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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 a Member of the European Parliament. Many other important matters, such as the exact electoral system used and the number of constituencies, are governed by national laws.

LEGAL BASIS

Article 14 of the Treaty on European Union (TEU) and Articles 20, 22 and 223 of the Treaty on the Functioning of the European Union (TFEU).

Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage^[1], Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 amending this Act.

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. This provision was implemented by the Council before the first direct elections of 1979 through the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage. It profoundly changed the institutional position of the European Parliament and is the founding document of a more democratic EU.

In 1992 the Maastricht Treaty provided that elections must be held in accordance with a uniform procedure and that the European 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’. 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).

[1]OJ L 278, 8.10.1976.

B. Application: common provisions in force

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

According to Article 22(2) of the 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 under Council Directive 93/109/EC.

In accordance with Article 6 of Council Directive 93/109/EC, as amended by Council Directive 2013/1/EU, ‘any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies, has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament’.

2. Electoral system

The elections must be based on proportional representation and use either the list system or the single transferable vote system (Article 1 of Council Decision 2002/772/EC, Euratom).

3. Incompatibilities

According to Article 7 of the 1976 Act (as amended by Decision 2002/772/EC, Euratom of the Council of 25 June 2002 and of 23 September 2002), 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 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; the electoral system can therefore be considered a polymorphic electoral system.

A. Electoral system and thresholds

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 (Article 2A). Several Member States apply a threshold: this is set at 5% in France (depending on the constituency), Lithuania, Poland, Slovakia, the Czech Republic, Romania and Hungary; at 4% in Austria, Italy and Sweden; at 3% in Greece; and at 1.8% in Cyprus.

B. Constituency boundaries

In European elections most of the Member States function as single constituencies. However, five Member States (Belgium, 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 the Netherlands (19), Germany (16, only in the case of the CDU/CSU) and Poland (13).

C. Entitlement to vote

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

Voting is compulsory in four Member States (Belgium, Luxembourg, Cyprus and Greece): the obligation to vote applies to nationals as well as to registered non-national EU citizens.

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 the European Parliament in their state of residence, under the same conditions as nationals (Article 22 of the TFEU). However, the concept of residence still varies from one Member State to another. Some countries require voters to have their domicile or usual residence within the electoral territory (Estonia, Finland, France, Germany, Poland, Romania and Slovenia), to be ordinarily resident there (Cyprus, Denmark, Greece, Ireland, Luxembourg, Slovakia, Sweden and the UK) or to be listed in the population register (Belgium and the Czech Republic). To be eligible to vote in Luxembourg, Cyprus and the Czech Republic, EU citizens must also satisfy a requirement for a minimum period of residence.

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

Belgium and Greece grant the right to vote only to those of their non-resident nationals who are living in another Member State, while Denmark and Italy restrict the right to vote of non-resident nationals living in a third country to specific categories. Germany grants the right to vote in elections to the European Parliament to citizens who have been living in another EU country for at least three months, provided that they are enrolled on the German electoral register. In Bulgaria, Ireland and Slovakia the right to vote is confined to EU citizens domiciled on their national territory.

The fact that some non-nationals are able to vote both in their host country and as nationals in their country of origin could give rise to abuse (double voting, which is a criminal offence in some Member States). However, enforcement remains difficult, as data reconciliation between the electoral authorities of the Member States is lacking.

D. Right to stand for election

The right to stand as a candidate in elections to the European Parliament in any other Member State of residence is also an application of the principle of non-discrimination between nationals and non-nationals and a corollary of the right to move and reside freely. Any person who is a citizen of the Union and not a national of their Member State of residence, but satisfies the same conditions in respect of the right to stand as a candidate as that state imposes by law on its own nationals has the right to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights (Article 3 of Council Directive 93/109/EC).

It was proposed that the European Parliament should hold some of its seats (for example, those that become available after the UK's departure) in reserve for MEPs representing pan-European

constituencies taken from transnational lists, but the proposal was rejected by Parliament in its resolution of 7 February 2018 on the composition of the European Parliament^[2].

Apart from the requirement of citizenship of a 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. No person may stand as a candidate in more than one Member State in the same election (Article 4 of Council Directive 93/109/EC). The minimum age to stand for election is 18 in most Member States, the exceptions being Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Ireland, Latvia, Lithuania, Poland and Slovakia (21), Romania (23), and Italy and Greece (25).

E. Nominations

In some Member States (the Czech Republic, Denmark, 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. European Council Decision 2013/312/EU of 28 June 2013 establishing the composition of the European Parliament lays down how the 751 seats provided for in Article 14(2) of the TEU are to be filled, applying the principle of ‘degressive proportionality’ to the individual share, Member State by Member State (1.3.3).

