President of the Regional Government, Vice – President of the Regional Government, Regional Secretaries);
- Member of the Legislative Assemblies of the Autonomous Regions of Azores and Madeira;
- Ambassador appointed from outside the diplomatic service;
- Civil Governor and Civil Vice-Governor;
- President of municipal councils and municipal councillors appointed to full-time or part-time posts;

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

- State employees and the employees of other public organisations;
- Member of the National Elections Committee;
- Member of ministerial offices;
- The staff of international or foreign state organisations;
- President and Vice – President of the Economic and Social Council;
- Member of the Higher Authority for the Media;
- Member of the management boards of state companies, companies with state-owned capital and companies in which the state or an independent public institution is a shareholder.

1.4.2 *National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)*

The incompatibility declaration of a Member of the European Parliament shall occur after taking office.

Members of the European Parliament shall, within 60 days of taking office, draw up and submit to the Constitutional Court a declaration that no form of incompatibility or impediment exists. Every post, function or professional activity exercised must be declared.

It is the duty of the Constitutional Court to analyse, monitor and authorise those declarations.

The Constitutional Court, through the CNE, shall inform the Ethics Committee of the European Parliament of the incompatibility situations. Should there be any doubts or need for explanations, direct contacts are established between the European Parliament and the Portuguese Parliament. The Portuguese PR (Permanent Representation of Portugal to the European Union) is often intermediate.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A PORTUGUESE MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

MPs are not subject to civil, criminal or disciplinary proceedings in respect of their voting or opinions expressed in the exercise of their duties ("freedom of speech" or "non-liability");

No MP may be detained or arrested without the authorisation of the Assembly of the Republic ("inviolability"), except for a crime in *flagrante delicto*, and intentional crimes punishable by a maximum prison sentence of more than three years.

The protection of this inviolability is limited to criminal proceedings. It also prevents deputies to be heard as testifiers or defendants without the leave of their assembly. The authorisation should however not be denied when a serious crime punishable with a maximum sentence of imprisonment of more than three years is suspected.

Although it is not expressly stated in the wording of art. 157, it seems obvious that the application of immunity should be restricted to cases of preventive detention or arrest: in actual fact, in the case of the carrying-out of a prison sentence, a legal conviction already exists, which removes the fundamental reason for immunity, which is to prevent the unlawful and arbitrary prosecution of Deputies.

Art. 157 of the Portuguese constitution reads as follows:

"Article 157
Immunities

1. Deputies are not subject to civil, criminal or disciplinary proceedings in respect of their voting or opinions expressed in the performance of their duties.
2. Deputies may not be heard as testifiers or as defendants without the permission of the Assembly. In the latter case permission shall be obligatory where there is strong evidence that a serious crime has been committed that is punishable with a maximum sentence of imprisonment for more than three years.
3. Deputies shall not be detained or arrested unless on the authority of the Assembly or when found in flagrante delicto committing a felonious offence punishable by imprisonment as set out in the above paragraph.
4. Where criminal proceedings are instituted against a Deputy who is charged with an offence, the Assembly shall decide whether or not the Deputy shall be suspended so that the proceedings can be pursued. The decision to suspend shall be obligatory where it concerns a crime referred to in the above paragraphs.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The judicial authorities are empowered to request the President of the Assembly of the Republic the immunity of Members to be waived. The decision to authorise the waiver of immunity is compulsory in cases of crimes punishable by a sentence more than three years or in *flagrante delicto*.

SLOVENIA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

- The Act on Election of Member of the European Parliament from the Republic of Slovenia (According to art. 9 of the Act on Election of Member of the European Parliament from the Republic of Slovenia, *the Deputies Act and the provisions of other acts applying for the deputies of the National Assembly apply mutatis mutandis to all issues not regulated by EU regulations*);

- The Act on Election in the National Assembly,
- The Members of the Parliament Act,
- The Act on Election Campaign,
- The Act on Incompatibility of Public Function with Lucrative Profession.

1.1.1 Voting systems (based on proportional representation¹)

Proportional representation, preferential list system

1.1.2 Control of the prohibition of multiple votes, including in another Member State

Checks are the responsibility of the Ministry for Home Affairs. Art. 10 par. 3 &4 of the Act on Election of Member of the European Parliament from the Republic of Slovenia stipulates that :

" In the same election to the European Parliament, a voter may only vote once and stand as candidate on only one list of candidates.

A citizen of the Republic of Slovenia who does not have permanent residence in the Republic of Slovenia and exercises his right to vote in the elections to the European Parliament in another country, can not exercise his right to vote in the elections of Members of the European Parliament from the Republic of Slovenia ".

1.1.3 Election of substitutes and their status

Next member on the list of the candidates, which won that seat.

1.1.4 Minimal threshold of eligibility

Seats are distributed on a national level, on a basis of the D'Hondt system, preferential votes for one candidate count if their sum exceeds certain quotient, i.e. number of votes to the list divided by doubled number of the MEPs to be elected (see art. 13 of the Act on Election of Member of the European Parliament).

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Art. 9 of the Members of the Parliament Act lists 6 cases for disqualification of a Member of Parliament:

- "- if he loses the right to vote,*
- if he becomes permanently unable to perform the function,*
- if he is convicted by final judgement to unconditional imprisonment for a period of more than six months;*
however, the National Assembly may decide that he may continue to perform his office of deputy;
- if three months after the confirmation of election as deputy he continues to perform an activity which is incompatible with the office of deputy (cf. art. 12 of the Members of the Parliament Act),*
- if he takes up a function or begins to perform an activity which is incompatible with the office of deputy y,*
- if he resigns."*

The National Assembly ascertains the application of any of these disqualification cases.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

According to art. 24 of the Act on Election of Member of the European Parliament, "*The President of the National Assembly shall inform the President of the European Parliament of the cessation of the term of office of a Member of the European Parliament and about who has been elected to replace the Member who has ceased to hold office*".

According to art. 17 of the Act on the Election in the National Assembly, a Member subject to disqualification is replaced "*for the remainder of the term of office by the candidate from the same list of candidates who would have been elected had the deputy whose term of office has expired not been elected*".

If the substitute does not accept the office within 8 days, the right is transferred to the next candidate.

Exceptions (art. 18 of the same act): by-elections are organised and the new member is elected for a period lasting until the termination of the term of the Parliament

- if there are no substitute candidates;
- if the disqualification occurred within 6 months of the confirmation of the term of office.

By-elections are not organised if the Member's term of office expires less than 6 months prior to the termination of the term, unless the National Assembly decides otherwise.

Art. 19 foresees that "*By-elections shall be called by the President of the Republic not more than fifteen days after the National Assembly has ascertained the termination of a deputy's term of office*".

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(...)".

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "Member of the government of a Member State":
refers to a member of the central government: Prime minister, minister, State Secretary (see art. 14 of the Members of the Parliament act);
- "Member of a national parliament":
national parliament, incompatibility with both chambers, National Assembly as well as National Council
- "Rules at national level relating to incompatibility":
According to art. 2 of the Act on Election of Member of the European Parliament from the Republic of Slovenia, "*a Member of the European Parliament (hereinafter: Member) can not hold the office of deputy of the National Assembly and can not perform executive functions in the local community. Likewise, a Member may not perform functions or activities that may not be performed by a deputy of the National Assembly*".

These activities are listed in articles 10 to 14 of the Members of the Parliament Act:

- member of the National Council;
- functions or job in state bodies;
- functions in local community bodies on a professional basis;
- holding an office, which is not compatible with the office of deputy or working in a state body;
- performing profit-making activities, which are by law incompatible with the performance of a public office;
- member of the supervisory board of a commercial enterprise;

However, art. 13 foresees that, after notifying the competent working body of the National Assembly, a deputy may perform an activity independently or as an employee, with the restriction detailed in the same article.

