

Prisoners' voting rights in European Parliament elections

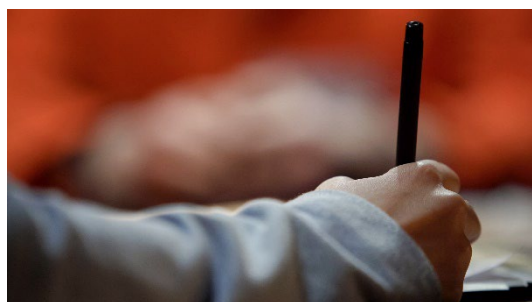
SUMMARY

In the European Union, provisions concerning prisoners' right to vote vary from one Member State to another. While a significant number of EU Member States place no restrictions at all on prisoners voting, many Member States deprive inmates of the right to vote, depending on the type of offence committed and/or the length of their sentence. A small number of Member States deprive inmates of the right to vote permanently, even after they have served their sentences. In those cases where inmates do have the right to vote, the process is facilitated in various ways, including postal votes, proxy votes and the creation of special polling stations.

The arguments in favour and against disenfranchisement on account of a criminal conviction are well known. Those in favour argue that depriving a person of the right to vote is part of the punitive process, while those against argue that voting is a right linked to citizenship and when individuals are convicted and lose their right to liberty, they do not cease to exist as citizens. They argue that deprivation of the right to vote should not be part of the punitive process because there is no evidence supporting the claim that disenfranchisement acts as a significant deterrent.

The current European Electoral Act on elections to the European Parliament does not provide for a uniform electoral system applicable in all the EU Member States. It contains a set of common principles that are to be upheld in the different domestic laws applicable to European elections. It does not define expressly and precisely who is entitled to vote or stand for election. Nor does it contain specific provisions concerning the exercise of the right to vote of prisoners. The definition of such provisions remains within the competence of each Member State. This briefing looks at the international and European standards applicable to the right to vote of prisoners. It also examines the existing provisions in the 27 EU Member States in relation to the European Parliament elections.

This briefing is one in a [series of publications](#) looking ahead to the 2024 European elections.



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Introduction

Disenfranchisement broadly means depriving someone of a legal right or privilege. Nowadays the term is often used to mean taking away the right to vote from a person or a group. Reasons for this can include residence abroad, a criminal conviction, intellectual disability or mental illness.

There are several [arguments](#) for and against **disenfranchisement on account of a criminal conviction**. Those in favour argue that depriving a person of the right to vote is part of the punitive process. An individual who commits a crime so serious as to warrant imprisonment, denies their role as a citizen and the sentence of imprisonment gives 'vivid material form to the [exclusion](#) from civic life that he has brought upon himself'. It is also argued that where very large prisons are located, the votes of the offenders could influence the political setting and ultimately regulations applicable to the local community.¹ Some also argue that disenfranchisement could act as a [deterrent](#) to committing a crime, although there is not much evidence to support this.

Those against disenfranchisement argue that voting is a right linked to citizenship and that when individuals are convicted, they lose the right to liberty, but [remain citizens](#). Those not subject to a life sentence will go back to their communities, so depriving them of the right to vote could undermine the rehabilitation aspect of the sentence. The fact that prisoners could still participate in the democratic life of a country by expressing their political preference would promote civic responsibility. Moreover, a blanket and automatic disenfranchisement on account of criminal convictions would risk disproportionately affecting certain categories of people, such as [ethnic minorities](#) when they are over represented in the penitential system or when racial disparities are present in the judicial system. Disenfranchisement of prisoners would disproportionately affect the voting rights of already disadvantaged groups, perpetuating their marginalisation from political and social life.²

When prisoners can vote, **voter turnout remains low**. A 2020 [report](#) of the Venice Commission pointed to the lack of voting facilities in prisons as one of the problems impacting the lower turnout. It also stressed that pre-trial detainees should always be allowed to vote because they are presumed innocent until proven guilty.³

International and European legal provisions

The right to political participation, including the right to vote and to stand for election without discrimination, is enshrined in several international human rights documents. The [Universal Declaration of Human Rights](#), adopted by the UN General Assembly in 1948, provides for the right for everyone to take part in the government of their country (Article 21). Article 10 recognises that 'everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'. The right to vote is also provided for in Article 25 of the [International Covenant on Civil and Political Rights](#) (ICCPR), adopted in 1966 and legally binding on the [173](#) State Parties. Although the covenant does not include any specific provision for the right to vote of prisoners, Article 2 states that each individual should enjoy the rights recognised in the covenant with no 'distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. A similar wording is used in Article 2 of the Universal Declaration of Human Rights. In 1990 the UN Assembly recognised in its [Resolution 45/111](#) on the basic principles for the treatment of prisoners that: 'Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, ... the International Covenant on Civil and Political Rights' and other rights set out in other UN covenants (para. 5 of the Resolution).

