

## TABLE OF CONTENTS

<b>Foreword</b> by Professor Sacha PRECHAL	V
<b>Preface and Acknowledgments</b>	VII
<b>List of Abbreviations</b>	XIX
 <i>Chapter 1</i>	
<b>Introduction</b>	1
1. Background and central questions	1
2. The leading perspective and its implications	6
3. Framework for analysis and structure	8
4. Methodology	10
 <i>Chapter 2</i>	
<b>National constitutions and the European integration</b>	13
1. Introduction	13
2. Authorising articles	13
2.1 Introduction	13
2.2 The function of the authorising articles	15
2.2.1 Approval of any limitation to national sovereignty by accession and treaty amendments	16
2.2.2 Legitimising accession and the extension of EC/EU's competences	17
2.3 The main elements of authorising articles	19
2.4 The introduction of specific Europe-clauses	21
2.5 Implications of EU membership for the balance of powers between the national legislature and the executive	24
3. Amending the Hungarian Constitution – The authorising article	26
3.1 The background to constitutional amendment prior to accession	27
3.2 Revision and amendment of the Constitution	29
3.3 Appraisal of the authorising article	30
3.4 Popular legitimacy of accession established by a referendum	32
4. Accommodating Community law within the national legal order	34
4.1 The openness of national legal systems towards Community law: monism and dualism	34
4.1.1 General description	34
4.1.2 Member State practice	35
4.1.3 Central and Eastern European Member States joining in 2004 and 2007	37
4.2 Accommodating Community Law in the Hungarian legal system: Ambiguity and a dualist tradition	37

4.3	Pending amendment of the Act on Legislation	39
5.	The effects of Community law within the national legal orders	41
5.1	The direct effect of Community law: invocability and the application of EC law	41
5.2	The supremacy of Community law	43
5.2.1	Supremacy of Community law in general	43
5.2.2	Ordinary supremacy and supremacy over constitutional law	44
5.3.	The ‘Simmenthal mandate’ of the national courts stemming from direct effect and supremacy	46
5.4.	Accommodating the principle of supremacy in the Hungarian constitutional/legal system	49
5.4.1	Preparation for accession in Hungary: drafting proposals to amend the Hungarian Constitution	49
5.4.2	The Constitutional Court and the supremacy of Community law before accession	50
5.4.3	The post-accession application of EU law by the Constitutional Court	55
6.	Community law and the Hungarian courts	58
6.1	Impeding the national court’s ‘Simmenthal mandate’: the Constitutional Court’s strong review position	58
6.2	The constitutional position of the ordinary courts in Hungary	59
6.3	The judiciary’s position after accession in the separation of powers at the national level	61
7.	Conclusion	63

### *Chapter 3*

<b>Setting the scene: the institutional triangle – the Council, the Commission, and the European Parliament</b>		67
1.	Introduction: Institutional evolution through the Treaties	67
2.	The Council of Ministers – the Council of the European Union	71
2.1	The composition of the Council	72
2.2	The nature and the function of the Council	74
2.3	Communicating with the Council	75
2.3.1	National governmental level – ministries	76
2.3.2	Brussels-based actors: the Permanent Representations	76
3.	The Council’s preparatory organs	77
3.1	The Committee of Permanent Representatives: COREPER	78
3.1.1	The composition of the COREPER	78
3.1.2	The function of the COREPER	79
3.2	Working groups/ Working parties	81
4.	Coordinating the Council’s work: The Presidency of the Council	82
5.	The emergence of a ‘new’ institution: The European Council and its functions	84
6.	The Commission	87
6.1	The Composition of the College of Commissioners	88