Decisions on the verification of Members' credentials may be the subject of an appeal before the Constitutional Court (Article 82 of the Constitution).

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "*1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

The authority in charge of the communication is the speaker of the National Assembly, after the notification of the parliamentary Commission for Mandates and Elections has been made. The procedure applied is the same as in case of incompatibility at a national level.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A SLOVENIAN MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

According to art. 9 of the Act on Election of Member of the European Parliament from the Republic of Slovenia: "*The provisions of the EU regulations shall apply to the status of Members of the European Parliament, the beginning and cessation of their office as Members, the incompatibility of holding the office of Member of the European Parliament with other offices, the immunity of Members, the material and other conditions for the work of the Members, the rights of the Members after the expiry of their term of office, and to the restrictions and obligations of the Members related to their office; with regard to the issues not regulated by EU regulations, the Deputies Act and the provisions of other acts applying for the deputies of the National Assembly shall apply mutatis mutandis.*"

The non-liability regime for the casting of votes and expression of opinions in the performance of their office and the immunity of members of the national parliament is regulated by art. 83.1 of the Slovenian constitution. It should be noted that non-liability for votes and opinions is limited to criminal offences. It is further restricted to performance of the Member's mandate, within the framework of sessions of the Assembly and its working parties, but extends beyond the duration of the term of office.

The "inviolability" (immunity) of members is regulated in Article 83, par. 2 & 3. The protection is granted against detention and criminal proceedings with the restriction of "*in flagrante delicto*" for an infringement subject to a potential sanction of more than 5 years of imprisonment. Even in these cases, however, the House may decide to grant immunity to a member. Other cases of *in flagrante delicto* are covered by the rules on immunity and the House's authorisation is thus required for immunity to be waived. In contrast to non-liability, inviolability is restricted to the duration of the term of office. After that point, members may be prosecuted for acts committed during their term of office, the statute of limitations being suspended during the term of office itself. Following a decision by the Constitutional Court, it is no longer possible for a member of either of the two chambers to invoke immunity for acts predating his term of office.

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.

Articles 21 and 22 of the Members of the Parliament Act refer back to the principles laid down in art. 83 of the Constitution. The procedure for authorising prosecution against a member of the national parliament is governed by art. 22.2:

" 2. Immunity of deputies

Article 21

A deputy shall not be criminally liable for any opinion expressed or vote cast at sessions of the National Assembly or its working bodies.

Article 22

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 request of the competent state body for the permission referred to in the preceding paragraph shall be decided by the National Assembly at the proposal of the mandate-immunity commission no later than 30 days from the day of lodging the request.

The National Assembly may also grant immunity to a deputy who has not claimed such immunity or who has been apprehended committing a criminal offence referred to in the second paragraph of this article. "

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

The authority empowered to request the immunity of an MEP to be waived is the National Assembly.

SLOVAKIA

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The Constitution of the Slovak Republic and Act No. 331/2003 Coll., on Elections to the European Parliament, as amended (hereinafter referred to as **the Constitution** and also as **the Election Act**), are the main legal texts setting out the rules which are applicable regarding election of MEP in Slovak Republic.

1.1.1 Voting systems (based on proportional representation)¹

Voting system to the European Parliament in the Slovak Republic is based on the principle of general, equal and direct voting right by secret ballot; the principle of proportional representation shall apply.

For the purposes of these elections to the European Parliament, the whole territory of the Slovak Republic represents only one electoral district, in which 14 MEPs are elected. Any voter has the right to mark on his voting paper a maximum of one preferred candidate (candidate's number).

The mandates delegated to a political party or a coalition are assigned to its candidates in accordance with their ranking on the voting paper of such a political party or coalition. In case at least one tenth of voters who gave the valid vote to a particular political party or a coalition have marked the preferred candidate on the respective voting paper, the mandate for an MEP is preferentially assigned to such candidate who received at least 10% of priority votes (counted from the total number of valid votes for such a political party or coalition). If more than one mandate is delegated to a political party or a coalition and more candidates have fulfilled the aforementioned condition, the mandates are assigned to the candidates according to the number of priority votes gained. In the case of equal gain of priority votes, the listing on the voting paper shall prevail.

1.1.2 Control of the prohibition of multiple votes, including in another Member State

In the course of the same elections, voting to the European Parliament is only allowed in one EU Member State.

The citizen of another EU Member State is only entitled to vote in the Slovak Republic, if enrolled in the register of voters, which is maintained by the respective municipality on the basis of his/her registration. Such registration is made at the citizen's request which has to be submitted to the municipality of the citizen's permanent residence 40 days prior to the day of the election at the latest; otherwise the EU citizen's right for enrolment to the register of voters shall lapse. The EU citizen must submit a declaration to be registered (inscribed) as a voter within a municipality in the Slovak Republic. Such a declaration must state (among other facts): (i) his/her nationality, (ii) municipality of an EU Member State where he/she was last registered in

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

the list of voters, and that (iii) he/she will perform his/her voting right only in the Slovak Republic. After registration, any such EU citizen will remain listed in the voter's list until he/she asks the municipality to be deleted, and/or until the municipality deletes him/her due to the nonfulfilment of conditions of performance of the voting right.

The municipality shall send the list of EU citizens enrolled in its voter's register to the Ministry of the Interior within 36 days preceding the elections; the Ministry of the Interior shall forward such a list to the Ministry of Foreign Affairs immediately. The Ministry of Foreign Affairs shall inform the EU Member State concerned immediately on the registration of its citizen(s) in the voters' register in the Slovak Republic.

The Ministry of Foreign Affairs shall inform the municipality concerned of the fact that a Slovak citizen for the time being inscribed in the voters' register maintained by such municipality, who is already enrolled in another EU Member State's register of voters. The municipality concerned shall then delete this voter from its voters' register.

1.1.3 Election of substitutes and their status

Candidates who were not assigned an MEP mandate become substitutes. The MEPs' substitutes don't have any particular status.

1.1.4 Minimal threshold of eligibility

Minimal threshold of eligibility is stipulated as 5% of the total number of valid votes. The votes for political parties or coalitions, which did not achieve the above-mentioned margin, shall not be taken into consideration in further allocation of mandates.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Slovak law does not stipulate any specific reasons for disqualification of an MEP. However, the Election Act stipulates the conditions of eligibility of an MEP. This provision of the Election Act might be interpreted in the manner that the MEP must comply with in the course of the whole electoral term. The relevant conditions are as follows:

- (i) citizenship of the Slovak Republic or EU Member State;
- (ii) permanent residence in the country of which an MEP has citizenship; and/or
- (iii) absence of obstacle preventing the MEP to perform his voting right (limitation of personal freedom for the reason of health protection, execution of punishment and/or deprivation of civil rights).

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

If the mandate in the European Parliament becomes vacant during the course of the electoral term, the substitute designated by the respective political party or coalition shall succeed. This rule will not apply in the case that the required number of preferential votes were gained by a

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility (...)".

candidate of the political party or coalition concerned, such candidate shall succeed.

In case of absence of any substitute of the same political party or coalition, or in the case of such political party's abolishment, the mandate will remain vacant until the end of the electoral term. If the respective political party has been suspended, the mandate will remain vacant for the period of such suspension.