Already in 1987, in its [Recommendation No R\(87\)3](#) on European Prison Rules, the **Council of Europe (CoE)** recognised that the deprivation of liberty is a punishment in itself. Therefore, in

principle, the conditions of imprisonment should not aggravate the inherent suffering of the prisoners. The **1990 CSCE/OSCE Copenhagen Document** outlines a number of human rights and fundamental freedoms and requires OSCE countries to 'guarantee universal and equal suffrage to adult citizens' (paragraph 7(3)), while paragraph 24 clarifies that the human rights and fundamental freedoms could be subject to restrictions only by law and consistently with the obligations under international law, in particular the ICCPR and the Universal Declaration of Human Rights. Neither the ICCPR nor the Copenhagen Document, both of which clearly outline obligations related to universal suffrage for adult citizens, mention exceptions for people who have been convicted of crimes.⁴

In 1996, the **UN Human Rights Committee**, in its **General Comment 25** on the 'Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service' asserted that limitations to the right to vote should be objective and reasonable. In particular when 'conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence' (para. 14). The **2002 Code of Good Practice in Electoral Matters**, adopted by the Venice Commission, defines some cumulative conditions under which the right to vote may be removed: the deprivation must be provided for by law and based on a criminal conviction for a serious offence; the proportionality principle must be observed; and, the withdrawal of political rights may only be imposed by express decision of a court of law.

European case law

The member states of the **CoE** adopted the **European Convention on Human Rights (ECHR)** in 1950. In **Article 3 of Protocol No 1** to the ECHR, the right to free elections has been interpreted by the European Court of Human Rights (ECtHR) as a right to vote and a right to stand for election (*Mathieu-Mohin and Clerfayt v Belgium*, 1987, paras. 48 to 51; *Ždanoka v Latvia* [GC], 2006, para. 102). The Court considers both rights as central to democracy and the rule of law (*Hirst v United Kingdom*). Article 3 of **Protocol No 1** ECHR differs from other legal provisions of the convention in so far it requires the contracting parties to hold elections rather than recognising a right to free elections to individuals. As it does not specify when and under which conditions access to free elections can be restricted, the contracting parties retain some discretion, although the Court retains the power to determine in the last resort whether the requirements of Article 3 of Protocol No 1 have been met. To uphold the principle of universal suffrage, the contracting parties must **justify** the loss of the vote by individuals or categories of persons. Against this backdrop, the **ECtHR**, through its case law, has clarified the scope of application of Article 3, including the fact that the European Parliament is part of the 'legislature' within the meaning of Article 3 (*Occchetto v Italy*, 2013).

The **ECtHR** has consistently assessed restrictions to the right to vote introduced by member states against two main criteria: whether the measure was arbitrary or lacked proportionality and whether the restriction interfered with the free expression of the opinion of the people.⁵ In fact, the discretion enjoyed by the states parties is not unlimited and cannot result in the prohibition on an entire group of people from taking part in political life, especially when members of the legislature are to be elected (*Aziz v Cyprus*, 2004). Any restriction should have a legitimate scope and pass a proportionality test.⁶

In 2005, in *Hirst v United Kingdom*, the Court stated that depriving all prisoners of their right to vote would result in a state of 'civic death',⁷ which is not acceptable in a modern society committed to the principle of democracy and equality. The fact that convicted people are deprived of their liberty does not mean, according to the Court, that they cannot enjoy other fundamental rights recognised by the Convention compatible with their specific situation. For instance, in other rulings, the Court has stated that imprisonment is not 'sufficient to justify the imposition of blanket restrictions on the right of a prisoner to correspond' (*Silver and Others v the United Kingdom*, 1983), or to have effective access to a lawyer or to court (*Campbell and Fell v the United Kingdom*, 1984). In *Hirst v United Kingdom*, the Court also **considered** that restrictions introduced by the states parties cannot 'curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness', that they must be 'imposed in pursuit of a legitimate aim', and that the means

employed must not be disproportionate (para. 62). This means that any limitation to the right to vote should be imposed after having considered the length of sentence and the nature and gravity of the offence. Disenfranchisement is a severe limitation and it requires, according to the Court, a 'discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned' ([para. 71](#)).

The ECtHR ruled along similar lines in [Greens and M.T. v the United Kingdom](#) in 2010, in [Firth and Others v the United Kingdom](#) in 2014 (this case concerned specifically prisoners unable to vote in elections of the European Parliament in 2009), in [McHugh and Others v the United Kingdom](#),⁸ in [Murat Vural v Turkey](#) in 2014, and in [Kulinski and Sabev v Bulgaria](#) in 2016. In [Frodl v Austria](#), the ECtHR stressed that '**disenfranchisement [is] an exception** even in the case of convicted persons' (para. 35), therefore it is necessary that the restriction is not applied as a blanket ban, that a decision be taken by a judge on the basis of the individual circumstances, and that a link exists between the crime committed and the restriction applied.