6.1.1	The evolution of the appointment procedure for the Members of the Commission	88
6.1.2	The appointment procedure in practice	89
6.1.3	The Commissioners' background and their independence	90
6.1.4	Nomination procedure for the Hungarian Commissioner	92
6.1.5	Why does size matter?	93
6.2	The functions of the Commission	96
6.2.1	Legislative initiative and policy development	96
6.2.1.1	Preparing pre-legislative instruments (Green Papers, White Papers)	98
6.2.1.2	Exerting (the national) interest through the Commission's legislative initiatives	98
6.2.2	The Commission's executive powers	100
6.2.2.1	Implementation of EU policies	100
6.2.2.2	Exerting (national) interests through the comitology committees	101
6.2.2.3	The Commission's role in direct policy implementation: competition policy	102
6.2.3	Supervising implementation of Community law: the Commission as the 'guardian of the treaties'	103
6.2.4	The Commission's involvement in management of policies	103
6.3	Relations with the governments of the Member States	104
6.4	The 'other' Commission: The civil service of the Commission	105
6.4.1	The cabinets of Commissioners	105
6.4.2	The Commission's bureaucracy	106
6.4.2.1	The recruitment competitions: concours	108
6.4.2.2	The staff grading system and structure	109
6.4.2.3	National experts seconded to the Commission	109
7.	The European Parliament	111
7.1	The Members of the European Parliament (MEPs)	111
7.1.1	The mandate of the MEPs: from delegation to direct election	111
7.1.2	Constituencies, contacts with the electorate and campaigns in the run-up to the European Parliament elections	113
7.2	The structure and work of the European Parliament	116
7.3	The evolution of the European Parliament's roles	117
7.3.1	The evolution of legislative powers	118
7.3.2	The budgetary powers of the European Parliament	121
7.3.3	Supervisory functions	122
7.4	Linkage points between the European Parliament and national parliaments	123
8.	Conclusion	127

#### *Chapter 4*

<b>Interinstitutional relations – the institutional balance</b>	129
1. Introduction: European cooperation and the institutions engaging in such cooperation	129

2.	Institutional balance in the Community constitutional order	131
2.1	The context of institutional balance	131
2.2	The content of institutional balance	133
2.3	The institutional balance as a balance of interests	135
2.4	The legal expression of institutional balance: legal bases for the institutions' actions	137
2.5	National constitutions as links between the levels of division of power	139
2.6	The principle of institutional balance and the Member States behind it	141
2.7	The dynamic side of the institutional balance	143
3.	Interinstitutional relations	145
3.1	Introduction	145
3.2	Interinstitutional relations in secondary-level legislation	145
3.3	Losers and winners in the shifts in power within the secondary-level legislation	150
3.4	Interinstitutional cooperation in tertiary-level legislation	152
3.4.1	The implications of comitology for the institutional balance	152
3.4.2	The EU institutions' positions towards the comitology committees	155
3.5	Interinstitutional relations in budgetary matters	158
3.6	Interinstitutional Agreements and their place in interinstitutional relations	160
3.7	Democratic control over the executive	162
3.7.1	Control over the Commission and Community administration	162
3.7.2	Control of national authorities in implementing Community law	163
3.7.3	Control over the Council of Ministers	164
3.7.4	Control over the European Council	164
4.	Conclusion	165
<i>Chapter 5</i>		
<b>Coordination of European affairs at the national level</b>		167
1.	Introduction	167
1.1	Challenges for the national coordination of EU policies	169
1.2	Why coordinate EU policies?	171
1.2.1	The definition of coordination	172
1.2.2	The objectives of national coordination	172
1.2.3	Levels of coordination	175
1.2.4	Instruments of coordination	176
1.2.4.1	Instructions to working group delegations	176
1.2.4.2	Instructions to the COREPER	176
1.2.4.3	Exerting the nation position in the Council formations	177
1.2.4.4	Approaching experts	177
2.	A general overview of established structures and practices for coordinating EU policies in the Member States	178