The Central Election Committee (hereinafter referred to as **the Committee**) shall state the succession of a substitute within 15 days of the notice of the European Parliament of the vacancy. The Committee shall inform the Chairman of the Slovak Parliament on the succession of a substitute or on remaining vacancy of the mandate. The Chairman of the Slovak Parliament shall inform the European Parliament of such facts within 15 days of the notice of the Committee.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

The Constitution does not explicitly stipulate any incompatibility of the office of an MEP, except that with the office of the member of the Slovak Parliament, as specified below. Further, the Constitution does not in any manner specify the incompatibility of the office of an MEP with that of members of regional parliaments.

Article 77 para 1 of the Constitution stipulates that the office of the member of the Slovak Parliament is incompatible with that of Judge (including Judge of the Constitutional Court), Prosecutor, Ombudsman, member of the military forces and security units, and a member of the European Parliament.

Furthermore, under Article 109, para 2 of the Constitution, the office of member of the Government, and under Article 137 para 2, the office of Judge of the Constitutional Court, are incompatible with that of other public authority. As there is no specification as to whether the term "public authority" shall mean only the Slovak authority, the interpretation might be extended to any public authority, including the European Parliament. In the case of such interpretation, the office of MEP should be considered as incompatible with that of a member of the Government (central Slovak Government) and Judge of the Constitutional Court.

In addition, pursuant to Act No. 564/2001 Coll. on the Ombudsman, as amended, namely Article 7, para 2, the Ombudsman is not allowed to perform any other paid activity during the course of his office. This provision covers the activity performed as MEP.

¹ Decision of the representatives of the Member States meeting in the Council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. *The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...)* 2. *From the European Parliament elections in 2004, the office of members of the European Parliament shall be incompatible with that of members of a national parliament. (...)* 3. *In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

Slovak law does not stipulate any specific procedures to communicate the occurrence of incompatibilities to the European Parliament.

The Constitution only stipulates some kinds of occurrence of incompatibilities and its consequences. The first is that the incompatibility (the extent of which is specified above) had occurred to the member of the Slovak Parliament as a result of his/her election to the European Parliament. In such cases, the mandate of the member of the Slovak Parliament lapses and the member of the Slovak Parliament remains only an MEP (Article 81a, line e) of the Constitution).

Another case would be that of incompatibility due to the execution of an office of "public authority" (see above). In such case, while taking the office of "public authority", the MEP shall lose his/her mandate in the European Parliament.

2 CONDITIONS TO EXERCISE THE MANDATE OF A MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A SLOVAK MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

On the territory of the Slovak Republic, the immunities enjoyed by the MEPs under art. 10 of the Protocol on the privileges and immunities of the European Communities are the same as those enjoyed by the members of the Slovak Parliament.

The immunities of the members of the Slovak Parliament, i.e. immunities of Slovak MEPs also, are specified in detail under Articles 78 and 79 of the Constitution.

Article 78:

- 1.No member of the Slovak Parliament can be prosecuted for his voting neither in the Slovak Parliament nor in its committees. This ban persists even after the expiry of the member's mandate.*
- 2.No member of the Slovak Parliament can be prosecuted for his speeches in the Slovak Parliament nor in its organs. This ban persists even after the expiry of the member's mandate. The member of the Slovak Parliament shall only be subject to the disciplinary powers of the Slovak Parliament.*
- 3.No member can be prosecuted neither in penal or disciplinary proceedings, nor be taken into custody without the prior consent of the Slovak Parliament. If the Slovak Parliament refuses to give its consent, the penal proceedings or taking into custody are excluded for the time of the member's execution of office.*
- 4.If a member of the Slovak Parliament has been arrested or caught in the penal act, the competent authority shall immediately inform the Chairman of the Slovak Parliament. If the mandate and immunity committee of the Slovak Parliament does not give its consent to such an arrest, the member of the Slovak Parliament must be let off.*
- 5.During custody of a member of the Slovak Parliament, his mandate is not executed, nor does it lapse.*

Article 79:

Any member of the Slovak Parliament has the right to refuse to give testimony relating to the matters of which he/she has become aware during the execution of his/her office or even after the expiration of his/her mandate.

The above-mentioned system of immunity represents the classical model of immunities which consists in the freedom of speech of the Member of Parliament ("non-accountability"), and the

protection against arrest, taking into the custody and prosecution ("inviolability"). Only the latter is concerned with the mandate of MEPs.

Under Slovak law, this immunity in the narrow sense is quite extensive and there are no limits (as for ex. of *"in flagrante delicto"*). There is no possibility to launch penal proceedings (or continue proceedings being launched before a person has become a deputy of the Slovak Parliament) without the prior consent of the Slovak Parliament.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Under Act No. 141/1961 Coll., as amended, the Penal Proceeding's Act, Judge, Prosecutor or police bodies have the right to request the immunity of an MEP to be waived with respect to a specified penal proceeding and penal acting.

However, neither the Penal Proceeding's Act nor any other act of law of the Slovak Republic specify the procedure of requesting an MEP's immunity to be waived in more detail (namely there are no provisions regarding the person to whom the request should be addressed). Such a procedure is only specified for the deprivation of immunity of a member of the Slovak Parliament.¹ Notwithstanding, if applying these provisions in an analogous manner for the proceedings regarding the MEP, the competent aforementioned authorities should address the request to the Chairman of the European Parliament.

¹ The request of the competent authority must be addressed to the Chairman of the Slovak Parliament. The Chairman must pass such requests to the Slovak Parliament's mandate and immunity committee. This committee shall examine such requests while permitting the member of the Slovak Parliament concerned to pronounce his/her opinion. The mandate and immunity committee shall then send its conclusion on the matter to the Slovak Parliament. The Slovak Parliament shall take the final decision on the request for the member's immunity to be waived at its next session (Act No. 350/1996 Coll., as amended, on standing order of the Slovak Parliament).

FINLAND

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 *Voting systems (based on proportional representation¹)*

The whole of Finland is a single constituency in elections for the European Parliament. The way in which the Finnish members of the European Parliament are chosen is that the votes cast for each party, electoral alliance or joint list of candidates are added together and this total figure is assigned as a comparative index to the candidate who has received most votes among the candidates on the party, electoral alliance or joint list; the candidate who has received the second-biggest vote is assigned half of the aforementioned total, and so on (the d'Hondt method). Thus the final order in which the candidates are ranked is determined on the basis of the comparative indices calculated in this way. (Election Act, Sections 88 – 91).

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

To ensure that a citizen of another European Union state is not included on the electoral rolls in two states, Section 162 of the Election Act obliges population registration authorities to provide each other with reciprocal notifications.

The Population Register Centre must notify the authorities in the member state concerned of those enfranchised citizens whose home state is another member state of the European Union and who have indicated their wish to exercise their right to vote in Finland.

When it receives notification from the relevant authority, the Population Register centre records a Finnish citizen who has notified the authorities in his or her state of residence of intent to vote in that state as being ineligible to vote in Finland.

Even if a voter is registered on the electoral rolls in two states, the prohibition on voting twice remains in effect and doing so is a punishable offence in Finland.

1.1.3 *Election of substitutes and their status*

The electoral district committee of Helsinki, which confirms the result of the election, names substitutes in its decision confirming the result of the election. The person named as the substitute is that candidate from the electoral alliance, party not included in an electoral alliance or joint list who has obtained the greatest number of votes among unelected candidates on the same list as the successful candidate. He or she is the substitute for all of the persons elected from the list in question.

If a substitute assumes a seat in the parliament or otherwise becomes unavailable, the electoral committee of Helsinki names a new substitute.

Substitutes are not entitled to remuneration and have no other privileges.

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

1.1.4 Minimal threshold of eligibility

There is no electoral threshold in Finland.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

The persons who are not eligible for election to the European Parliament are listed in Section 164.2 of the Election Act. The list is based mainly on EU legislation.