In 2012 in [Scoppola v Italy](#), the ECtHR did not find a violation of Article 3. It recognised **that States have a wide margin of appreciation** in deciding if and under which conditions some prisoners could be denied the right to vote (para. 83). The Court held that states could decide whether a ban should be imposed by the judge in individual cases, or could be imposed in general terms by the law. States also remain free to decide what kinds of crime should justify the ban (paras. 97 to 102).

The **Court of Justice of the European Union (CJEU)** has stated in a number of rulings that because the [European Electoral Act of 1976](#) does not define expressly and precisely who is entitled to vote and stand as candidate, this decision falls within the competence of each EU Member State ([Spain v United Kingdom](#), paras. 70 and 78 and [M. G. Eman and O. B. Sevinger v College van burgemeester en wethouders van Den Haag](#), paras. 43 and 45). In 2015, the CJEU ruled in [Delvigne v Commune de Lesparre Médoc and Préfet de la Gironde](#) and came to similar conclusions to those of the ECtHR in [Hirst v United Kingdom](#). Mr Delvigne was convicted of murder, given a 12-year prison sentence and subsequently deprived of his right to vote, in accordance with the relevant French law. Because of that, he could not register and vote in the European Parliament elections. Under [Article 267](#) of the Treaty on the Functioning of the European Union (TFEU), the referring court asked the CJEU about the interpretation of Articles [39](#) (Right to vote and to stand as a candidate at elections to the European Parliament) and [49](#) (Principles of legality and proportionality of criminal offences and penalties) of the [Charter of Fundamental Rights of the EU](#) (CFR) in order to assess whether the French national law depriving Mr Delvigne of the right to vote was compatible with the CFR. The CJEU noted that Article 52 CFR accepts that limitations may be imposed on the rights recognised by the CFR, including the right to vote, as long as the limitations meet certain conditions. The limitations must be provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, be made only if necessary and if they genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. Thus, the Court considered the restrictions imposed by the French law proportionate after they considered the nature and gravity of the crime committed and the duration of the punishment (paras. 49 and 58).

Domestic provisions in the 27 EU Member States⁹

Already modified on several occasions since its initial adoption in [1976](#), the current [European Electoral Act](#) does not provide for a uniform electoral system applicable in all the EU Member States in European elections. It contains a set of common principles that should be upheld by the different domestic laws applicable to European elections. The **EU Electoral Act does not contain any specific provision concerning the exercise of the right to vote of persons** with a disability, living in closed residential setting, or **in prison**. In May 2022, the European Parliament adopted a legislative [resolution](#) proposing to repeal the 1976 European Electoral Act and replace it with a new Council regulation seeking to harmonise a number of rules applicable to European elections. Among the [new features](#), Article 6 (on the exercise of the right to vote) of the draft legislative act

asks Member States to ensure that all EU citizens, including 'those serving a prison sentence in the Union, are able to exercise their right to vote in elections to the European Parliament' and that the measures 'shall be without prejudice to national law or court decisions handed down in accordance with national law'.

As of July 2023, **11 out of 27 EU Member States** have **no restrictions** on prisoners voting (Croatia, Cyprus, Czechia, Denmark, Finland, Ireland, Latvia, Lithuania, Slovenia, Slovakia, Sweden) and they grant incarcerated citizens the right to vote at European elections regardless of the crime committed or the length of the sentence. A number of Member States apply **some restrictions** linked to the length of the sentence and/or the kind of offence a person is convicted of (Austria, Belgium, France, Germany, Greece, Hungary, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania and Spain). **Two Member States** (Bulgaria and Estonia) **do not allow prisoners to vote**. When prisoners can vote, alternative voting procedures are put in place, such as voting **by post** (e.g. Denmark, Slovenia, Ireland, France), by **proxy** (e.g. France, Netherlands), by the establishment of a **special polling station** within the prison (e.g. Italy, Poland), by **voting in advance by post** (e.g. Finland). In some Member States **voting rights may not be automatically reinstated upon release from prison**; this is the case in Luxembourg, for example.

