



## THE EUROPEAN PARLIAMENT: ELECTORAL PROCEDURES

The procedures for electing the European Parliament are governed both by European legislation defining rules common to all Member States and by specific national provisions which vary from one state to another. The common rules lay down the principle of proportional representation and certain incompatibilities with a mandate as an MEP. Many other important matters, such as the exact electoral system used and the number of constituencies, are governed by national laws.

### LEGAL BASIS

Articles 20, 22 and 223 of the Treaty on the Functioning of the European Union (TFEU).

### COMMON RULES

#### A. Principles

The founding Treaties stated that Members of the European Parliament (MEPs) would initially be appointed by the national parliaments, but made provision for election by direct universal suffrage. The Council implemented this provision with the Act of 20 September 1976.

In 1992 the Maastricht Treaty provided that elections must be held in accordance with a uniform procedure and that Parliament should draw up a proposal to this effect, for unanimous adoption by the Council. However, since the Council was unable to agree on any of the proposals, the Treaty of Amsterdam introduced the possibility of adopting ‘common principles’ instead. Council Decision 2002/772/EC, Euratom modified the 1976 Act accordingly, introducing the principles of proportional representation and incompatibility between national and European mandates.

With the Treaty of Lisbon, the right to vote and to stand as a candidate acquired the status of a fundamental right (Article 39 of the Charter of Fundamental Rights of the European Union).

#### B. Application: common provisions in force

##### 1. Right of non-nationals to vote and to stand as candidates

According to Article 22(2) TFEU, ‘every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides’. The arrangements for implementing this right were adopted in Directive 93/109/EC.

##### 2. Electoral system

The elections must be based on proportional representation and use either the list system or the single transferable vote system (Council Decision 2002/772/EC, Euratom).

### **3. Incompatibilities**

The office of Member of the European Parliament is incompatible with that of member of the government of a Member State, member of the Commission, judge, advocate-general or registrar of the Court of Justice, member of the Court of Auditors, member of the European Economic and Social Committee, member of committees or other bodies set up pursuant to the Treaties for the purpose of managing the Union's funds or carrying out a permanent direct administrative task, member of the Board of Directors, Management Committee or staff of the European Investment Bank, and active official or servant of the institutions of the European Union or of the specialised bodies attached to them. Further incompatibilities were added in 1997 (member of the Committee of the Regions) and in 2002 (member of the Court of First Instance – now General Court –, member of the Board of Directors of the European Central Bank, Ombudsman of the European Union and, most importantly, member of a national parliament).

## **ARRANGEMENTS SUBJECT TO NATIONAL PROVISIONS**

In addition to these common rules, the electoral arrangements are governed by national provisions that can vary a great deal.

### **A. Electoral system**

Pursuant to the 2002 Council Decision, all Member States must use a system based on proportional representation. A Member State may set a minimum threshold, which may not exceed 5%, for the allocation of seats. Most new Member States apply a 5% or 4% threshold. The German constitutional court has declared the country's hitherto existing 5% threshold for European elections to be unconstitutional.

### **B. Constituency boundaries**

In European elections most of the Member States function as single constituencies. However, four Member States (France, Ireland, Italy and the United Kingdom) have divided their national territory into a number of regional constituencies.

Constituencies of merely administrative interest or distributive relevance within the party lists exist in Belgium (4), Germany (16, only for the CDU/CSU), the Netherlands (19) and Poland (13). In Belgium one seat is reserved for election by the German-speaking minority.

### **C. Entitlement to vote**

The voting age is 18 in all Member States except Austria, where it is 16.

#### **1. Voting by non-nationals in their host country**

Citizens of the Union residing in a Member State of which they are not nationals have the right to vote in elections to Parliament in their state of residence, under the same conditions as nationals (Article 22 TFEU). The concept of residence still varies from one state to another. Some countries require voters to have their domicile or usual residence on electoral territory (Estonia, Finland, France, Poland, Romania and Slovenia), to be ordinarily resident there (Cyprus, Denmark, Greece, Ireland, Luxembourg, Slovakia, Sweden and the United Kingdom) or to be listed on the population register (Belgium and the Czech Republic).

#### **2. Voting by non-resident nationals in their country of origin**

In the United Kingdom the right to vote of citizens resident abroad is confined to certain categories (e.g. citizens who have lived abroad for less than 15 years). Belgium, Denmark, Greece, Italy and Portugal grant the right to vote only to those of their non-resident nationals who are living in another EU Member State. Austria, Finland, France, the Netherlands, Spain

and Sweden grant their nationals the right to vote irrespective of their country of residence. Germany grants this right to citizens who have lived in another country for less than 25 years. In Bulgaria, Ireland and Slovakia the right to vote is confined to EU citizens domiciled on their national territory.

#### **D. Right to stand for election**

Apart from the requirement of citizenship of an EU Member State, which is common to all the Member States (with the exception of the UK, where certain Commonwealth citizens are also allowed to stand for election to the European Parliament), conditions vary from one country to another.