The list has been supplemented nationally in accordance with indent 12 of Section 164.2 of the Election Act, which states that the holder of a post or position that according to the Constitution is an impediment to membership of a parliament cannot be a member of the European Parliament either. A person in this category can be a candidate and win election, but must resign the post or position in question upon being elected.

The Constitution of Finland 11th June 1999

Section 27 - Eligibility and qualifications for the office of Representative

Everyone with the right to vote and who is not under guardianship can be a candidate in parliamentary elections. A person holding military office cannot, however, be elected as a Representative.

The Chancellor of Justice of the Government, the Parliamentary Ombudsman, a Justice of the Supreme Court or the Supreme Administrative Court, and the Prosecutor-General cannot serve as representatives. If a Representative is elected President of the Republic or appointed or elected to one of the aforesaid offices, he or she shall cease to be a Representative from the date of appointment or election. The office of a Representative shall cease also if the Representative forfeits his or her eligibility.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

The person who substitutes for a member of the European Parliament is determined in the manner set forth in point 1.1.3. above.

The electoral district of Helsinki issues a letter of authorisation to a new member (Election Act, Section 182).

Election Act

(714/1998; amendments up to 218/2004 included)

Section 182 — Form of letter of authorisation for Members of European Parliament

If a membership of the European Parliament becomes vacant, the electoral district committee of Helsinki delivers a letter of authorisation to the person who is to replace the member. In this case the letter of authorisation shall read as follows: :

" Since after --- was elected to the European Parliament on theday of the month of.....in the European Parliamentary elections that were conducted in Finland and the membership has become vacant, therefore, according to the Election Act--- living at.... replaces him or her as a member of the European Parliament.

This certificate is a letter of authorisation of a Member of the European Parliament."

Place and time.

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility(..)".

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²

- "Member of the government of a Member State":

“Member of the Council of State”, which means a member of the national government.

- " Member of a national parliament ":

Election Act (714/1998; amendments up to 218/2004 included) does not precise the definition of the incompatibility with being a member of a national parliament (as from Elections 2004) set by Council Decision of 25 June 2002 and 23 September 2002, although Section 28 of the Election act ("*Suspension of the office of a Representative and release or dismissal from office*") provides that " *The office of a Representative is suspended for the time during which the Representative is serving as a Member of the European Parliament.* ".

- "Rules at national level relating to incompatibility":

according to indent 12 of Section 164.2 of the Election Act, the additional incompatibilities foreseen at the national level are those listed in Section 27 of the Constitution:

*The Chancellor of Justice of the Government,
The Parliamentary Ombudsman,
A Justice of the Supreme Court or the Supreme Administrative Court
The Prosecutor-General*

Indent 8 of Section 164 also refers to the incompatibility with being a "*member of the Committee of Regions*", a case which has not been foreseen by Council decision of 2002.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

There are no specific provisions on the matter, but if a member of the European Parliament were to be appointed to one of the posts or positions mentioned in Section 164 of the Election Act, the appointing authority would have to make a notification to the European Parliament.

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. *The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...)* 2. *From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...)* 3. *In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility.*"

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A FINNISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

Finland has no national provisions concerning the immunity of a Member of the European Parliament on Finnish territory.

Section 30 of the Finnish Constitution provides for the definition of this immunity:

"Section 30 - Parliamentary immunity

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."

This system of immunity refers to the classical distinction between the non-accountability for opinions and acts in the exercise of the mandate of the representative, and the protection against being under arrest and custody, but both immunities are subject to limitations, which seems to be an original case in the landscape of European parliamentary protection regimes (see also NL and UK).

According to art. 10 of the Protocol on the Privileges and Immunities of the European Communities, enclosed in the Treaty of 8th April 1965¹, the immunity granted to the Members of the European Parliament on the territory of their own Member State is the one granted to the members of the parliament of their country.

The immunity indicated in the third paragraph of the Section would appear to be broader than the classical "in flagrante delicto" exception. However, documents associated with the drafting of the provision indicate that the expression "substantial reasons" used in it means that the proof should be approximately as strong as when a perpetrator is caught red-handed (Government Bill 1/1998). In addition, the lower limit of the scale of penalties required by law for the suspected crime (the minimum punishment in abstracto) must be at least 6 months' imprisonment.

Moreover, the immunity does not submit the launching of judicial prosecutions themselves to the prior approval of the chamber, but only the detention of the member.

The protection is granted only until criminal proceedings have started before the court.

¹ Treaty establishing a single Council and a single Commission of the European Communities, OJ L 152, 13/07/1967, p. 1.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Not specified.

SWEDEN

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

The election of MEPs is covered by The Elections Act (1997:157).

1.1.1 *Voting systems (based on proportional representation¹)*

As for the election to the Riksdag (i.e. national parliament), the election to the EP is based on a proportional list system, with a possibility of a preferential vote for one candidate on the list. The number of personal votes is only determined for a candidate who has obtained personal votes amounting to at least 5 per cent of the party's number of votes in Sweden. The system is party based – all candidates must belong to a political party, and the parties establish the lists of candidates. In the election to the EP the whole of Sweden is one constituency, which means that each party only has one list of candidates.

1.1.2 *Control of the prohibition of multiple votes, including in another Member State²*

A citizen of another EU country who is entitled to vote and wish to take part in the election must apply to The County Administration, 30 days before the election at the latest. The County Administration forwards the application to The Central Election Authority, which is responsible for establishing the electoral rolls. That person is then included in the electoral roll, but can be deleted from the roll on his or her own request or because he or she is no longer entitled to vote. Notification of a decision to include a EU citizen in the roll shall be dispatched to the electoral authority in the state where the voter is a citizen.

If the Central Election Authority receives a message from an authority in any other Member State that a person, who is entitled to vote and who is registered in an electoral roll in Sweden, is registered in an electoral roll in another country or has already cast a vote in an election to the European Parliament, the Central Election Authority shall immediately rectify the electoral roll unless the voting card has already been sent to the voter.

According to The Election Authority, many of these messages arrive too late, sometimes many months after the election. Following the Election Act chap. 5 art. 5, the Election Authority will be able to delete persons from the electoral roll even though the voting card has been sent to the voter.

1.1.3 *Election of substitutes and their status*

The Central Election Authority appoints substitutes to the MEPs according to the turnout order. For every MEP, an equal number of substitutes as the MEP's party obtained seats in the election

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

shall be appointed. However, there shall always be appointed at least three substitutes for every MEP. When a substitute is appointed, a person who has been elected as MEP shall be ignored. The substitutes have no right to compensation until they actually replaces a MEP in the parliament.

1.1.4 Minimal threshold of eligibility

Only parties that have obtained at least 4 per cent of the votes in the whole of Sweden may participate in the distribution of the seats.

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

There are no specific national laws regarding disqualification of Members of the European Parliament.

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

As said above, there are no national laws for disqualification of MEPs. If a MEP resigns during the election period, The Central Election Authority shall on the application of the European Parliament appoint a new MEP. The person who is in turn to enter the Parliament in accordance with the order of substitutes shall be appointed as a new MEP. If a new MEP cannot be appointed, the seat shall be unoccupied during the remainder of the election period.

1.4 VERIFICATION OF CREDENTIALS

1.4.1 Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act², as modified by the Council Decision of 25th June and 23rd September 2002³

The provisions of the 1976 Act are transferred to the Election Act chap. 1 art. 6. Regarding the provision about members of the government, these are the Prime Minister and the Ministers. Moreover, Sweden has a parliament (single chamber) only at the national level, the Riksdag. The provisions of the 1976 Act regarding incompatibilities have been transferred, in the exact wording of the Act, to chapter 18, section 71 of the Election Act. The section contains no further definition or explanation of the provisions.