Belgium

Citizens who have committed certain crimes can be deprived, even for life, of their right to vote (Articles 6 to 9 of the [Electoral Code](#)). Those citizens serving a prison sentence who have the right to vote can do so via a proxy ([Article 147bis \(1\)4](#) of the Electoral Code). However, there have been reports of prisoners having problems accessing voting.¹⁰

Bulgaria

Article 42(1) of the [Constitution](#) states that all citizens who have reached the age of 18, with the exception of those placed under judicial interdiction or persons serving a custodial sentence, shall have the right to elect state and local government authorities and to vote in referendums. According to Article 27(2) of the [Election Code](#), the Directorate General of Implementation of Penal Sanctions at the Ministry of Justice shall provide the Directorate General of Civil Registration and Administrative Services at the Ministry of Regional Development and Public Works with data about the persons serving custodial sentences, for their automatic removal from the electoral rolls.

Czechia

According to Article 28(2) of Act No. 62/2003 Coll. on [Elections to the European Parliament](#) and on Amendments to Certain Acts, as amended, 'No later than 20 days before the date of the elections each local authority shall include in its list of voters for the elections to the European Parliament all voters not having a permanent address or place of residence within its administration area in compliance with special legal regulations but at the same time within its administration area'. The list includes those serving in the military service, staying in hospitals or institutional care, or 'being held in custody or in detention or serving a prison term and reported to the local authority by the commanding officer or director of such facility'. According to Article 36 the vote is ensured upon request by **mobile ballot box** in the presence of two members of the election commission concerned.

Denmark

According to [Chapter 9](#), section 78 of the Criminal Code, 'A punishable offence shall not involve the suspension of civil rights, including the right to carry on business under an ordinary licence or a maritime licence'. According to Part 8 (Advance Voting in Denmark) Section 54 (3) of the [Folketing \(Parliamentary\) Elections Act](#), which is applicable to European elections, voters being detained in an institution under the Prison and Probation Service or in a prison may cast an '**advance vote**'¹¹ in

the institution. Advance voting can take place within the last 3 weeks prior to election day, however, no later than on the last weekday but one preceding election day, Section 56(1).

Germany

According to the German Criminal Code ([Strafgesetzbuch, also in English](#)), Section 45(5), the court may deprive a convicted person of the right to vote on public matters for a period between 2 and 5 years if the law expressly so provides. This [time period](#) begins to run only after the prison sentence has been served, but it becomes legally effective upon conviction (Section 45a). The offences eligible for disenfranchisement are those likely to undermine the foundation of the state or that constitute tampering with elections. Those prisoners who can vote, vote under the following conditions: Section 57(2) of the [European Electoral Regulations](#) states that wherever necessary and possible, the local authority of the municipality should provide persons entitled to vote in socio-therapeutic and penal institutions, who have a polling card valid for the district or urban district, the opportunity to vote in the institution before a **Mobile Electoral Board** (Section 8). Section 59(4) of the [European Electoral Regulations](#) states that in hospitals, senior citizens' homes, nursing homes, convalescent homes and socio-therapeutic and penal institutions as well as collective accommodation care must be taken to ensure that voters can mark the ballot paper and place it in the ballot paper envelope without being seen, and in suitable rooms.

Estonia

According to the Estonian [Constitution](#), Article 58, participation in voting may be restricted by law for Estonian citizens who have been convicted by a court and are serving a sentence in a penal institution (also confirmed by [Kalda v Estonia](#)). Section 4(3)(2) of the European Parliament Elections Act ([Euroopa Parlamendi valimise seadus](#)) provides that a person who has been convicted of a criminal offence by a court and who is serving a prison sentence does not have the right to vote. Section 20(3)(1) provides that a person who, according to information in the criminal records database, has been convicted of a criminal offence by a court and whose prison sentence will last until election day (as assessed on the 30th day before the elections) will not be entered in the list of voters.

Ireland

The [Electoral \(Amendment\) Act 2006](#) enables prisoners to register for a **postal vote** in the area that they would otherwise be living in. A person on parole or temporary release at the time of the election is free to vote where he or she is registered. However, no right to temporary release is granted in order to vote at the ballot box. Inmates already registered to vote in the area and willing to vote from prisons have to fill in '[Form RFG](#)', which is available in all prisons and should be sent to the local authority.

Greece

Under Article 51(3) of the [Hellenic Constitution](#), a law may curtail a person's right to vote as a result of an irrevocable criminal conviction for certain felonies. Pursuant to Article 5 of [Presidential Decree 26/2012](#) as recently amended by Article 92 of [Law No 4804/21](#) currently in force, those who are irrevocably sentenced to prison for certain crimes (such as high treason and its preparatory acts, torture, etc.) and those irrevocably sentenced to life imprisonment, are deprived of the right to vote. Article 5 of [Law No 4255/14](#) on European Elections, refers to Article 69 of [Presidential Decree 26/2012](#), as currently in force, for the drawing up of special electoral rolls for citizens serving a prison sentence. Prisoners exercise their right to vote in the electoral section of the facility where they are detained, on the basis of special electoral lists, in which they are registered for this purpose.

