



## 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 provisions lay down the principle of proportional representation, rules on thresholds and certain incompatibilities with the Member of the European Parliament mandate. 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); Articles 20, 22 and 223 of the Treaty on the Functioning of the European Union (TFEU) and Article 39 of the Charter of Fundamental Rights.

[Act of 20 September 1976](#) concerning the election of the representatives of the Assembly by direct universal suffrage, last amended by [Council Decision \(EU, Euratom\) 2018/994](#) of 13 July 2018.

### COMMON RULES

#### A. Principles

The founding Treaties ([1.1.1.](#)) 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 (1976 Electoral Act). It profoundly changed the institutional position of the European Parliament and was the founding document of a more democratic European Union.

In 1992, the Maastricht Treaty ([1.1.3.](#)) provided that elections had to be held in accordance with a uniform procedure and that the European Parliament was to 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 of 25 June and 23 September 2002](#) modified the 1976 Electoral Act accordingly, introducing the principle of proportional representation and a number of incompatibilities between national and European mandates.



The last amendments to the 1976 Electoral Act were adopted by [Council Decision \(EU, Euratom\) 2018/994 of 13 July 2018](#), which includes provisions on the possibility of different voting methods (advance voting, electronic, internet and postal voting); on thresholds; on the protection of personal data; on the penalisation of ‘double voting’ by national legislation; on voting in third countries; and on the possibility of the visibility of European political parties on ballot papers.

With the Treaty of Lisbon (1.1.5.), the right to vote and to stand as a candidate acquired fundamental right status (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**

Under 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 under [Council Directive 93/109/EC](#), as last amended by [Council Directive 2013/1/EU](#), Article 6 of which lays down that ‘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**

Under the amended 1976 Electoral Act, European elections must be based on proportional representation and use either the list system or the single transferable vote system. Member States may also authorise voting based on a preferential list system.

In addition to the voluntary minimum threshold for the allocation of seats of up to 5% of valid votes cast at national level, the recent amendments to the 1976 Electoral Act, adopted by [Council Decision \(EU, Euratom\) 2018/994](#), establish an obligatory minimum threshold of between 2% and 5% for constituencies (including single-constituency Member States) with more than 35 seats in Member States where the list system is used. Member States will have to comply with this requirement in time for the 2024 elections at the latest.

Pursuant to that Decision, Member States may also provide for advance voting, postal voting and electronic and internet voting. Where they do so, they must ensure, in particular, the reliability of the result, the secrecy of the vote and the protection of personal data.

### **3. Incompatibilities**

Under Article 7 of the 1976 Electoral Act, as amended by Council [Decision 2002/772/EC, Euratom](#), 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 remain for members of the Committee of the Regions (added in 1997); for members of the Board of Directors of the European Central Bank, the Ombudsman of the European Union and, most importantly, members of a national parliament (added in 2002).

## ARRANGEMENTS SUBJECT TO NATIONAL PROVISIONS

In addition to these common rules, the electoral arrangements are governed by national provisions, which can vary a great deal; the electoral system can therefore be considered a polymorphic electoral system.

### A. Electoral system and thresholds

All Member States must use a system based on proportional representation. In addition to the voluntary threshold for the allocation of seats of up to 5% at national level, [Council Decision \(EU, Euratom\) 2018/994](#) established an obligatory minimum threshold of between 2% and 5% for constituencies (including single-constituency Member States) with more than 35 seats. This requirement must be met in time for the 2024 European elections at the latest.

Currently, the following Member States apply thresholds: France, Belgium, Lithuania, Poland, Slovakia, the Czech Republic, Romania, Croatia, Latvia and Hungary (5%); Austria, Italy and Sweden (4%); Greece (3%); and Cyprus (1.8%). The other Member States apply no threshold, although Germany tried to do so, but in two decisions of [2011](#) and [2014](#), the German Constitutional Court declared the country's existing thresholds for EU elections (which were first 5%, then 3%) to be unconstitutional.

### B. Constituency boundaries

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

### C. Entitlement to vote

The voting age is 18 in all Member States except Austria and Malta, where it is 16, and Greece, where it is 17.

Voting is compulsory in five Member States (Belgium, Bulgaria, Luxembourg, Cyprus and Greece): the obligation to vote applies to both nationals and 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 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 (e.g. Estonia, France, Germany, Poland, Romania and Slovenia), to be ordinarily resident there (e.g. Cyprus, Denmark, Greece, Ireland, Luxembourg, Slovakia and Sweden) or to be listed in the population register (e.g. Belgium and the Czech Republic). To be eligible to vote in some countries (e.g. Luxembourg and Cyprus), EU citizens must also satisfy a requirement for a minimum period of residence. In all Member States, nationals from other EU countries are required to register to vote before election day. Deadlines for registration vary from one Member State to another.

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

Almost all Member States allow the possibility of voting from abroad in European elections. In some Member States, voters are required to register with their national electoral authorities in order to be eligible to vote from abroad by post or at an embassy or consulate. In other Member States, postal votes may take place at embassies or consulates. In some Member States, the right to vote abroad is only granted to citizens living in another Member State (e.g. Bulgaria and Italy). In addition, most Member States make special arrangements for diplomats and military personnel serving abroad.

