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Comparative EU constitutionalism

Governmental systems and Parliaments

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ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Governmental systems – in general

- Parliamentary (HU, CZ, CRO) – concept?
- Rationalised parliamentary (PL) – concept?
- Presidential (USA) – concept?
- Semi-presidential (F) – concept?

Hungary

Croatia

Czech Republic

- **Legislative power –**
Parliament
 - one chamber (HU, CRO)
 - two chambers (CZ)
- **Executive power –**
Government
 - responsible to the Parliament
 - chancellery type
- **President of the Republic**
 - representative and symbolic; „takes care of ...”
 - countersignature
 - do not part of the executive
 - elected by the Parliament (HU, CZ)
 - elected by the people (CRO)

Poland

- Legislative power – Parliament (two chambers)
- Executive power – dualist type
 - Government and head of state
 - Government is responsible to the Parliament
 - head of state does not control the executive
 - co-operation: countersignature
- President of the Republic
 - elected by the people
 - competences are restricted (see above)

Poland - executive

Chancellor type

- constructive vote of no confidence

Presidential system

- Prerogatives (no countersignature is needed)

‘...eclecticism of legal regulations and their inconsistency’
(B.Banaszak)

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Hungary

Croatia



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Czech Republic Poland



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Constitutional organs

- Consult with charts and compare the constitutional organs in Hungary, Croatia, Czech Republic and Poland!

Parliaments and electoral systems

HU

- 386 MPs; 4 years
- mixed electoral system

CZ

- 200 MPs; 4 years – proportional; D'Hondt, 14 constituencies
- 81 senators – majoritarian, two turns; 6 years; rotation

CRO

- 100-160 MPs; 4 years
- Now: 153 MPs
- Proportionale system
- D'Hondt

PL

- 460 MPs; 4 years – proportional; D'Hondt, 41 constituencies
- 100 senators – majoritarian, 40 constituencies

Hungary

Majoritarian

- Single member constituency (176 pcs)
- 176 MPs
- Absolute – simple major.

Proportional

- Territorial list (20 pcs) – counties (20 pcs)
- 152 MPs
- Hagenbach-Bischoff

Surplus
votes

National list

- 58 MPs – D'Hondt

Surplus
votes

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Territorial list – proportional system

- 5% threshold

Are the valid votes cast for the party *equivalent or more* then the 5% of the votes cast for the all territorial list in the state?

Valid votes cast for Σ list of the P Party

$\times 100 \geq 5$

Valid votes cast for Σ list of Σ Party

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Distribution – territorial list – HAGENBACH-BISCHOFF

1. Number of mandate to be distributed + 1 = **DIVIDENT**
2. Σ valid votes

DIVIDENT = Nr of votes needed for 1 mandate
3. Nr of valid votes of P Party

Nr of votes needed for 1 mandate = mandates given to P Party

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D'HONDT

5 mandates to be allocated

	Party 1	Party 2	Party 3
Surplus votes	22	16	4
Surplus votes/2	11	8	2
Surplus votes/3	7,3	5,3	1.3
Surplus votes/4	5,5	4	1
Surplus votes/5	4,4	3,2	0.2

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D'HONDT

5 mandates to be allocated

	Party 1	Party 2	Party 3
Mandate 1	11		
Mandate 2		8	
Mandate 3	7,3		
Mandate 4	5,5		
Mandate 5		5,3	

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Functions of the Parliaments

- Legislation - types of majority; legal sources
- Constitution-making
- Tasks concerning the creation and termination of the mandate of governments (confidence) – *Governments!*
- Foreign policy making
- National security (with legal sources)
- Budgetary policy
- European integration
- Elects and creates (charts!)
- Other

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Legislation

Legal sources

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Hungary

Cons

Generally recognised principles of IL

Σ2/3

Treaty of Access.

Community law

Act

Int. treaty

Law decree

Decree of the Gov.

Decree of the HNB

Decree of the PM and Mins

Ordinances of state secretaries

Decree of the local gov.

Hungary

Extraordinary sources of law

- **When?** State of war, emergency, disaster
- **Defence Council** - **decree** in danger of war (Art 19 (3) h))
- **PR** – **emergency measure** (by decree) state of emergency (Art 19 (3) i))
- **Government decree**
 - State of danger
 - State of preventive defence emergency (Art 35 (3))

Croatia

- **Constitution** and **Act on the Constitutional Court** (same procedure as the one applied for Const amendm.)
- **Organic laws** – adopted by majority of all MPs and 2/3 of all MPs
- **Laws** adopted by simple majority
- **Government decrees**
 - delegated by the Parliament on small number of issues not regulated by laws
 - for 1 year; after 1 year the Parl evaluates whether such decree may remain in force
 - CANNOT be delegated issues on HR's, electoral system, organisation and operation of governmental bodies and local governments

Croatia

- Laws in qualified situations
 - state of war
 - immediate threat to the independence and unity of the state
 - severe natural disaster
 - Parliament not in session
- President of the Republic
 - **Decrees with constitutional force**
 - **Decrees with force of law**

**Approval by the
Parliament**

During the War of independence
- 30 decrees were issued

The Czech constitutional order

- the **Constitution** (Dec 1992)
- the **Charter** of Fundamental Rights and Freedoms
- **constitutional acts of the Czech National Council** adopted from 6 June 1992 until the end of 1992
- **constitutional laws** adopted in accordance with this Constitution on
 - establishing the Provisional Senate – NO
 - creating higher territorial self-governing units
 - changing the borders
 - Referendum – only one: accession to the EU
- **constitutional laws** defining the **state borders** of the Czech Republic (1920-1992)
- **international treaties on HR'S** – debate

The Czech legal hierarchy

- **Constitution**
- **Acts**
- **Government decrees**
 - for implementation of Acts within their scope
- **Orders** of ministries, administrative offices, self governments
 - for implementation of Acts within their scope

Laws of the Czech Rep.
during the federation

Laws of the federation



Laws of the Czech Rep.