- "Member of the government of a Member State":

The members of government are the Prime Minister (*statsminister*) and the Ministers (*statsråd*)

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to.incompatibility(...)".

² Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1.The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3..In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to.incompatibility."

³ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

- "*Member of a national parliament*":

Sweden has a parliament only at the national level, the *Riksdag*. The *Riksdag* has only one chamber;

- "*Rules at national level relating to incompatibility*":

The Election Act contains no further incompatibilities than those listed in the 1976 Act.

The new proposed Election Act has a reference to the 1976 Act only, without repeating the incompatibility provisions in the Act itself.

1.4.2 National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure, and time limits)

According to an earlier version of The Election Act, The Central Election Authority was responsible for trying incompatibilities set out by the 1976 Act. This was changed in 2002, and according to the current Act, no Swedish authority is responsible for this issue. The question of trying incompatibility is presumably left to the European Parliament itself.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A SWEDISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

The legal framework for the privileges and immunities granted to the MEPs is the Law (1994:1500) on Sweden's accession to the European Union. The law specifies which treaties and other acts are in force in Sweden. The protocol on the privileges and immunities of the European Communities from 1967 is one of these acts.

The legal basis of the immunity granted members of the parliament (*Riksdag*) is set in article 8, **Chapter 4. "The work of the *Riksdag*"** of the Instrument of Government of the Swedish constitution:

*"Art. 8.1 No person may take legal action against a person who holds a mandate as a member of the *Riksdag*, or who has held such a mandate, deprive him of liberty, or restrict his movements within the Realm on account of an act or statement made in the exercise of his mandate, unless the *Riksdag* has given its consent thereto in a decision in which at least five sixths of those voting concur."*

The non-liability thus apply to acts or statements made in the exercise of the mandate, also after the end of the mandate, but it can be waived by decision of the parliament itself deciding with specific majority rules (5/6).

*" Art. 8.2. If, in any other case, a member of the *Riksdag* is suspected of having committed a criminal act, the relevant rules of law concerning arrest, detention or remand are applied only if he admits guilt or was caught in the act, or the minimum penalty for the offence is imprisonment for a minimum of two years."*

The protection against the deprivation of liberty during the mandate of a member of parliament is limited by three exceptions:

- admittance of guiltiness by the member;
- in flagrante delicto;
- offence punished by a penalty exceeding 2 years of imprisonment.

It is limited to the duration of the mandate due as it has been solely instituted to preserve the capacity of functioning of the house.

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

There are no laws or regulations regarding this matter.

As regards members of the national house, Chapter 3, Article 18 of the Rules of Procedure lays down the procedure for implementing the *Riksdag's* consent to waive a Member's immunity pursuant to the first paragraph of Chapter 4, Article 8.

A prosecutor or any other party who wishes to initiate court proceedings as a result of acts committed by a Member of Parliament must make a written application to the Speaker to this effect. Proceedings shall then be instituted in a public court.

A waiver of immunity requires a decision taken by qualified majority.

For more information on the elections to the European Parliament, please contact The Central Election Authority, (www.val.se).

UNITED KINGDOM

1 NATIONAL PROVISIONS OF LAW APPLICABLE TO THE ELECTION OF MEMBERS OF THE EUROPEAN PARLIAMENT

1.1 SET OF RULES APPLICABLE TO THE ELECTION OF THE EUROPEAN PARLIAMENT

1.1.1 Voting systems (based on proportional representation¹)

Under the system introduced in 1999, and now provided for by the *European Parliamentary Elections Act 2002*², the UK is divided into 12 regions. These are Northern Ireland, Scotland, Wales, and nine English regions.

In England, Scotland and Wales, the Party List form of PR is used, with closed lists. A list of candidates (in rank order of priority to be given seats) is drawn up for elections, and this may not be adjusted by the voter. The d'Hondt (or highest average) method is used to allocate votes between parties. Details are given in House of Commons Library Research Paper 98/102.³ The *European Parliamentary Elections Act 2002* makes provision for the voting system⁽ⁱ⁾.

(i)

(1) *The system of election of MEPs in an electoral region in Great Britain is to be a regional list system. (2) The Secretary of State must by regulations-*

(a) *make provision for the nomination of registered parties in relation to an election in such a region, and*

(b) *require a nomination under paragraph (a) to be accompanied by a list of candidates numbering no more than the MEPs to be elected for the region.*

(3) *The system of election must comply with the following conditions.*

(4) *A vote may be cast for a registered party or an individual candidate named on the ballot paper.*

(5) *The first seat is to be allocated to the party or individual candidate with the greatest number of votes.*

(6) *The second and subsequent seats are to be allocated in the same way, except that the number of votes given to a party to which one or more seats have already been allocated are to be divided by the number of seats allocated plus one.*

(7) *In allocating the second or any subsequent seat there are to be disregarded any votes given to-*

(a) *a party to which there has already been allocated a number of seats equal to the number of names on the party's list of candidates, and*

(b) *an individual candidate to whom a seat has already been allocated.*

(8) *Seats allocated to a party are to be filled by the persons named on the party's list of candidates in the order in which they appear on that list.*

(9) *For the purposes of subsection (6) fractions are to be taken into account.*

(10) *In this section "registered party" means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41).¹*

¹ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4, art. 1.

² Text of the legislation is available at <http://www.legislation.hmso.gov.uk/acts/acts2002/20024--a.htm>

³ Available at <http://www.parliament.uk/commons/lib/research/rp98/rp98-102.pdf>

In Northern Ireland the Single Transferable Vote system is used⁽ⁱ⁾. This is a system of preferential voting in multi-member constituencies. Voters are able to rank as many candidates within and across parties as they wish in order of preference. Any of those candidates who reach a certain quota are deemed to have been elected. After the first count, the surplus votes of candidates elected on the first count, and those of candidates with fewest votes, are distributed on the basis of preference to the remaining candidates. This continues until the required number of candidates reach the quota and so are declared elected.

⁽ⁱ⁾The system of election of MEPs in Northern Ireland is to be a single transferable vote system under which

(a) a vote is capable of being given so as to indicate the voter's order of preference for the candidates, and

(b) a vote is capable of being transferred to the next choice-

(i) when the vote is not required to give a prior choice the necessary quota of votes, or

(ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

1.1.2 Control of the prohibition of multiple votes, including in another Member State¹

It is an offence to vote more than once in the same constituency at any parliamentary election in the United Kingdom under section 61 of the *Representation of the People Act 1983*. The provisions of this act regarding electoral offences are applied with modifications to elections to the European Parliament by regulation 24 of the *European Parliamentary Elections Regulations 2004*^{*}.

^{*}A person shall be guilty of an offence if -

(a) he votes as elector otherwise than by proxy either -

(i) more than once in the same electoral region at any European Parliamentary election; or

(ii) in more than one electoral region at a European Parliamentary election, or

(iii) in any electoral region at a European Parliamentary election when there is in force an appointment of a person to vote as his proxy at the election in respect of an address other than the address by virtue of which he votes as elector;
or

(b) he votes as elector in person at a European Parliamentary election at which he is entitled to vote by post; or

(c) he votes as elector in person at a European Parliamentary election, knowing that a person appointed to vote as his proxy at the election either has already voted in person at the election or is entitled to vote by post at the election; or

(d) he applies for a person to be appointed as his proxy to vote for him at European Parliamentary elections in any electoral region without applying for the cancellation of a previous appointment of a third person then in force in respect of that or another electoral region or without withdrawing a pending application for such an appointment in respect of that or another electoral region.