##### **1. Minimum age**

The minimum age for standing for election is 18 in most Member States, the exceptions being Belgium, the Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Poland, Slovakia and the United Kingdom (21), Romania (23), and Italy and Cyprus (25).

##### **2. Residence**

In Luxembourg, a national of another Member State needs at least two years' residence in order to stand for election to the European Parliament. Also, a list may not comprise a majority of candidates who do not have Luxembourg nationality.

#### **E. Nominations**

In some Member States (the Czech Republic, Denmark, Estonia, Germany, Greece, the Netherlands and Sweden) only political parties and political organisations may submit nominations. In all other Member States nominations may be submitted if they are endorsed by the required number of signatures or electors, and in some cases a deposit is also required.

#### **F. Election dates**

The European elections in 2009 took place between 4 and 7 June, the exact day being chosen in accordance with national traditions. The 2004 elections were held between 10 and 13 June.

The next elections will take place in 2014. With its decision of 14 June 2013, the Council has moved the dates, originally set for June, to 22-25 May, so as to avoid a clash with the Whitsun holidays.

#### **G. Voters' options to alter the order of candidates on lists**

In some Member States (e.g. France, Germany, Greece, Portugal and Spain, as well as the United Kingdom excluding Northern Ireland) under the list system voters cannot alter the order in which candidates appear on a list. In others (e.g. Austria, Belgium, Denmark, Finland, Croatia, Italy, Luxembourg, the Netherlands and Sweden) the order on the list may be changed using transferable votes. In Luxembourg voters may even vote for candidates from different lists, while in Sweden they may also add or remove names from the lists. The list system is not used in Ireland, Malta or Northern Ireland.

#### **H. Allocating seats**

While most Member States have adopted the d'Hondt rule for allocating seats, there are many exceptions. For instance, Germany uses the divisor method, with a standard truncation method called Sainte-Laguë/Schepers, while in Italy seats are allocated by the 'whole electoral quota and largest remainder' method, and in Ireland and Malta by means of the single transferable vote (STV-Droop) system.

## **I. Validation of results, and rules on election campaigns**

In Denmark, Germany and Luxembourg the national parliament validates the election results; in Slovenia, the National Assembly confirms the election of MEPs. In Austria, Belgium, the Czech Republic, Estonia, Finland, Italy, Ireland and the United Kingdom it is up to the courts to do so, while both options are provided for in Germany. In Spain the result is validated by the 'Junta Electoral Central'; in Portugal and Sweden a validation committee carries out this task. In France the Council of State is competent to adjudicate disputes concerning the elections, but the Minister of the Interior also has the right to do so on the grounds that the legally stipulated forms and conditions have not been observed.

In most Member States the rules on election campaigns (permitted funding, broadcasting time slots, publication of poll results) are the same as those applying to national elections.

## **J. Filling seats vacated during the electoral term**

In some Member States (Austria, Denmark, Finland, France, Croatia, Italy, Luxembourg, the Netherlands and Portugal) seats falling vacant are allocated to the first unelected candidates on the same list (possibly after adjustment to reflect the votes obtained by the candidates). In Belgium, Ireland, Germany and Sweden vacant seats are allocated to substitutes. In Spain and Germany, if there are no substitutes, account is taken of the order of candidates on the lists. In the United Kingdom by-elections are held. In Greece vacant seats are allocated to substitutes from the same list; if there are not enough substitutes, by-elections are held. In some Member States (notably Austria and Denmark) MEPs have the right to return to the Parliament once the reason for their departure has ceased to apply.

# **ROLE OF THE EUROPEAN PARLIAMENT**

Since the 1960s Parliament has repeatedly voiced its opinion on issues of electoral law and has put forward proposals in accordance with Article 138 of the EC Treaty. The continuing lack of a genuinely uniform procedure for election to Parliament shows how difficult it is to harmonise different national traditions. The option provided for in the Treaty of Amsterdam of adopting common principles has only partially enabled these difficulties to be overcome. The Treaty of Lisbon (Article 223 TFEU) still provides a legal basis for the adoption of a uniform procedure, requiring the consent of Parliament.

In 1997 Parliament made a proposal for a uniform electoral procedure; its substance was incorporated into the 2002 Council decision, with the exception of the proposed establishment of a single European constituency for filling 10% of the seats. At present the European constituency is still the subject of debate; the intention is to adopt a Parliament position with a view to opening negotiations with the Council.

On 22 November 2012 Parliament adopted a resolution urging the European political parties to nominate candidates for the position of President of the Commission, so as to reinforce the political legitimacy of both Parliament and the Commission. The Commission subsequently adopted a recommendation to this effect, also calling on national political parties to display their affiliation with European political parties during the electoral campaign.

In 2003 a system for the funding of European political parties was established (Regulation EC No 2004/2003) which, after being amended in 2007, also allowed for the establishment of political foundations at EU level. Since funding for election campaigns remains low, and continues to be subject to national regulation, Parliament is pursuing a revision of this regulation.

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