~~Laws of the federation~~

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Czech Republic – extraordinary sources of law

- No mention
- State of war
 - Parliament deal with governmental bills in a shortened debate
 - Pres of the Rep cannot return Act adopted in this way

Poland

- Sources of law: Ch III of the Constitution

- Constitution

- Acts

Two types: with(out) prior consent (Art 89)

- ratified international agreements and community law

‘If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws’ (Art 91)

- **Regulations:** scope of statutory authorisations (authorised organ, scope of matters)

Poland

Extraordinary sources of law

Ch XI of the Constitution

Situation

- martial law
- state of emergency
- state of natural disaster

Introduction

President of the Republic

Council of Ministers



Regulation with a force of law

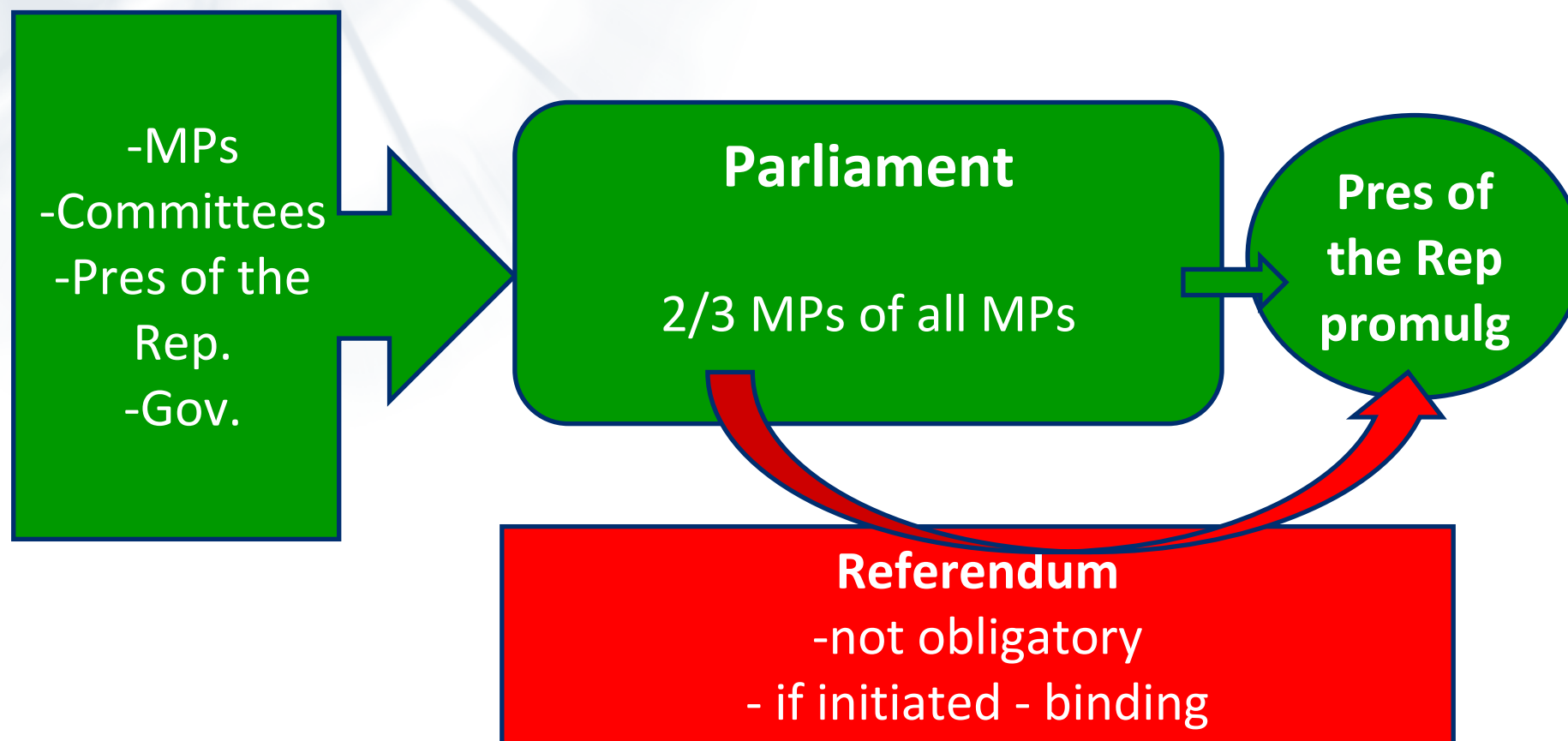
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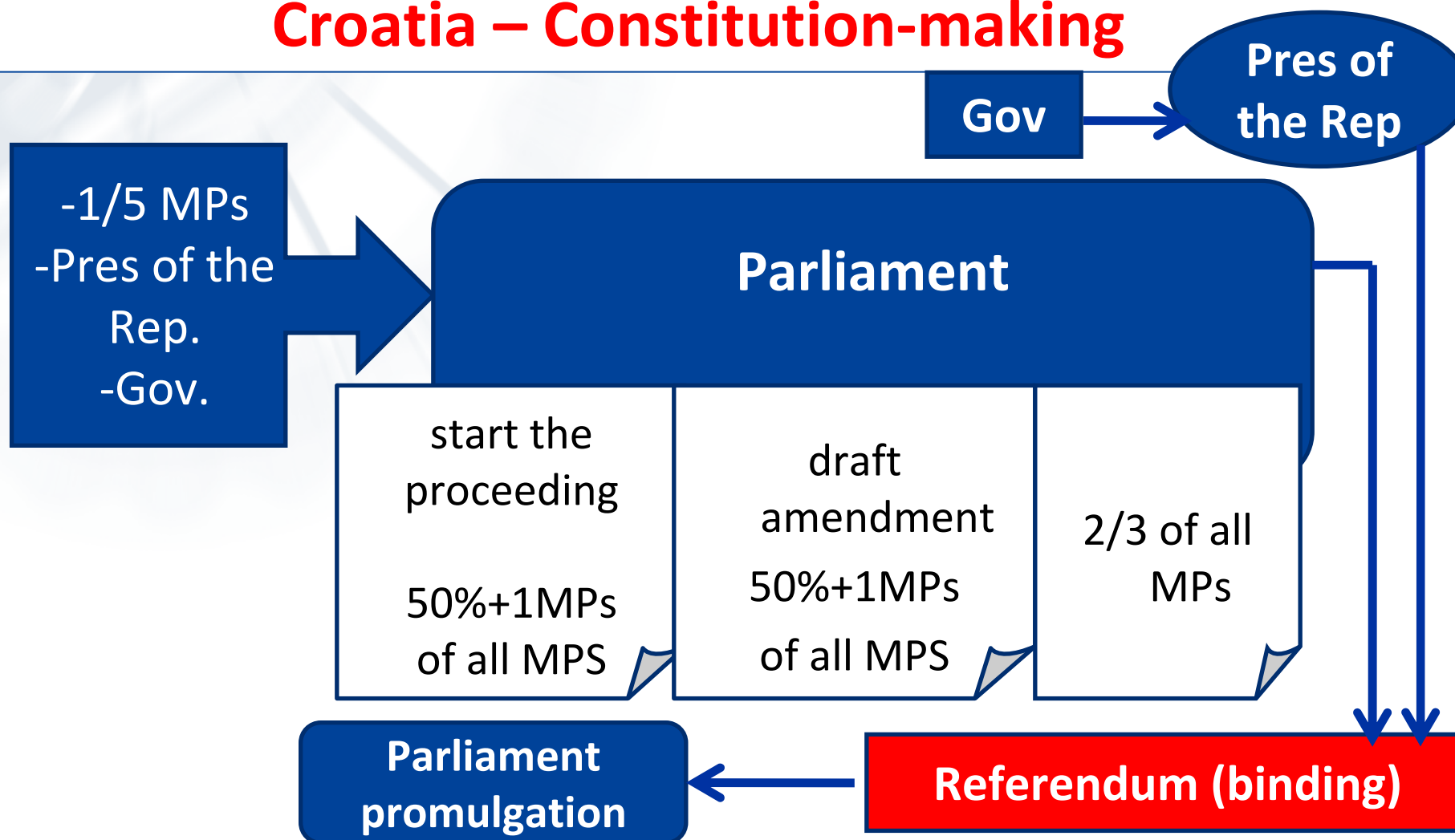