(European Parliamentary Elections Regulations 2004, SI 293 2004. Available at <http://www.hmso.gov.uk/si/si2004/20040293.htm#24>)

The Electoral Policy division of the Department of Constitutional Affairs issued guidance to electoral administrators in May 2004 about the exchange of information arrangements that were required under EC directive 93/109/EC to prevent double voting. This guidance was issued as an annex to an EPR newsletter 5/04 of 14 May 2004⁽ⁱ⁾. Par. 3 of the guidance reminds that

¹ Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, Art. 13.

"Regulations (...) require EROs to send direct to other EU States details of EU nationals living in the UK who are registered to vote in the UK European elections and have chosen to vote in the elections here."

⁽¹⁾

Annex A - Exchange of information

1. This note provides advice on issues that have arisen in relation to exchange of information arrangements that are required under EC Directive 93/109/EC.

Background

2. EC Directive 93/109/EC enables EU citizens living in another EU State to vote in the European elections in their State of residence. Article 4 of the Directive states that double voting is not allowed (i.e. someone who is registered in two EU States cannot vote in the same European elections twice). To prevent double voting, Article 13 states that Member States shall exchange information in respect of EU citizens who are registered in other EU States.

3. We have implemented this Directive in various SIs. Most recently, Regulations introduced last year (SI 2003/1557) require EROs to send direct to other EU States details of EU nationals living in the UK who are registered to vote in the UK European elections and have chosen to vote in the elections here.

Guidance to Administrators

4. We have issued guidance to electoral administrators on the exchange of information arrangements in previous newsletters, in particular, guidance was contained in newsletters EPR 6/03 and EPR 1/04.

5. Electoral administrators in EU and Accession States have been asked to notify Electoral Policy Division, DCA of any UK citizens resident abroad in an EU/Accession State who apply to vote in European Parliamentary elections in their State of residence. Our guidance has explained that upon receipt of any notifications, where it is possible to do so (if we have sufficient information), we will pass this information on to the relevant ERO. Our guidance to EROs has stated that upon receipt of a voter's details, if the individual is also registered to vote in European Parliamentary elections in that ERO's area, the ERO should take whatever steps, if any, s/he thinks are necessary to ensure that the voter is aware that it is an offence to vote twice in those elections, even if they are voting in different countries.

Action to be taken by EROs

6. We have not specified what action the ERO should take. Importantly, in UK law EROs have no power to delete someone from the electoral register simply because they are registered in another EU State, and there is no power not to issue a ballot paper (including postal ballot papers) to someone registered both in the UK and another EU State, or to that person's proxy in the UK. It is though an offence to vote more than once in the same elections.

7. We have been sending details of UK voters registered in other EU States to EROs. EROs have queried what particular action they should take upon receipt of the information.

8. Article 13 of the Directive 93 /109/EC states that 'the Home Member State shall in accordance with its national legislation take appropriate measures to ensure that its nationals do not vote more than once ... '.

9. Legal advice we have received confirms that we are required to take appropriate measures under the Directive to ensure that our nationals do not vote more than once. We are required to pass on the details we have received of UK voters registered in another Member State to the relevant ERO in the UK. Unless this information is passed on, no measures can reasonably be taken to prevent someone from voting twice.

10. As to what "appropriate measures" may cover (given that EROs cannot delete a person from the register), after consultation with our lawyers, the following courses of action are suggested:

Postal votes/ Proxy postal votes

Where EROs issue a postal ballot paper to either:

an elector registered to vote in another EU country and who has made a declaration that his right to vote will only be exercised in his Member State of residence, or

a proxy in the UK appointed by such an elector

we advise that they also include a letter explaining that it will be an offence for the elector to vote more than once in the European Parliamentary elections, whether in the UK or elsewhere. Attach is a draft letter that might be used for this purpose.

Electors voting in person

Under rule 36 of the European Parliamentary Elections Rules in the European Parliamentary Elections Regulations 2004, the presiding officer may ask whether a person applying to vote has already voted, here or elsewhere, and that unless his questions are answered satisfactorily, no ballot paper should be delivered to that person.

We are advised that such enquiries should be made in every case where the ERO has been informed that the voter in question has applied for registration in another EU country, and has made a declaration that the right to vote will only be exercised in the Member State of residence (if UK nationals do attempt to vote here after registering abroad, they would clearly be breaching their declaration, but that does not itself invalidate their right to vote under our legislation if they have not in fact voted in the relevant country). If no such enquiries are made, we think that there must be some doubt as to whether we are taking appropriate measures to prevent double voting.

Questions that rule 36 permits to be put to a proxy voter are limited to certain specified matters, which we do not think are likely to reveal whether the voter for whom the proxy is acting has voted in person in his or her country of residence. However, an offence will still be committed if the proxy votes on behalf of a UK national who also votes in the same elections in another EU State. EROs might therefore wish to consider putting up notices in polling stations to explain that it is an offence for a person to vote more than once in the European elections, whether in the UK or elsewhere (and whether in person or by proxy).

11. Data protection implications. Lawyers are considering whether the above possible courses of action have any data protection implications (possibly not as exchange of information results from a EU Directive and is to prevent double voting which is a criminal offence).

12. After the June elections we may wish to revisit the exchange of information arrangements. In particular, we might wish to review our statutory provisions governing exchange of information. Possible rule changes might include giving EROs the power to delete a person from the register of European electors (and so not be issued with a ballot paper), where they have registered in another EU State and have opted to vote in that State's European elections (EPR Newsletter 5/04. Available at <http://www.dca.gov.uk/elections/elegletter/letters/epr504.htm>)

¹ *European Parliamentary Election Regulations 2004:*

PART 3

VACANCIES

Initial response to vacancies

82. - (1) Subject to paragraphs (2) and (5), as soon as practicable after the Secretary of State has -

(a) received information of a vacancy in the seat of an MEP from the President of the European Parliament under the Act annexed to Council Decision 76/787, or

(b) informed the European Parliament under that Act that a vacancy exists,

he shall send a notice in accordance with paragraph (4) to the returning officer for the electoral region in which the vacancy exists.

(2) Paragraph (1) does not apply where it appears from the declaration of the result of the election that the person whose seat is now vacant was an individual candidate.

(3) Subject to regulation 85(2), a by-election shall be held in the circumstances described in paragraph (2) to fill the vacancy and the period within which the poll at that election must take place is six months from the occurrence of the event specified in paragraph (1)(a) or (b), as the case may be.

(4) The notice referred to in paragraph (1) shall -

(a) state that a vacancy exists, and

(b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose list his name was included.

1.1.3 Election of substitutes and their status

The regulations require the vacancy to be filled by the next eligible and willing candidate from the original list at the last European Parliament elections. A by-election will be held if the

previous incumbent of the seat was an individual rather than a party or where the end of the party's list has been reached. The regulations setting out the rules for filling vacancies are in part 3 of the *European Parliamentary Election Regulations 2004*⁽ⁱ⁾.

⁽ⁱ⁾

European Parliamentary Election Regulations 2004:

PART 3

VACANCIES

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(3) Subject to regulation 85(2), a by-election shall be held in the circumstances described in paragraph (2) to fill the vacancy and the period within which the poll at that election must take place is six months from the occurrence of the event specified in paragraph (1)(a) or (b), as the case may be.

(4) The notice referred to in paragraph (1) shall -

(a) state that a vacancy exists, and

(b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose list his name was included.

(5) Paragraph (1) shall not apply where the event referred to in sub-paragraph (a) or (b) of that paragraph occurred less than six months before the Thursday of the period of the next general election of MEPs.

(6) For the purpose of paragraph (5) and regulation 83(1), the period of the next general election of MEPs is that during which the next general election would take place in accordance with the Act annexed to Council Decision 76/787.