Spain

Citizens having committed certain crimes can be deprived of their right to stand as candidates by a judicial decision in the cases provided for in the Spanish Criminal Code, but they cannot be deprived of the [right to vote](#) (Article 3(1) of [Organic Law 5/1985 of 19 June 1985](#), Article 44 of the [Criminal Code](#), and Article 3 of [Organic Law 1/1979 of 26 September](#)). Citizens serving a prison sentence exercise their right to vote through **postal voting** ([Order PCM/185/2022 of 9 March](#)). It is [reported](#) that in all prisons, sessions are organised to explain voting procedures and rules. The Electoral Census Office must provide envelopes and enough ballots to be delivered to the prison.

France

Under [Article 131-26](#) of the Criminal Code, a court may rule that a person is to be deprived of all or part of their civic rights for a period that may not exceed 10 years in the case of a conviction for a serious offence (*crime*) and 5 years in the case of a conviction for a less serious offence (*délit*). Inmates with the right to vote may **vote by post, by proxy or by going to the polling station** ([Article R57-7-95 to R57-7-97 of the Code of Criminal Procedure](#) and [Article L79-L82 of the Electoral Code](#)). The prison governor must inform the prisoner entitled to vote of the date to vote and how to register to vote. The governor must provide the necessary means to register and collect the required supporting documents. In order to vote by post, the detainee must apply to be registered on the electoral roll of the county town where the prison is located. A detainee may vote by proxy if he or she has not requested a day's leave to go and vote at the polling station, or if he or she has been refused such leave. In order to vote at the polling station, the detainee must apply to the enforcement judge for a day's leave to vote.

Croatia

Article 16(1)(14) of the Act on the execution of prison sentences (Law [14/21](#)) lists among the rights of prisoners the right to vote in presidential elections, parliamentary elections, European Parliamentary elections and state referendums. Article 9(3) of the Republic of Croatia European Parliamentary Elections Act (Law [92/2010](#), modified by Laws [23/2013](#) and [143/2013](#)) states that voters who are deprived of their freedom must vote at special polling stations.

Italy

[Article 28](#) of the Criminal Code establishes either perpetual or temporary disqualification from public office. The former, for instance, as a consequence of a sentence to life imprisonment, deprives the convicted person of the right to vote or to stand as a candidate in any elections, and any other political right. Those prisoners with the right to vote are allowed to **vote at the place of imprisonment** or pre-trial detention ([Article 8](#), Law No 136/1976). The prisoner-voter must send to the mayor of the municipality, via the prison director, a declaration stating their wish to vote in the place where they is located. Prisoners' votes are cast in a **special polling station** (See manual [p. 144](#) 'The special polling station').¹² If there are more than 500 prisoners entitled to vote in a given prison the District Election Commission, upon a proposal by the mayor of the municipality, must arrange for the prisoners to be distributed between two special polling stations, belonging to the section in whose electoral district the prison is located and to an adjoining section ([Article 9](#) (11), Law No 136/1976). See also the European electoral [manual](#), p. 176.

Cyprus

While the [electoral legislation](#) of Cyprus from 1979 allows for the deprivation of the right to vote, the explicit [ban on voting for prisoners](#) was removed in 2015. The [electoral legislation](#) on the election of Members to the European Parliament does not include an explicit ban on the voting of prisoners. Voting for prisoners is [administered](#) by means of a [special election centre](#) that operates in prisons, where those prisoners who are registered on electoral rolls can vote.

Latvia

Section 28 of the [Election to the European Parliament Law](#) provides for specific rules for advance voting that apply to those who are unable to come to polling stations for different reasons. It states that: on the basis of a written submission from such a voter or their authorised person or trustee, the polling station commission shall organise **voting on an advance voting day at the location of the voter**, ensuring secrecy. That provision is applicable to persons who cannot go to the polling stations for health reasons but also to: 'voters on whom a security measure relating to deprivation of liberty has been imposed or who are serving a sentence of deprivation of liberty' and 'voters who are in a place of temporary detention' (Section 28(1) points 4 and 5). Individuals who vote at their location in accordance with this section are registered on a 'separate electoral roll and the sealed ballot envelopes shall be placed in a separate sealed ballot box'.

Lithuania

According to the [Electoral Code](#), Article 59(2), persons in custody of territorial police institutions and prisons **are entered on the voter lists of the electoral district where they have declared their place of residence**. A person who has not declared their place of residence shall, at their written request, be entered on the voter list of the electoral district where they are kept in custody or where they are serving their sentence. According to Article 50, the election procedure must be organised at **specialised polling stations** where prisoners are kept in custody and serving their sentence.