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Legislation Constitution-making

Hungary – Constitution-making





Czech Republic – Constitution-making

-MPs
- Group of
MPs
-Senate
-Gov.
-body of
local self-gov
-people

**Chamber
of
Deputies**

3/5 of all
MPs

Senate

3/5 of
senators
present

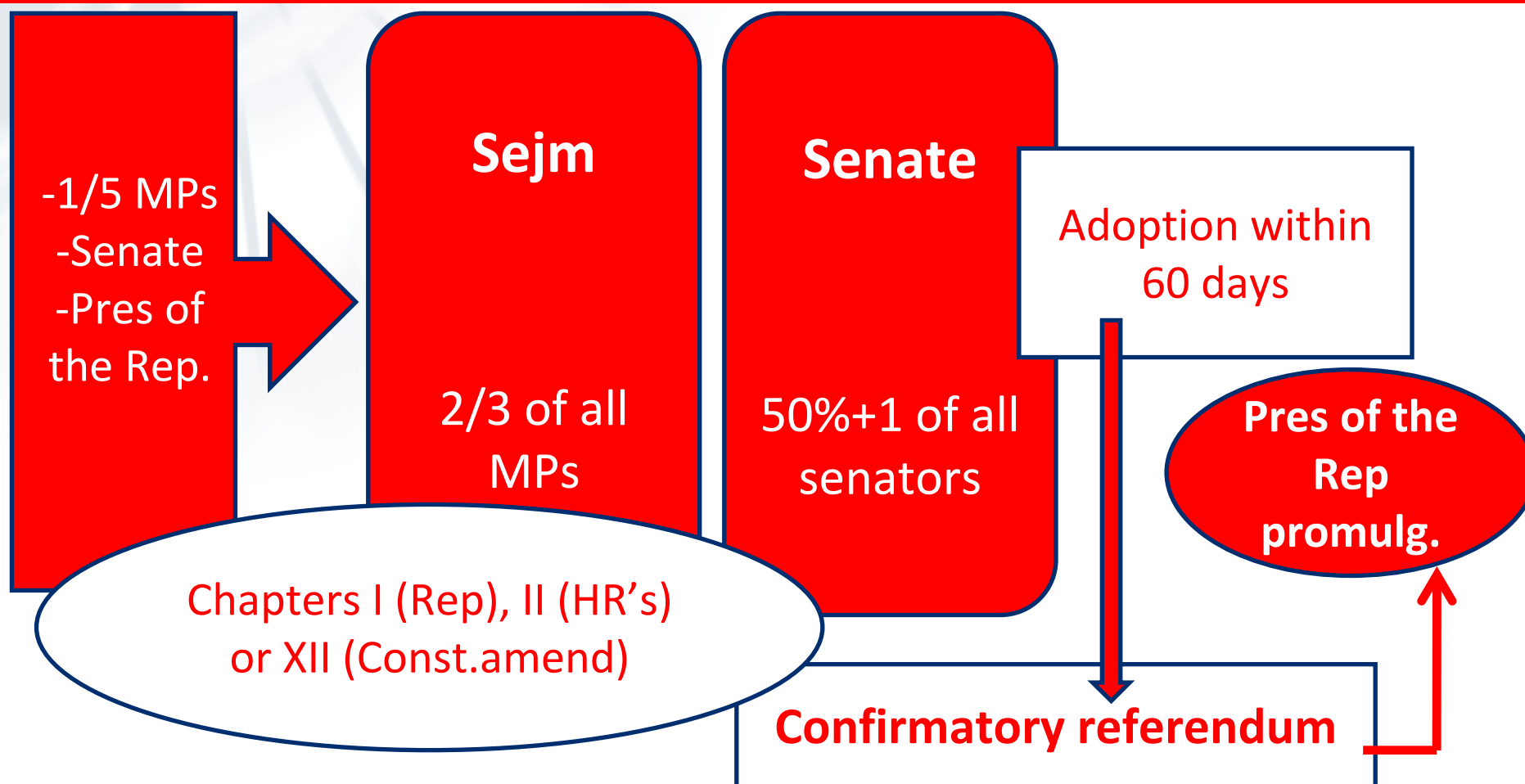
Eternity
clause
Art 9.2

more than 100 submitted