3.	Coordination of EU policies in Hungary	180
3.1	The initial model of coordination prior to Hungary's accession to the EU	181
3.2	Coordination of EU affairs between 2004 and July 2006	183
3.2.1	The Minister without portfolio responsible for European affairs	184
3.2.2	Office for European Affairs	185
3.3	The reform of the coordination system in July 2006 when coordination tasks were transferred to the Ministry of Foreign Affairs	187
3.3.1	The State Secretariat headed by a Political Director	188
3.3.2	The State Secretariat headed by the European Director	189
3.4	The levels of coordination of EU affairs	193
3.4.1	The first level of reconciliation: expert committees of the European Inter-ministerial Coordination Committee	195
3.4.2	The European Inter-ministerial Coordination Committee	197
3.4.3	The role of the Minister for Foreign Affairs	198
3.4.4	The Government	200
3.5	The position of the Permanent Representation in the national coordination system	201
3.6	The dynamic side of the coordination	201
3.7	Coordinating the mandates for representatives in the comitology committees	202
4.	Coordination experiences	204
4.1	The changes brought about by accession and how they have affected the dynamism of the ministries' work	205
4.2	Intra-departmental coordination	206
4.3	The drafting of the national position through inter-ministerial discussions and the involvement of civil society	207
4.4	Sources of information and documentation	207
4.5	Communication within the national level and with the Brussels arena	208
4.6	Consultation with other Member States: exchange of information and experience	209
4.7	Training of desk officers	209
4.8	Cooperation with Hungarian MEPs	209
4.9	Hungary's representation in EU litigation	210
5.	Preparations for Hungary's Presidency	211
6.	Conclusion	213

### *Chapter 6*

### **The role of national parliaments in the EU – the Hungarian parliament controlling the government in EU decision-making procedures**

1.	Introduction	215
1.1	The emerging role of national parliaments in the European architecture	216

1.2	The involvement of national parliaments in EU affairs at the domestic level	218
1.2.1	The aims of parliamentary involvement	218
1.2.2	The means of parliamentary involvement in the conduct of EU affairs	221
2.	The different systems of national parliaments' control over their governments	224
3.	The Hungarian Parliament's participation in EU affairs: From monitoring the accession period to scrutinising the government in EU decision-making	233
3.1	The position of Parliament in the Hungarian governmental system	233
3.2	The Committee of European Integration Affairs	234
3.2.1	The early days of parliamentary salience concerning European affairs	234
3.2.2	The status and roles of the CEIA in the pre-accession process	236
3.2.2.1	Monitoring the process of harmonising national legislation with the <i>acquis communautaire</i>	237
3.2.2.2	Appointments and control over the budget	238
3.2.2.3	Monitoring the Government before accession through reports and consensus-seeking	238
3.2.3	The CEIA's involvement in parliamentary discussions and other forums	239
3.2.4	Contacts with other standing committees, civil society and the EU arena	241
3.3	Cooperation between Parliament and the Government after accession	242
3.3.1	The legal basis of parliamentary scrutiny	242
3.3.2	The scrutiny procedure	243
3.3.2.1	The scope of the information transmitted by the Government and the initiation of the parliamentary discussion	244
3.3.2.2	Formalising the position of Parliament	246
3.3.2.3	Involvement of other parliamentary standing committees in the scrutiny procedures	247
3.3.3	The adoption of Parliament's standpoint on the Government's negotiation position	248
3.3.4	The impact of Parliament's standpoint	249
3.4	Parliament's participation in establishing comitology mandates	252
3.5	Other forms of consultations between the Parliament and Government	252
3.6	The involvement of civil society and business organisations in the discussions	253
3.7	Hearings of the Hungarian members of EU institutions	254
3.8	The involvement of Hungarian MEPs in the work of the national parliament	255
3.9	Contacts with the Brussels arena and the EU institutions	257
4.	Conclusion	259