Luxembourg

According to [Article 11\(2\)](#) of the Luxembourg Penal Code, a prison sentence of more than 10 years automatically entails disenfranchisement for life (to vote, to stand for election and to be elected), while a prison sentence of between 5 and 10 years may entail disenfranchisement for life or for 10 to 20 years ([Article 12](#)). Article 3 of the [electoral law](#) of 18 February 2003, as amended, states that 'to be a voter in European elections, one must: [...] 3° enjoy civil rights and not be deprived of the right to vote either in the Grand Duchy of Luxembourg or in the Member State of origin'. Article 6 clarifies that persons who have been deprived of the right to vote by a final criminal conviction are excluded from the electorate and may not be admitted to vote (see also Article 77). However, if they have the right to vote, citizens who are imprisoned have the possibility to **vote by post** (Articles 328 et seq).

Hungary

According to Article XXIII(6) of the [Fundamental Law of Hungary](#), those disenfranchised by a court for a criminal offence or limited mental capacity shall not have the right to vote or to be voted for. Others serving a prison sentence and who have the right to vote may exercise it through a mobile ballot box (section 103 of [Act XXXVI of 2013 on Electoral Procedure](#)). Section 184 of [Act XXXVI of 2013 on Electoral Procedure](#) specifies that within the territory of the polling district, two members of the polling station commission shall take the mobile ballot box to voters who are registered on the list of voters who requested the mobile ballot box.

Malta

According to Article 12(b)(c) of the current [European Parliament Elections Act](#) CAP. 467, no person shall be qualified to be registered on the European Union Electoral Register if: (b) he is serving a sentence of imprisonment **exceeding 12 months** imposed on him by a court in a Member State or substituted by competent authority for some other sentence imposed on him by such court; or (c) he is disqualified for registration as a voter by or under any law in Malta by reason of his having been **convicted of any offence connected with the election of members of the House of Representatives, members of Local Councils or members of the European Parliament**. Under Article 77(3) of the [General Elections Act](#) (CAP. 354)¹³ mixed ballot boxes are provided for different divisions, where voters vote independently of the division where they may be registered in the last

Electoral Register. Point e) states that voters residing in Corradino Correctional Facility shall vote in the place indicated in this sub-article and it shall be the duty of the person responsible for the Facility mentioned to submit to the Commission a list with the voters' personal details.

Netherlands

Article 54(2) of the [Dutch Constitution](#) allows for the disenfranchisement of certain categories of prisoners: those who have been sentenced by a final court decision to a prison sentence of at least 1 year, for an offence that allows for disenfranchisement, and who have been deprived of the right to vote, lose their right to vote. According to a Commission-funded [report](#) from 2020, this provision acts as a triple cumulative filter: an individual must have committed an offence that could be sanctioned with disenfranchisement, they must have been finally sentenced to imprisonment of 1 year or longer and a judge must have ruled to disenfranchise them. However, exclusion of the right to vote must only be possible in the case of criminal acts that seriously undermine the foundations of the Dutch system of government. Those prisoners who retain their right to vote may exercise that right by voting **by proxy or in person** where they have sufficient free movement rights on the day of the vote. ([Article B6 Kieswet](#)).

Austria

Under para. 3 of the European Voters' Registration Act ([Europa-Wählerevidenzgesetz \(EuWEG\)](#)), certain categories of persons may be excluded, by a court decision, from the exercise of the right to vote. The section further lists which crimes under the Criminal Code are eligible for exclusion from the right to vote following a court conviction. Persons not covered by that provision who are deprived of their liberty (imprisoned or detained) may exercise their right to vote under paras. 26 (2) and 60 [Europawahlordnung \(EuWO\)](#) (absentee ballots and creation of special electoral districts).

Poland

The [Polish Penal Code](#) provides in Article 40 for the optional **deprivation of public rights** that the sentencing court can pronounce with regard to persons sentenced to at least 3 years' imprisonment, as well as those sentenced (even for lower or suspended penalties) for certain listed crimes (most of which are various forms of corruption, including trading of influence and procurement fraud). The period of deprivation of public rights, which is decided by the sentencing court, can range from 1 to 10 years (Article 43 Penal Code). The deprivation takes effect when the judgment becomes final (definitive), but the actual period starts to run only once the convict has already served their sentence for the offence in question. Therefore, the deprivation of public rights is effective once the convict is released from prison, for up to 10 years. Persons subject to the penal measure of deprivation of public rights may not vote in the European elections (Article 10 (2) [Electoral Code](#)).

The Electoral Code facilitates the voting of inmates of prisons and detention centres, by providing for the (in principle) obligatory creation of voting precincts in prisons and detention centres, as well as their external wards, in which at least 15 voters will be present on election day (Article 12(4)). Such a precinct may also be created in a prison or detention centre with fewer than 15 voters (Article 12(6)), although according to the [statistics](#) available it seems that the population of all such facilities in Poland is higher than 15, and therefore it is highly probable that there are at least 15 voters in each.