5 amendments adopted

none adopted

Poland – Constitution-making



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Hungary – Legislation

Pres.of the Rep., Gov, MPs
Parl.comittees

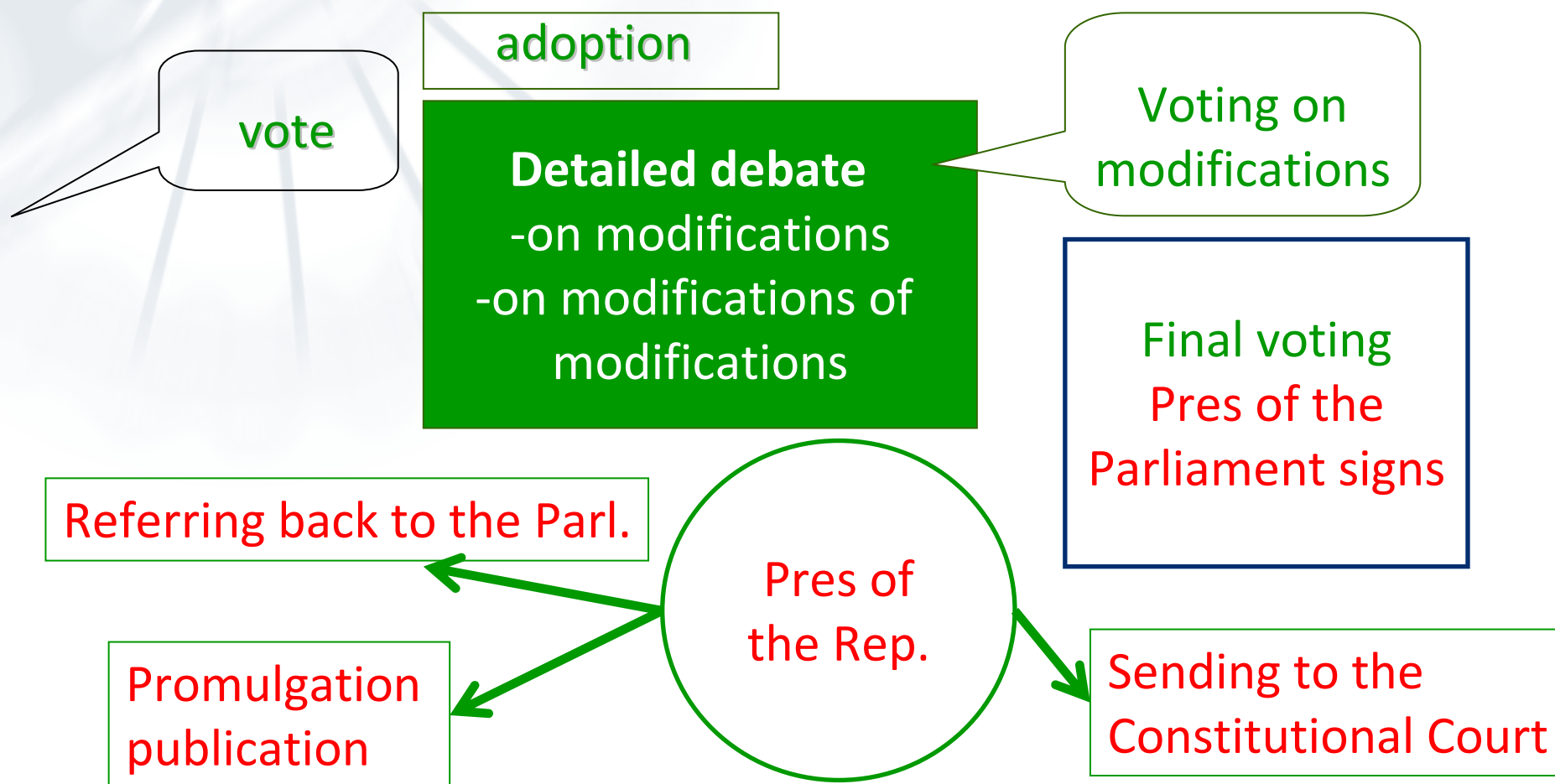
Pres of the
Parliament

Putting to agenda

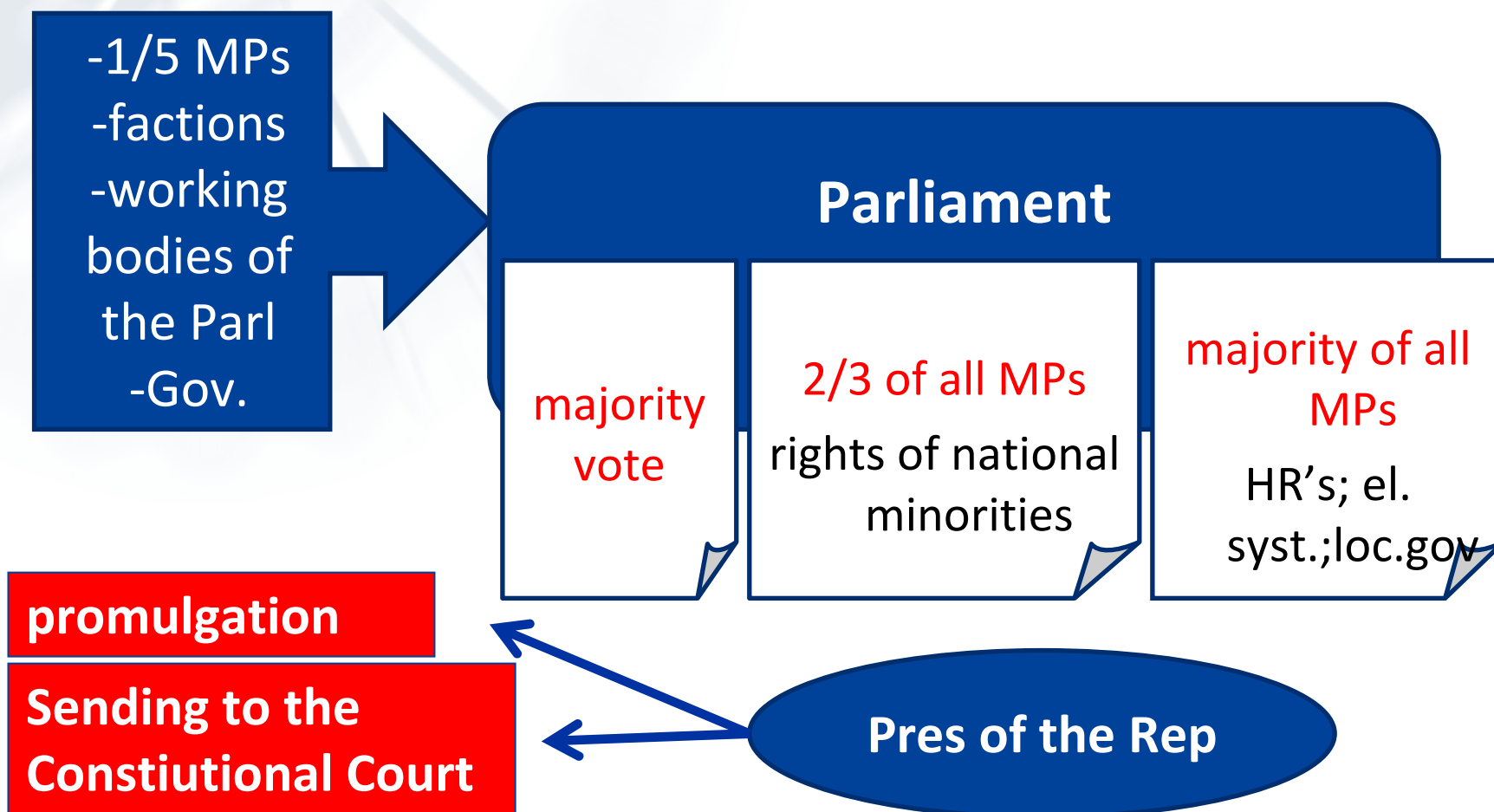
General debate
necessity
regulatory principles
amendments