F. Election dates

Pursuant to Articles 10 and 11 of the 1976 Act, as amended by Council Decision 2002/772/EC, Euratom, elections to the European Parliament are held within the same period starting on a Thursday morning and ending on the following Sunday; the exact date and times are fixed by each Member State. In 1976 it was the Council, acting unanimously after consulting the European Parliament, which determined the electoral period for the first elections in 1979. Subsequent elections since 1979 took place in the corresponding period during the last year of the five-year period referred to in Article 5 of the Act (1.3.1).

Concerning the 2014 elections, the Council, by its decision of 14 June 2013, moved the dates, originally set for June, to 22-25 May, so as to avoid a clash with the Whitsun holidays, applying the following provision of Article 11: ‘Should it prove impossible to hold the elections [...] during that period, the Council acting unanimously shall, after consulting the European Parliament, determine, at least one month before the end of the five-year term referred to in Article 5, another electoral period which shall not be more than two months before or one month after the period fixed pursuant to the preceding subparagraph.’ Subsequent elections shall take place in the corresponding period in the final year of the five-year period (Article 10 of the 1976 Act). This would mean that the 2019 elections would take place during the week of 23 to 26 May.

G. Voters’ options to alter the order of candidates on lists

In most Member States, voters may cast preferential votes to change the order of the names on the list. However, in nine Member States (Germany, Spain, France, Greece, Portugal, the UK, Estonia, Hungary and Romania) the lists are closed (no preferential vote). In Luxembourg voters may even vote for candidates from different lists, while in Sweden they may add or remove names from the list. In Malta, Ireland and Northern Ireland the voters list the candidates in order of preference (single transferable vote).

[2]Texts adopted, P8_TA(2018)0029.

H. Validation of results, and rules on election campaigns

In Denmark and Luxembourg the national parliament validates the election results; in Slovenia, the National Assembly confirms the election of MEPs. In Germany, the final results are published by the Federal Returning Officer one day after the vote. In Austria, Belgium, the Czech Republic, Estonia, Finland, Italy, Ireland, Slovenia and the UK it is up to the courts to do so, and this is also the case in Germany if the parliamentary ruling is challenged. In Spain the result is validated by the ‘Junta Electoral Central’; in the Netherlands, Portugal and Sweden a validation committee carries out this task.

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.

According to Rule 4 and Articles 5 and 13 of the 1976 Act, Members of the European Parliament are elected for a term of five years. This period begins at the opening of the first session following each election. The opening of the first session following the 2014 election was on Tuesday 1 July 2014.

I. Filling seats vacated during the electoral term

In some Member States (Austria, Denmark, Finland, France, Croatia, Italy, Luxembourg, the Netherlands, Portugal and the UK), 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 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 (e.g. Austria) MEPs have the right to return to the European Parliament once the reason for their departure has ceased to apply. As regards the UK, given that the two-year time frame for the negotiation and conclusion of a withdrawal agreement is due to end on 29 March 2019, it will no longer be a member of the EU at the time of the elections in 2019 unless the European Council, in agreement with the UK, unanimously decides to extend that period (Article 50(3) of the TEU). The UK’s 73 seats will not become vacant following its departure, but will cease to exist ([1.3.3](#)).

ROLE OF THE EUROPEAN PARLIAMENT

Since the 1960s the European 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 lack of a genuinely uniform procedure for election to the European 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 ambition set out in Article 223 of the TFEU of adopting a uniform procedure, requiring the consent of the European Parliament, has yet to be fulfilled. Parliament’s continuing efforts to modernise and ‘Europeanise’ the common electoral procedure led in 1997 to a proposal for a uniform electoral procedure; its substance was incorporated into the 2002 Council decision. The proposed European constituency (establishing a single European constituency to fill 10% of the seats) is still the subject of debate. On 7 February 2018 Parliament voted in favour of reducing the number of its seats from 751 to 705 after the UK leaves the EU (which may be before the 2019 elections).

On 22 November 2012 the European 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. These arrangements

were implemented ahead of the 2014 elections and, for the first time, lead candidates ran in the 2014 elections. Finally, as a result of the 2014 elections, one of those candidates, Jean-Claude Juncker, was elected as Commission President on 22 October 2014 by the European Parliament. In its decision of 7 February 2018 on the revision of the Framework Agreement on relations between the European Parliament and the European Commission^[3], Parliament stated that it is ready to reject any candidate for President of the European Commission who is not nominated as a [lead candidate](#) ('Spitzenkandidat') of a European political party ahead of the 2019 European elections.

In 2003 a system for the funding of European political parties was established which also allows for the establishment of political foundations ([1.3.3](#)) at EU level (Regulation (EU, Euratom) No 1141/2014 of 22 October 2014 on the statute and funding of European political parties and European political foundations).

Udo Bux
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[3]Texts adopted, P8_TA(2018)0030.