Portugal

According to Article 2 of [Law No 14/79](#), persons who are deprived of political rights by a definitive judgment are ineligible to vote.¹⁴ According to Article 79-B (Advance voting) of the same law, prisoners entitled to vote may cast their **vote in advance**.¹⁵ The detailed arrangements for advance voting in prison are spelled out in Article 79-D. Prisoners can, by electronic means or by post, apply to the electoral administration of the General Secretariat of the Ministry of Internal Administration, to cast their votes in advance. The electoral administration of the General Secretariat of the Ministry

of Internal Administration shall send the mayor of the municipality where the voters are located, the list of their names, and the places involved, along with the number of voting slips. The prisons caring for the prisoner-voters must ensure the conditions required for casting a vote in advance are in place.

Romania

According to Article 36(2) of the [Constitution of Romania](#), 'Mentally deficient or alienated persons, laid under interdiction, as well as **persons disenfranchised by a final decision** of a court cannot vote'. Article 5(6) of [Law 33/2017](#) also confirms that persons who, on the reference date, are **sentenced by final judgment to the loss of their electoral rights** shall not be entitled to vote. Article 47(3) of [Law 33/2017](#) provides that the president of the electoral bureau of a polling station can approve, upon request, the use of a mobile **special ballot box** to enable persons under arrest or imprisoned who have not lost their right to vote to cast their votes.

Slovenia

Citizens serving a prison sentence and citizens in detention have the right to **vote by post**. Whenever there is a vote (either elections or a referendum), the National Electoral Commission informs all the competent institutions of the possibility to vote by post. The legal basis for this can be found in the [Election of Members of the European Parliament from the Republic of Slovenia Act](#) (ZVPEP),¹⁶ the Voting Rights Register Act (ZEVP-2),¹⁷ and the National Assembly Election Act (ZVDZ),¹⁸ whose provisions apply *mutatis mutandis* for issues not specifically regulated by the ZVPEP.

Slovakia

Citizens serving a sentence in prison can vote (Section 21 para 4 [Act No 180/2014](#)) but they **do not have the right to be candidates in elections**. (Section 6 Act No 180/2014). Citizens serving a prison sentence (or detained persons) who serve their sentence/detention outside their permanent residence have to ask the municipality (where they have their residence) to issue a 'voting card' to vote in any polling station. Voting in prison is ensured through **a portable ballot box** from the electoral district/polling station where the prison administratively belongs.

Finland

Section 2 of the [Election Act](#) states that in the European Parliament elections held in Finland, anyone who has turned 18 at the latest on election day is entitled to vote if he or she is: a Finnish citizen regardless of place of residence; or a citizen of another EU Member State, under certain conditions. Voting rights are inalienable: you can only vote in person, i.e. no one can vote on behalf of another person. According to Section 46, **special pre-voting points** include hospitals, 24-hour care and other social services (e.g. old people's homes, care homes and service centres) designated by the municipal government, and penal institutions.

Sweden

According to Chapter 7, section 4 of the [Elections Act \(2005:837\)](#), voters who, due to illness, disability or age, are unable to get to a polling station themselves, but also voters who are in custody and voters who are detained in a correctional institution and who, for security reasons, cannot vote in the same polling station as other inmates of the institution may **vote by means of a messenger** who should be at least 18 years old (see also Chapter 7, section 5-10, [Elections Act](#)). The following persons may act as messengers: the voter's spouse or common-law partner and the voter's, spouse's or cohabitee's children, grandchildren, parents or siblings; those who professionally or in a similar manner provide care for the voter or who otherwise usually assist the voter in personal matters; rural postmen; and employees of a detention centre or correctional institution.