vote

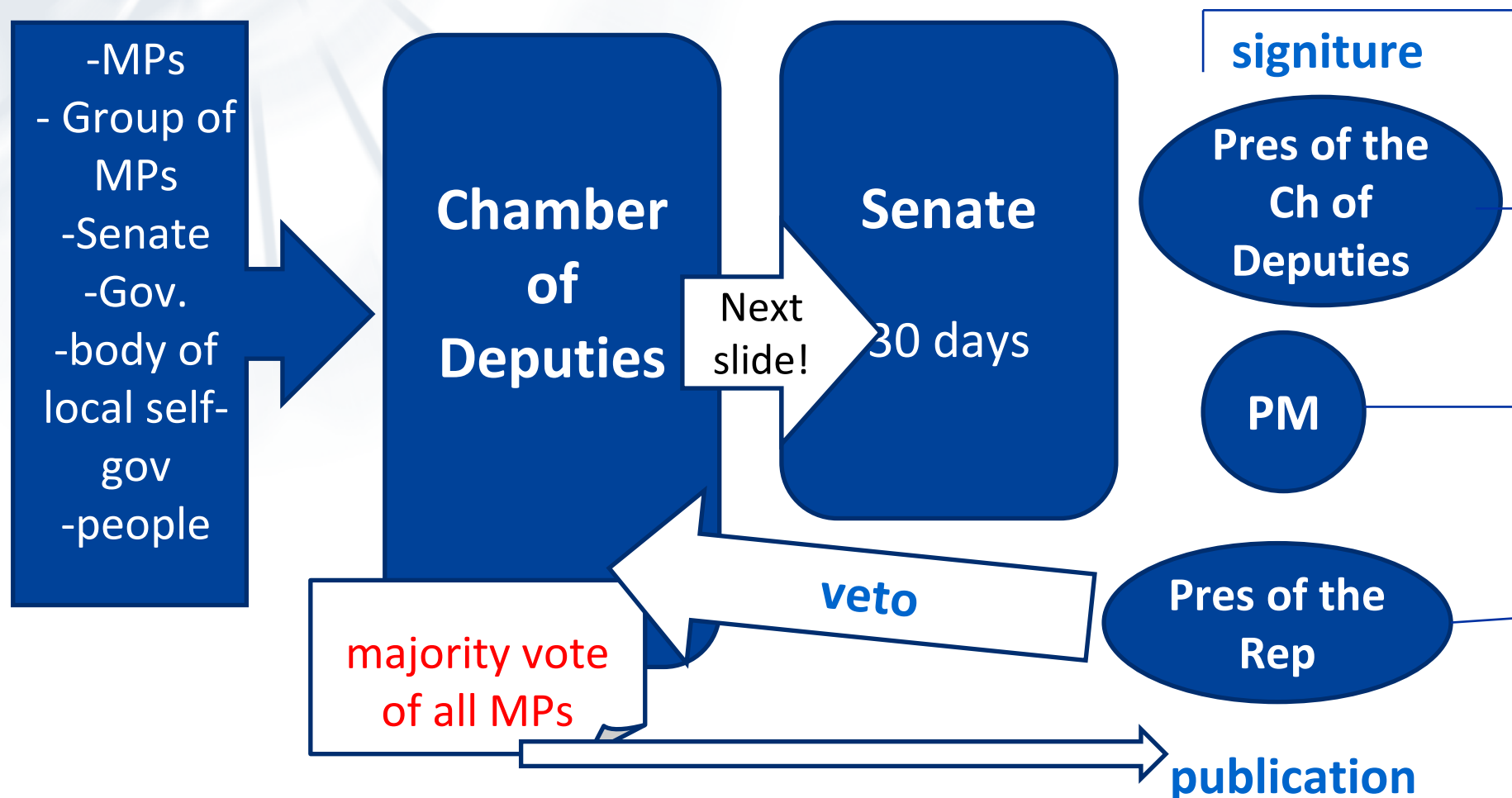
Hungary – Legislation



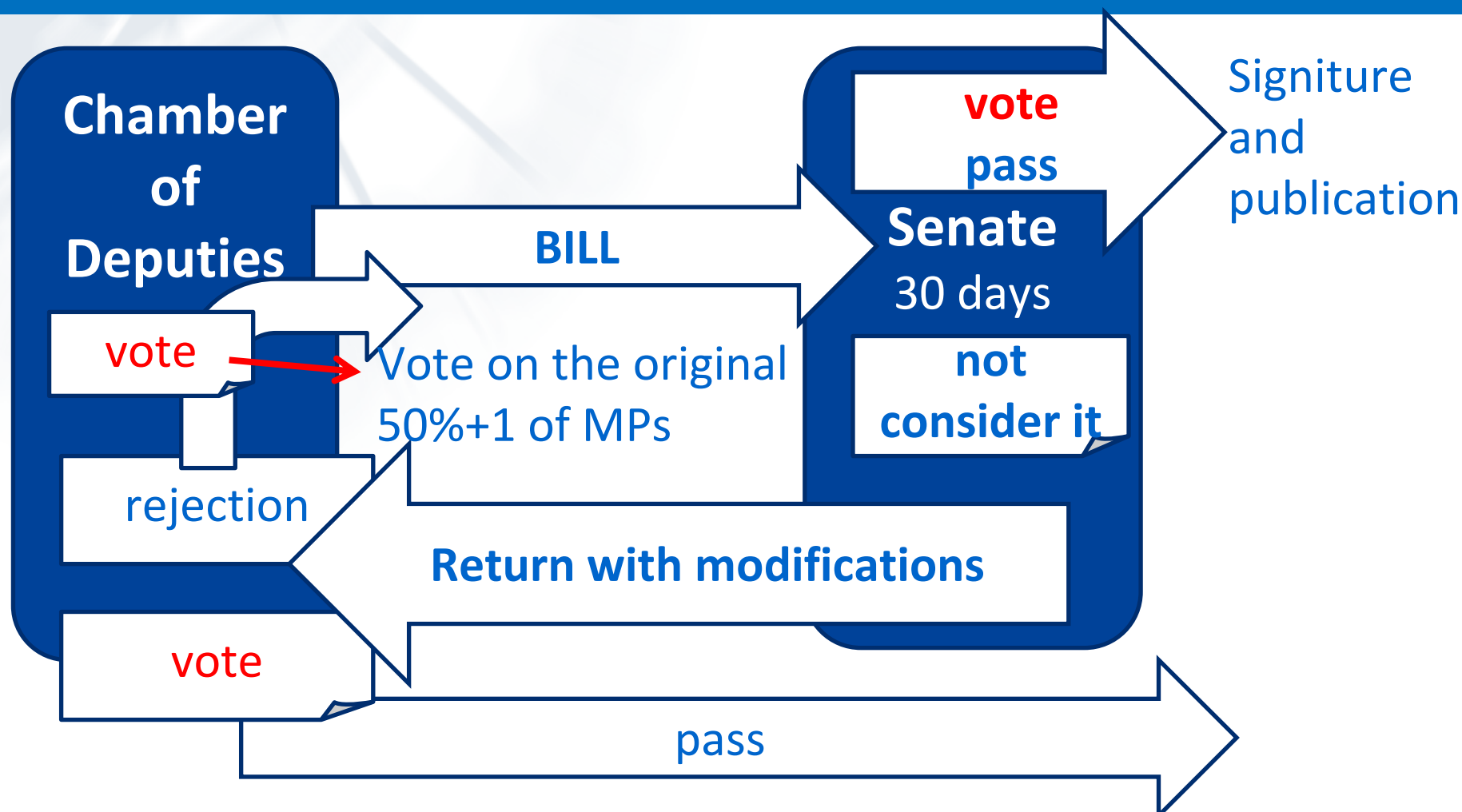
Croatia – Legislation



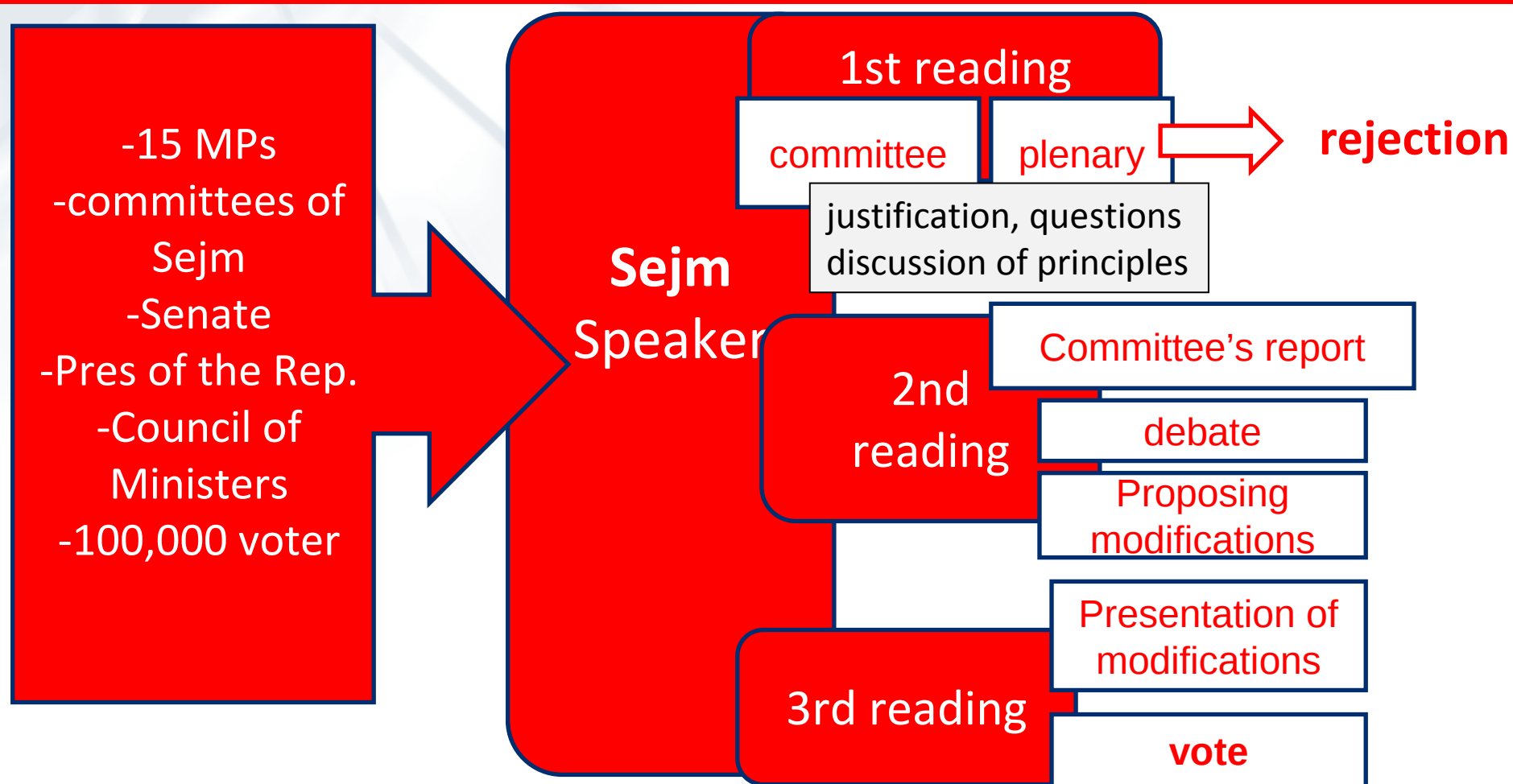
Czech Republic – Legislation