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, notably double voting, which is a criminal offence in some Member States. In this regard, the recent amendments to the 1976 Electoral Act, adopted by [Council Decision \(EU, Euratom\) 2018/994](#), require Member States to ensure that double voting in elections to the European Parliament is subject to effective, proportionate and dissuasive penalties.

## 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 within the European Union. 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](#)).

Apart from the requirement of citizenship of a Member State, which is common to all the Member States, 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, only political parties and political organisations may submit nominations. In 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 \(EU\) 2018/937](#) of 28 June 2018 establishing the composition of the European Parliament lays down how the seats in the European Parliament provided for in Article 14(2) TEU are to be allocated, applying the principle of ‘degressive proportionality’ ([1.3.3](#)).

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

Pursuant to Articles 10 and 11 of the 1976 Electoral Act, as amended, 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 set 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 have taken place in the corresponding period during the last year of the five-year period referred to in Article 5 of the Electoral 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 year 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 are to take place in the corresponding period in the final year of the five-year period (Article 11 of the 1976 Act). Accordingly, the 2019 elections took place between 23 and 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 six Member States (Germany, Spain, France, Portugal, Hungary and Romania) the lists are closed (no preferential vote). In Malta and Ireland, voters list the candidates in order of preference (single transferable vote).

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

In some Member States, 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 other Member States, vacant seats are allocated to substitutes and if there are no substitutes, the order of candidates on the lists is the decisive criterion. In some other Member States, MEPs have the right to return to the European Parliament once the reason for their departure has ceased to apply.

## **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 (now Article 223 TFEU). 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 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. On 11 November 2015, the European Parliament adopted a [resolution](#) of 11 November 2015 on the reform of the electoral law of the European Union. The legislative initiative from the Constitutional Affairs Committee proposed amendments to the 1976 Electoral Act with a view to making the European elections more democratic and to increasing public participation in the election process. Parliament's proposed amendments were partly accepted and incorporated into Council Decision (EU, Euratom) 2018/994 of 13 July 2018. However, the Council could not agree on Parliament's proposal that a joint constituency be established and lead candidates appointed for the post of Commission President.

Following its resolution of 7 February 2018 on the composition of the European Parliament, Parliament voted in favour of reducing the number of its seats from 751 to 705 after the UK's departure from the EU and of re-distributing some of the seats to be freed up by Brexit among those EU countries that are slightly under-represented ([1.3.3](#)). 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 during the 2014 elections, 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, Parliament stated that it was ready to reject any candidate for President of the European Commission not nominated as a [lead candidate](#) ('Spitzenkandidat') of a European political party ahead of the 2019 European elections; however, after the 2019 elections, Ms Ursula von der Leyen, who had not been a Spitzenkandidat, was elected President of the European Commission

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 (EC) No 2004/2003 was repealed and replaced by [Regulation \(EU, Euratom\) No 1141/2014](#) of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations). The 2014 Regulation has recently been amended, following Parliament's [resolution of 15 June 2017](#) on the funding of political parties and political foundations at European level. In the resolution, shortcomings were expressed regarding the level of co-financing and the possibility for MEPs' multi-party membership, in an effort to ensure that public money is used properly in the funding of European political parties and foundations through [Regulation \(EU, Euratom\) 2018/673](#) of the European Parliament and of the Council of 3 May 2018 .



Recent events have demonstrated the potential risks to electoral processes and democracy that can arise from online communication (manipulating personal data in an electoral context). To prevent unlawful use of personal data, new amendments to the 2014 Regulation on the statute and funding of European political parties and European political foundations have very recently been adopted ([Regulation \(EU, Euratom\) 2019/493](#) of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament. The new rules agreed by Parliament and the Council are designed to protect the electoral process from online disinformation campaigns that misuse voters' personal data and allow for financial sanctions to be imposed on European political parties and foundations that deliberately influence, or attempt to influence, the outcome of the European elections by taking advantage of breaches of data protection rules.

In addition, following Parliament's resolution of 15 June 2017 on online platforms and the digital single market where it called on the Commission to look into the possibility of legislative intervention to limit the dissemination of fake content, in April 2018 the Commission issued its [communication](#) entitled 'Tackling online disinformation: a European approach' and proposed an EU-wide [Code of Practice](#), which was signed by three online platforms in September 2018. The Commission's December 2018 '[action plan against disinformation](#)', among other measures, urges the online platforms to swiftly and effectively implement the commitments and to focus on actions that are urgent for the European elections, including deleting fake accounts, labelling messaging activities by 'bots' and cooperating with fact-checkers and researchers to detect disinformation and make fact-checked content more visible. In the run-up to the May 2019 European elections, the Commission asked the three platforms signatory to the Code of Practice to [report on a monthly basis](#) on their actions undertaken to improve the scrutiny of ad placements, ensure transparency of political and issue-based advertising and to tackle fake accounts and malicious use of bots.

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