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ENDNOTES

- ¹ That risk could be averted by allowing inmates to register and vote by post at their last known address.
- ² In 2002, the Canadian Supreme Court [ruled](#) that prisoner disenfranchisement had a 'disproportionate impact on Canada's already disadvantaged Aboriginal population, whose over-representation in prisons reflects a crisis in the Canadian criminal justice system'. In the United States, a 2022 [study](#) estimated that 4.6 million Americans – 2 % of the voting-age population – were ineligible to vote owing to laws in 48 US States banning convicted people from voting, including those having completed sentences or while on probation or parole. Disenfranchisement affected African American voters (5.3 %) disproportionately compared with non-African Americans (1.5 %).
- ³ A 2022 [study](#) conducted on inmates in the US reported that the lack of interest of the inmates, the limited information available, and the difficult registration process were the main causes of low turnout among inmates.
- ⁴ Although there is a mention that this right should not be curtailed by 'unreasonable restrictions' (Article 25, ICCPR).
- ⁵ [Guide on Article 3 of the Protocol No 1 to the European Convention of Human Rights](#), Right to free elections, 2022.
- ⁶ For a more detailed summary of the existing case law see: [Prisoners' right to vote](#), European Court of Human Rights, Press Unit, December 2022.
- ⁷ The notion of 'civic death' (*civilitas mortuus* in Latin) implies the forfeiture of certain rights, including the right to vote, by a convicted person.
- ⁸ In [Moohan v the United Kingdom and Gillon v the United Kingdom](#), the ECtHR declared the complaint inadmissible and reiterated that, according to the Court settled case law, article 3 of Protocol No 1 is not applicable to referendums.
- ⁹ The section looks at the national provisions in the 27 EU Member States as regards the exercise of the right to vote in the European elections for persons deprived of liberty. It has been compiled on the basis of the information provided by the European Centre for Parliamentary Research and Documentation ([ECPRD](#)) and by the European Parliament Research Service (Belgium, Croatia, Estonia, France, Germany, Italy, Netherlands, Poland, Romania, Spain and Sweden). In addition, the data were verified in July 2023 by country specialists from the EPRS Members' Research Service.
- ¹⁰ According to an [article](#) by RTBF, it is the responsibility of the prisoner whose poll card was sent to his or her home address to request a proxy vote. The prison certifies that the prisoner cannot vote in person. Prisoners do not often receive their voting cards however as that depends on their contacts outside the prison.
- ¹¹ The Danish authorities use the term '[advance voting](#)', since it conveys the central feature, i.e. that this kind of voting must take place before election day. The advance voting takes place under the auspices of the Danish authorities or vote receivers appointed by the Danish authorities to perform this task and with material procured by the Danish Ministry of Social Affairs and the Interior. The term 'postal voting' refers to the fact that the votes cast in a controlled environment are sent by regular mail by the vote receiving authorities to the relevant Danish municipality where the voter in question is resident.
- ¹² Articles 8 and 9, Law No 136/1976, and Article 1, paragraph 1, d) and e), Legislative Decree No 161/1976, amended by Law No 240/1976.
- ¹³ The European Parliament Elections Act, Article 21, states that 'the provisions the provisions of the General Elections Act and of the Electoral Polling Ordinance shall apply to the conduct of elections, and to the counting of votes in elections, of members of the European Parliament'.

- ¹⁴ The Electoral Law for the European Parliament ([consolidated text](#)) was approved by [Law No 14/87 of 29 April 1987](#). Article 1 states that the election of MEPs in Portugal is governed by this law, by the applicable community rules and, in the [part not foreseen therein](#) or where the same rules refer to national legislation, [by the rules that govern the election of deputies to the Assembly of the Republic](#), with the necessary adaptations.
- ¹⁵ Though it is [reported](#) that the procedure for early voting is cumbersome and that encouragement to exercise political rights is rare.
- ¹⁶ Official Gazette of RS, Nos 40/2004, 41/2007, 109/2009, 9/2014 and 59/2017.
- ¹⁷ Official Gazette of RS, No 98/2013.
- ¹⁸ Official Gazette of RS, No 44/1992 et seq.

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Annex I

Comparison of existing provisions in the 27 EU Member States

| | No restriction | Restrictions for certain crimes/lengths of sentence | Total restriction | If vote allowed, how it is organised? |
|----------------|----------------|-----------------------------------------------------|-------------------|--------------------------------------------------------------|
| Belgium | | | | Proxy |
| Bulgaria | | | | |
| Czech Republic | | | | Portable ballot box |
| Denmark | | | | Advance voting in the institution |
| Germany | | | | In the institution, before a mobile electoral board |
| Estonia | | | | |
| Ireland | | | | Postal voting |
| Greece | | | | In the institution |
| Spain | | | | Postal voting |
| France | | | | Postal voting, by proxy and at the polling station |
| Croatia | | | | Special polling station |
| Italy | | | | Ad hoc Polling Station |
| Cyprus | | | | Special polling station |
| Latvia | | | | Special polling station - advance voting; special ballot box |
| Lithuania | | | | Special polling station |
| Luxembourg | | | | Postal voting |

| | | | | |
|-------------|--|--|--|------------------------------------------------------|
| Hungary | | | | Mobile electoral box |
| Malta | | | | Special polling station - mixed ballot box |
| Netherlands | | | | By proxy or in person if possible |
| Austria | | | | Special electoral districts/absentee ballots |
| Poland | | | | Special voting station in prison or detention centre |
| Portugal | | | | Special polling station - advance voting |
| Romania | | | | Portable ballot box |
| Slovenia | | | | Postal voting |
| Slovakia | | | | Portable ballot box |
| Finland | | | | Advance voting, Ad hoc Polling Station |
| Sweden | | | | By messenger |

Source: EPRS.