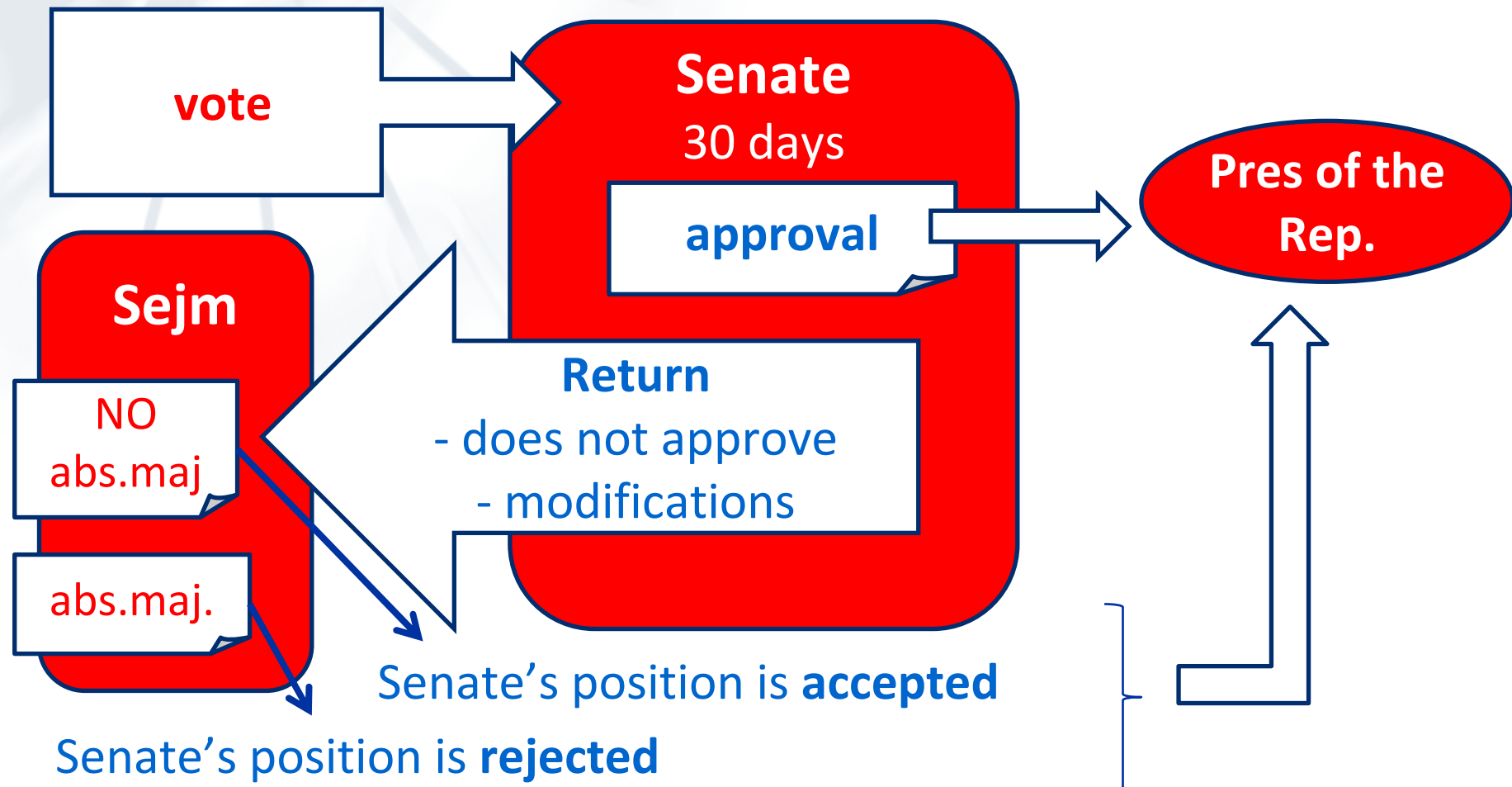
Czech Republic – Legislation



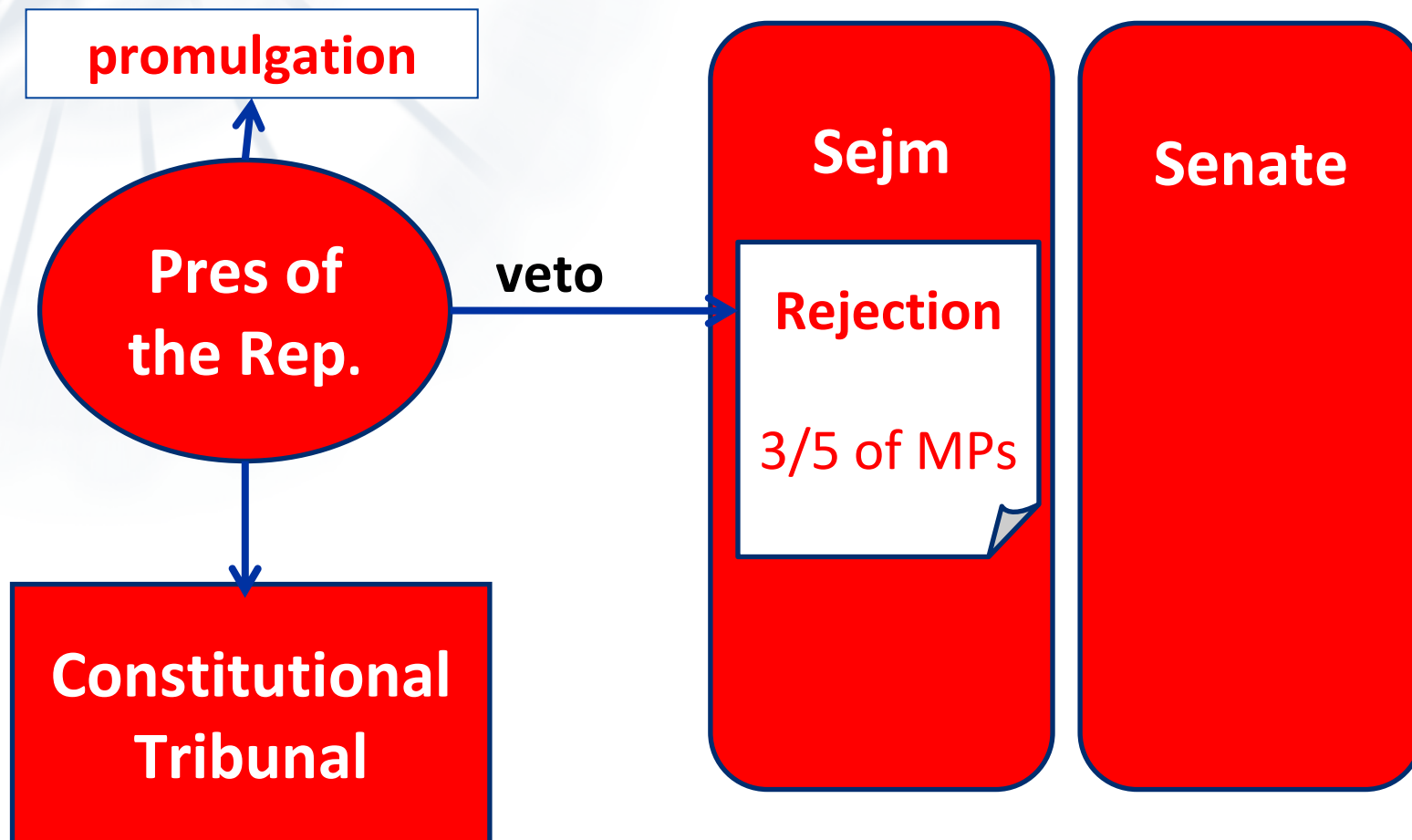
Poland – Legislation



Poland – Legislation



Poland – Legislation



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European integration

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Hungary

Czech Republic

Poland

Panel EU Constitutionalism has dealt with the topic!