Filling of vacancies from a registered party's list

83. - (1) On receipt of a notice under regulation 82(4), the returning officer shall ascertain from the list submitted by the registered party named in the notice ("the relevant list") the name and address of the person whose name appears highest on that list ("the first choice"), disregarding the name of any person who has been returned as an MEP or who has died.

(2) The returning officer shall take such steps as appear to him to be reasonable to contact the first choice to ask whether he will -

(a) state in writing that he is willing and able to be returned as an MEP, and

(b) deliver a certificate signed by or on behalf of the nominating officer of the registered party which submitted the relevant list stating that he may be returned as that party's MEP.

(3) Paragraph (4) applies where -

(a) within such period as the returning officer considers reasonable -

(i) he decides that the steps he has taken to contact the first choice have been unsuccessful, or

(ii) he has not received from the first choice the statement and certificate referred to in paragraph (2), or

(b) the first choice has -

(i) stated in writing that he is not willing or able to be returned as an MEP, or

(ii) failed to deliver the certificate referred to in paragraph (2)(b).

(4) In the circumstances set out in paragraph (3), the returning officer shall repeat the procedure required by paragraph (2) in respect of the person (if any) whose name and address appears next in the relevant list ("the second choice") or, where paragraph (3)(a) or (b) applies in respect of that person, in respect of the person (if any) whose name and address appear next highest after the second choice in that list and the returning officer shall continue to repeat the procedure until the seat is filled or the names in the list exhausted.

(5) Where a person whose name appears on the relevant list provides the statement and certificate referred to in paragraph (2), the returning officer shall (subject to paragraph (6)) declare in writing that person to be returned as an MEP.

(6) Where -

(a) the returning officer has, in accordance with paragraph (4), asked a second or other subsequent choice the questions in paragraph (2), and

(b) the person who was previously asked those questions then provides the statement and certificate referred to in paragraph (2), that statement and certificate shall have no effect unless and until the circumstances described in subparagraph (a) or (b) of paragraph (3) apply in respect of the second or other subsequent choice.

(7) The returning officer shall give public notice of a declaration given under paragraph (5) and send a copy of it to the Secretary of State.

(8) Where the returning officer is unable to fill the seat under this regulation, he shall notify the Secretary of State that he is unable to do so.

By-election to fill certain vacancies

84. - (1) Subject to regulation 85(2), where the Secretary of State has received a notice from a returning officer under regulation 83(8), a by-election shall be held to fill that vacancy.

(2) The period within which the poll at any by-election which is required to be held under paragraph (1) must take place is six months from the date on which the Secretary of State receives the notice referred to in that paragraph.

When a by-election is not needed

85. - (1) The circumstances in which this regulation applies are where the latest date for the poll for a by-election would fall on or after the Thursday of the period of the next general election of MEPs (within the meaning of regulation 82(6)).

(2) In the circumstances in which this regulation applies, regulations 82(3) and 84(1) shall not apply and the Secretary of State shall not appoint a day for the poll for a by-election (European Parliamentary Elections Regulations 2004, SI 293 2004)

1.1.4 Minimal threshold of eligibility

There is no threshold. Under section 2 of the *European Parliamentary Elections Act 2002* the first seat is allocated to the party or individual candidate with the greatest number of votes. The second and subsequent seats must be allocated in the same way, but the number of votes given to a party to which one or more seats have already been allocated must be divided by the number of seats allocated plus one. Section 2 of the Act is reproduced in annex⁽¹⁾.

⁽¹⁾

General elections

2 Voting system in Great Britain

(1) The system of election of MEPs in an electoral region in Great Britain is to be a regional list system.

(2) The Secretary of State must by regulations-

(a) make provision for the nomination of registered parties in relation to an election in such a region, and

(b) require a nomination under paragraph (a) to be accompanied by a list of candidates numbering no more than the MEPs to be elected for the region.

(3) *The system of election must comply with the following conditions.*

(4) *A vote may be cast for a registered party or an individual candidate named on the ballot paper.*

(5) *The first seat is to be allocated to the party or individual candidate with the greatest number of votes.*

(6) *The second and subsequent seats are to be allocated in the same way, except that the number of votes given to a party to which one or more seats have already been allocated are to be divided by the number of seats allocated plus one.*

(7) *In allocating the second or any subsequent seat there are to be disregarded any votes given to-*

(a) *a party to which there has already been allocated a number of seats equal to the number of names on the party's list of candidates, and*

(b) *an individual candidate to whom a seat has already been allocated.*

(8) *Seats allocated to a party are to be filled by the persons named on the party's list of candidates in the order in which they appear on that list.*

(9) *For the purposes of subsection (6) fractions are to be taken into account.*

(10) *In this section "registered party" means a party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (c. 41). (European Parliamentary Elections Act 2002)*

¹ 10 *Disqualification*

(1) *A person is disqualified for the office of MEP if-*

(a) *he is disqualified for membership of the House of Commons, or*

(b) *he is a Lord of Appeal in Ordinary.*

(2) *But a person is not disqualified for the office of MEP under subsection (1)(a) merely because-*

(a) *he is a peer,*

(b) *he is a Lord Spiritual,*

(c) *he holds an office mentioned in section 4 of the House of Commons Disqualification Act 1975 (c.24) (stewardship of Chiltern Hundreds etc.), or*

(d) *he holds any of the offices described in Part 2 or 3 of Schedule 1 to that Act which are designated by order by the Secretary of State for the purposes of this section.*

(3) *A citizen of the European Union who is resident in the United Kingdom is not disqualified for the office of MEP under subsection (1)(a) merely because he is disqualified for membership of the House of Commons under section 3 of the Act of Settlement (12&13 Will 3 c.2.) (disqualification of persons, other than Commonwealth and Republic of Ireland citizens, who are born outside Great Britain and Ireland and the dominions).*

(4) *A person is disqualified for the office of MEP for a particular electoral region if, under section 1(2) of the House of Commons Disqualification Act 1975 (c. 24), he is disqualified for membership of the House of Commons for any parliamentary constituency wholly or partly comprised in that region.*

(5) *A person who-*

(a) *is a citizen of the European Union, and*

(b) *is not a Commonwealth citizen or a citizen of the Republic of Ireland,*

is disqualified for the office of MEP if he is disqualified for that office through a criminal law or civil law decision under the law of the member state of which he is a national (and in this subsection "criminal law or civil law decision" has the same meaning as in Council Directive 93/109/EC).

(6) *If a person who is returned as an MEP for an electoral region under section 2, 3 or 5-*

(a) *is disqualified under this section for the office of MEP, or*

(b) *is disqualified under this section for the office of MEP for that region,*

his return is void and his seat vacant.

(7) *If an MEP becomes disqualified under this section for the office of MEP or for the office of MEP for the electoral*

region for which he was returned, his seat is to be vacated.

(8) Subsection (1) is without prejudice to Article 6(1) of the Act annexed to Council Decision 76/787 (incompatibility of office of MEP with certain offices in or connected with Community institutions).

1.2 CAUSES FOR THE DISQUALIFICATION OF A MEMBER OF THE EUROPEAN PARLIAMENT¹

Anyone can be a candidate for the European Parliament who has attained the age of 21 and who is eligible to stand for election to the UK Parliament or the Gibraltar House of Assembly. Under UK law a person is disqualified from the office of representative to the European Parliament if he is disqualified from membership of the House of Commons or disqualified from membership of the Gibraltar House of Assembly. Section 10 of the *European Parliamentary Elections Act 2002* sets out the exceptions to these rules⁽¹⁾.