*Chapter 7*

<b>The Hungarian Permanent Representation – Representing the national position in the Brussels-arena</b>	261
1. Introduction	261
2. The size, structure and composition of the Hungarian Permanent Representation	262
3. The role and functions of the Permanent Representation	269
3.1 The learning process involved in collecting information via formal and informal channels	270
3.1.1 Establishing and maintaining contacts with the Commission	272
3.1.2 Contacts with the Council Presidency	273
3.1.3 Contacts with other Permanent Representations and official counterparts at informal venues	274
3.2 Transmitting information to the national level and participating in the establishment of the national position	274
3.3 Representing the national position at the Council formations	276
3.4 Trade-offs, coalition-building, and finding allies during the negotiations	277
4. Contacts with other Hungarian (political) actors in the Brussels arena	278
4.1 Approaching Hungarian MEPs and cooperation between Hungarian MEPs and the Government	279
4.2 An illustration of lobbying activities and network-building by Hungarian MEPs	283
5. Subnational interest representation in the Brussels arena	286
6. Conclusion	287

*Chapter 8*

<b>Implementation of EC legislation in Hungary</b>	291
1. Introduction: Implementation of Community law in the national legal systems	291
1.1 Definitions and terminological problems surrounding the implementation of EU law	292
1.2 The legislative acts of the European Union to be implemented by the Member States	295
1.2.1 Regulations	295
1.2.2 Directives	297
1.2.3 Decisions	298
1.3 The requirements as to the proper implementation of EC law in general	299
1.4 Experiences of some Member States with the techniques and instruments of implementation	301
2. Approximation/Harmonisation of national law to/with Community law in Hungary prior to accession	305

2.1	The general framework for legal adaptation as laid down in the Europe Agreement	306
2.2	Assistance in adaptation provided by the European Union	310
2.2.1	White Paper on Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union	310
2.2.2	Agenda 2000	310
2.2.3	Partnerships for Accession	311
2.3	The programming for harmonisation	311
2.4	Adaptation techniques during the 'harmonisation' process	313
2.5	Adaptation by transposing regulations	314
2.6	Translation of Community law	315
2.7	Last-minute preparations in a 'legislative race'	316
2.8	The coordination and monitoring of the adaptation process	317
2.9	Cooperation with Parliament in the approximation period	319
3.	Implementation of Community law into national law after accession	319
3.1	After accession: implementation of Community law	321
3.1.1	The preparation of the implementing measure	321
3.1.2	Interdepartmental discussions regarding the implementing measure	323
3.1.3	Public discussion of transposition	324
3.2	Implementing instruments and techniques in Hungary as a Member State	325
3.2.1	Legislation and legislative principles in Hungary	325
3.2.2	Legislative acts adopted for implementation	328
3.2.2	Ministerial decrees	328
3.2.3	Governmental decrees	329
3.2.4	Acts of Parliament: laws, amendment of laws	330
3.3	Transposition techniques	331
3.4	Repealing measures 'transposing' EC regulations	333
3.5	Difficulties arising from transposition/implementation	334
3.5.1	Interpretation issues	334
3.5.2	Monitoring the draft implementation measure for its compliance with European/Community law	335
3.5.3	Examining the draft implementing measure's compatibility with national (constitutional) law	336
3.6	Notification of transposition	338
3.7	Impact assessment concerning the implementing measures	340
3.8	Infringement procedures against Hungary, compliance with Community obligations	340
4.	Conclusion	342



*Chapter 9***Conclusions** 345

1. The interrelated relationship between national and European institutions as ‘co-actors’ in EC decision-making 345
2. The constitutional allocation of powers with regard to Hungary’s involvement in EU decision-making procedures 346
3. System, structures and procedures established and operationalised by the Hungarian national institutions 347
- 3.1 Coordination of European affairs: the establishment of the national position and its representation in the Brussels arena 348
- 3.2 The implementation of Community law and the position of the Hungarian Parliament therein 353
4. Implications for the separation of powers between the national institutions 354

*Annexes*

**Questionnaire 1** – The Europeanisation of national administration: the coordination of EU policies at the national level 357

**Questionnaire 2** – Questionnaire on the Coordination of comitology procedures 360

**Questionnaire 3** – The Hungarian Permanent Representation to the European Union 361

**Questionnaire 4** – Implementation of EU legislation in Hungary 363

**Bibliography** 365

**Table of Cases** 379

**Index** 381