- Governments (ministries) – more active role
- Parliaments
 - more and strengthened competences when exercising democratic control over governments
 - special committees
- Constitutional Courts

Poland – Constitutional Tribunal 2005

‘The essence of the legislative function is the possibility of influencing the shape of the law binding in the country. In consequence, the powers of Parliament relating to the influencing the content of the position adopted by Poland in the forum of the Council of the EU should be included within this very function. After the accession of Poland to the EU, the legislative competences have to be interpreted after all with due consideration of the new conditions for making law. As the regulations adopted by the organs of EU will be binding on the territory of Poland (partly directly, partly through implementation statutes), the expression of opinions on legislative proposals of the Union becomes a significant form of co-participation in the creation of EU law. Delegating some legislative competences to the organs of the European Community did not mean the disposal by national legislatures of their prerogative in this field’

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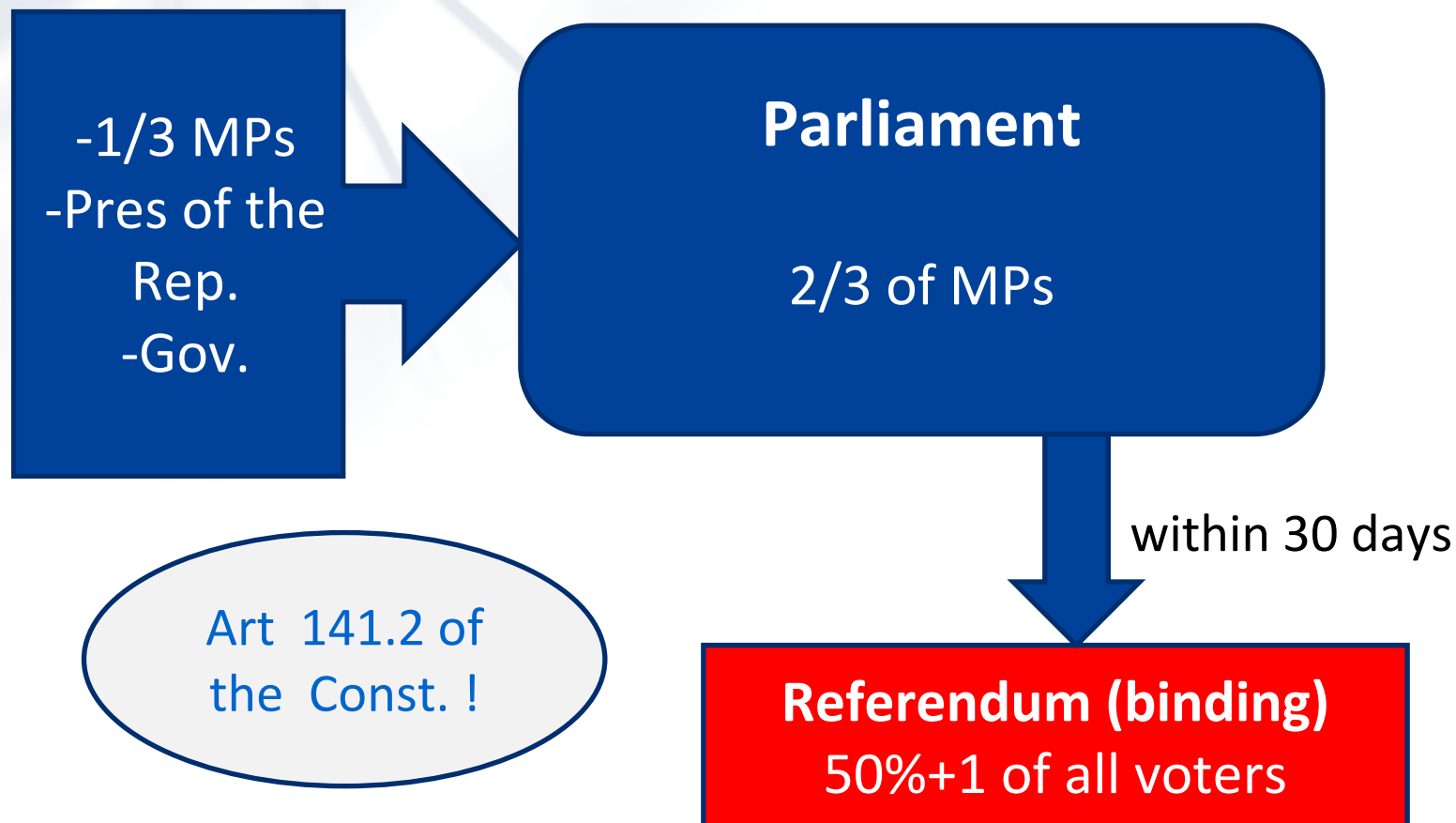
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Croatia

- 2001 – setting up a European Integration Committee by the Parliament
- Febr 2003 – submission of application
- June 2004 – status of candidate state
- October 2005 – negotiations
 - Acquis is divided into 35 chapters
 - All have been opened, some of them closed

Croatia – procedure for accession



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HU

- **int.treates:** P, Gov, Pres.of the Rep.
- **foreign policy:** Gov, P
- **representation:** Pres.of the Rep.

Foreign policy

PL

- **int.treates:** P+Gov+Pres.of the Rep.
- **foreign policy:** P+Gov+Pres.of the Rep
- **representation:** Pres.of the Rep.

CRO

- **int.treates:** P, Gov, Pres.of the Rep.
- **foreign policy:** Gov, Pres.of the Rep.
- **representation:** Pres.of the Rep.

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Czech Republic – foreign policy

International treaty

- Gov, Pres.of the Rep
- approval of both Chambers, IF it affects HR's, alliances (Art 49 Cost)
- Constitutional Court – a priori norm control
 - ratification of treaty under Art 10a and 49 Cost
 - once: Lisbon Treaty

Foreign policy: Gov, P

Representation: Pres.of the Rep.

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Budgetary issues

HU – P, Gov

- social-economic plan
- adoption of budget

CZ – P, Gov

- adoption of budget
- procedure is regulated in the Const
- failure (Ch of Deputies) prior to 1st Jan – stop-gap budget (1/12 of the previous calendar year)

CRO – P, Gov

- adoption of budget
- same legislative procedure
- if not adopted (120 days) - Parl may be dissolved

PL – P, Gov

- adoption of budget
- if not adopted (4 months) – Parl may be dissolved



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Thank you for your attention!