(1)

10 Disqualification

(1) A person is disqualified for the office of MEP if-

- (a) he is disqualified for membership of the House of Commons, or
- (b) he is a Lord of Appeal in Ordinary.

(2) But a person is not disqualified for the office of MEP under subsection (1)(a) merely because-

- (a) he is a peer,
- (b) he is a Lord Spiritual,
- (c) he holds an office mentioned in section 4 of the House of Commons Disqualification Act 1975 (c.24) (stewardship of Chiltern Hundreds etc.), or
- (d) he holds any of the offices described in Part 2 or 3 of Schedule 1 to that Act which are designated by order by the Secretary of State for the purposes of this section.

(3) A citizen of the European Union who is resident in the United Kingdom is not disqualified for the office of MEP under subsection (1)(a) merely because he is disqualified for membership of the House of Commons under section 3 of the Act of Settlement (12&13 Will 3 c.2.) (disqualification of persons, other than Commonwealth and Republic of Ireland citizens, who are born outside Great Britain and Ireland and the dominions).

(4) A person is disqualified for the office of MEP for a particular electoral region if, under section 1(2) of the House of Commons Disqualification Act 1975 (c. 24), he is disqualified for membership of the House of Commons for any parliamentary constituency wholly or partly comprised in that region.

(5) A person who-

- (a) is a citizen of the European Union, and
- (b) is not a Commonwealth citizen or a citizen of the Republic of Ireland,

is disqualified for the office of MEP if he is disqualified for that office through a criminal law or civil law decision under the law of the member state of which he is a national (and in this subsection "criminal law or civil law decision" has the same meaning as in Council Directive 93/109/EC).

(6) If a person who is returned as an MEP for an electoral region under section 2, 3 or 5-

- (a) is disqualified under this section for the office of MEP, or
- (b) is disqualified under this section for the office of MEP for that region,

his return is void and his seat vacant.

(7) If an MEP becomes disqualified under this section for the office of MEP or for the office of MEP for the electoral

¹ Act of 1976, art. 7.3: " 3 .In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to.incompatibility(...)".

region for which he was returned, his seat is to be vacated.

(8) Subsection (1) is without prejudice to Article 6(1) of the Act annexed to Council Decision 76/787 (incompatibility of office of MEP with certain offices in or connected with Community institutions).

The major legislation governing disqualification from the House of Commons is consolidated in the *House of Commons Disqualification Act 1975*. A House of Commons Library Standard Note, SN/PC/3221, looks at this in more detail and can be found at

<http://www.parliament.uk/commons/lib/research/notes/snpc-03221.pdf>. Briefly the following are disqualified from sitting in the House of Commons:

- peers who sit in the House of Lords;
- bishops (known as the Lords Spiritual) who are entitled to sit and vote in the House of Lords;
- undischarged bankrupts;
- certain persons holding offices of profit under the Crown including:
- holders of judicial office, civil servants;
- members of the armed forces or police forces;
- members of the legislature of any country or territory outside the Commonwealth;
- Government-nominated directors of commercial companies;
- prisoners - a person found guilty of one or more offences and sentenced to more than 12 months imprisonment is disqualified while detained in the United Kingdom, Channel Islands, Isle of Man or the Republic of Ireland;
- people found guilty of certain electoral offences (corrupt or illegal practices)
- Detailed lists of people who are barred are set out in schedules to the House of Commons Disqualification Act 1975.
- There is also a common law rule that ‘idiots’ are disqualified for election to Parliament and that ‘lunatics’ are disqualified in their non-lucid intervals, but this has not been tested in recent times in the courts.¹

1.3 OPTIONS AND PROCEDURE SET BY NATIONAL LAW FOR THE SUBSTITUTION OF A MEMBER OF THE EUROPEAN PARLIAMENT, SUBJECT TO A DISQUALIFICATION FORESEEN BY NATIONAL LAW

See above point 1.1.3.

¹ Electoral Commission factsheet available at http://www.electoralcommission.org.uk/files/dms/Candidatesatageneralelection_14678-129_EN_S_W_.pdf

1.4 VERIFICATION OF CREDENTIALS

1.4.1 *Definition, content and understanding of the incompatibilities set by art. 7 of the 1976 Act¹, as modified by the Council Decision of 25th June and 23rd September 2002²*

Under Article 6 of the *European Act 1976* the office of representative of the European Parliament is incompatible with being a member of a government of a member state. Council Decision 2002/772/EC which amends the 1976 Act came into force on 1 April 2004. The Decision stated that ‘the office of member of the European Parliament shall be incompatible with that of member of a national parliament.’ This means that it is not possible for a MEP to be a member of the Westminster Parliament; it does not cover any of the devolved legislatures, the Scottish Parliament, the National Assembly of Wales or the Northern Ireland Assembly. A person who is elected to a devolved legislature may therefore hold office as a MEP. There is a derogation to Council Decision 2002/772/EC which allows MEPs who are members of the UK Parliament during the five year term preceding election to the European Parliament in 2004 to have a dual mandate until the 2009 European Parliament elections.

The UK Government Department responsible for national electoral policy is the Department for Constitutional Affairs.³

1.4.2 *National procedure applying to the communication to the European Parliament of incompatibilities (competent authority, procedure and time limits)⁴*

Information not available.

2 CONDITIONS TO THE EXERCISE OF THE MANDATE OF MEMBER OF THE EUROPEAN PARLIAMENT

2.1 LEGAL FRAMEWORK FOR THE PRIVILEGES AND IMMUNITIES GRANTED TO A BRITISH MEMBER OF THE EUROPEAN PARLIAMENT ON THE NATIONAL TERRITORY

2.2 NATIONAL AUTHORITIES EMPOWERED TO REQUEST THE IMMUNITY OF A MEMBER OF THE EUROPEAN PARLIAMENT TO BE WAIVED

Article 10(a) of the 1965 Protocol provides that MEPs in each state enjoy the same immunities accorded to their own MPs.⁵ But, as the House of Lords European Communities Committee noted in a report in 1985-86, the privileges and immunities are minimal in the UK, Ireland and the Netherlands, ‘where only words spoken and things done in Parliament in the course of, or in

¹ Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 1-4; Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 08/10/1976 P. 5-11: Article 7 "1. The office of member of the European Parliament shall be incompatible with that of: — member of the Government of a Member State (...) 2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament. (...) 3. In addition, each Member State may, in the circumstances provided for in Article (8) extend rules at national level relating to incompatibility."

² Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

³ www.dca.gov.uk

⁴ Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom; OJ L 283, 21/10/2002 P. 1-4.

⁵ *Protocol on Privileges and Immunities of the European Communities of 8 August 1965*

connection with, Parliamentary proceedings enjoy immunity in the courts.’¹ This position remains current today, with the exception of the *Defamation Act 1996* which enables a Member to waive his parliamentary privilege in order to pursue defamation (libel) actions in the courts. There is no immunity from criminal prosecution and from civil suits. Therefore there are no procedures for waiving immunity for MPs and MEPs. It is the European Parliament itself, under the 1965 Protocol, which would waive immunity for its MEPs. The request would need to be made by the Crown Prosecution Service, which is the prosecuting authority in England and Wales. The Lord Chancellor’s Department noted in a memorandum to the Lords Committee, that, were a ‘foreign MEP’ to commit an offence, such as a road traffic accident, on British soil, the MEP could be prosecuted as long as a summons was served on the MEP at a time when the Parliament was not in session, since the 1965 Protocol appeared to state that immunity applied only when it was in session.²

¹ *Privileges and Immunities of Members of the European Parliament HL Paper 106 1985-86, para 12*

² *ibid Memorandum by the Lord Chancellor’s Department, para 4*