

## THE EUROPEAN PARLIAMENT: ELECTORAL PROCEDURES

The electoral procedures in the European Parliament are governed both by European legislation defining rules common to all Member States, as those related to incompatibilities and to the introduction of the principle of proportional representation, and by specific national provisions which vary from one state to another.

### LEGAL BASIS

Article 190 paragraphs 1 and 2 of the EC Treaty.

### COMMON RULES

#### A. Principles

The **founding Treaties** stated that Members of the European Parliament would initially be appointed by the national parliaments but made provision for election by direct universal suffrage, based on a project drawn up by Parliament itself. It was only in 1976 that the Council decided to implement this provision by the Act of 20 September (now incorporated in the EC Treaty at Article 190 paragraph 1).

In 1992, the **Maastricht Treaty** inserted a provision into the EC Treaty (Article 190 paragraph 4)) stating that elections must be held in accordance with a **uniform procedure** in all Member States and Parliament should draw up a proposal to this effect, for unanimous adoption by the Council. However, the Council was unable to agree on a uniform procedure, in spite of the various proposals presented by Parliament.

To resolve this deadlock, the **Treaty of Amsterdam** introduced into the EC Treaty the possibility, failing a uniform procedure, of ‘**common principles**’ with a view to enhancing the democratic legitimacy of the EP and the feeling of being a citizen of the European Union. On this basis it was possible to modify the 1976 act by Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002. This decision introduced the principles of proportional representation and incompatibility between national and European mandates.

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

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

According to Article 19 of the EC Treaty, ‘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 on 6 December 1993 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 (Council Decision 2002/772/EC, Euratom).

### **3. Incompatibilities**

The office of member of the European Parliament is incompatible with that of member of the Commission, judge, advocate-general or registrar of the Court of Justice, member of the Court of Auditors, member of the Economic and Social Committee, member of committees or other bodies set up pursuant to the Community Treaties for the purpose of managing the Communities' 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 Communities or of the specialised bodies attached to them.

The 2002 Council Decision added further incompatibilities: member of the Court of First Instance, member of the Board of Directors of the European Central Bank, Ombudsman of the European Communities and, of course, 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 are at times quite different.

### **A. Electoral system**

Pursuant to the 2002 Council Decision, all of the Member States must now use a system based on proportional representation. Lists failing to obtain, for example, 5% of the vote in Germany or France, or 4% in Austria or Sweden, are excluded from the allocation of seats. Until the 1994 elections the United Kingdom used the first-past-the-post system (except in Northern Ireland, where proportional representation was already in use). Most major new Member States apply the 5% or 4% threshold.

### **B. Constituency boundaries**

Until 2003, in 11 Member States (Germany, Austria, Denmark, Spain, Finland, France, Greece, Luxembourg, the Netherlands, Portugal and Sweden) the whole country formed a single electoral area. In four Member States (Belgium, Ireland, Italy and the United Kingdom) the national territory was divided into a number of constituencies. Most new Member States have introduced single electoral areas (e.g. the Czech Republic and Hungary). Poland has 13 regional constituencies.

Since the 2002 Council Decision, a number of the old Member States have amended or are amending national laws. France has abandoned the use of a single electoral constituency and has established eight large regional constituencies: Northwest, West, East, Southwest, Southeast, Massif Central, Île-de-France and Overseas. In Germany, although the electoral legislation will not be changed, parties are allowed to present lists of candidates at either *Land* or national level. Similarly, in Finland parties may present their lists at either constituency or national level.

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

#### **1. Vote of non-nationals in the host country**

Voting age is 18 in all the Member States. Citizens of the Union residing in a Member State of which they are not nationals now have the right (Article 19 of the EC Treaty) to vote in elections to Parliament in the Member State in which they reside, under the same conditions as nationals of that state. However, the concept of residence still varies from one national electoral system to another.

Some countries require voters either to have their domicile or customary residence on electoral territory (Finland and France), or customarily to stay there (Germany, Luxembourg, Belgium,

Greece, Spain, Portugal and Italy), or to be registered on the electoral roll (Austria, Denmark, United Kingdom, Hungary, Ireland, the Netherlands, Poland and Sweden).

To be entitled to vote in Luxembourg, Community citizens must also prove a minimum period of residence. This was reduced, however, with the entry into force of the new electoral law on 18 February 2003. Since then, the obligatory period of residence in the territory of Luxembourg has been five years, although this period does not apply to Community electors who do not have the right to vote in that state because they are resident outside their Member State of origin or because of the period of that residence.

## **2. Vote of non-resident nationals in the countries of origin**

In the United Kingdom the right to vote of citizens resident abroad is confined to civil servants, members of the armed forces and citizens who left the country less than five years before, provided they submit a declaration to the appropriate authorities. Austria, Denmark, Portugal and the Netherlands only grant the right to vote to their nationals living in an EU Member State. Sweden, Belgium, France, Spain, Greece and Italy grant their nationals the right to vote whatever their country of residence. Germany grants this right to citizens who have lived in another country for less than ten years. In Ireland and Hungary the right to vote is confined to EU citizens domiciled on the national territory.

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

Apart from the requirement of nationality of an EU Member State, which is common to all the Member States, conditions vary from one to another.

### **1. Minimum age**

18 in Finland, Sweden, Denmark, Germany, Spain, the Netherlands, Luxembourg, Portugal and most new Member States, 19 in Austria, 21 in Belgium, Greece, the Czech Republic, Ireland, Lithuania, Poland, Slovakia and the United Kingdom, 23 in France and 25 in Italy.

### **2. Residence**

In Luxembourg, since the new electoral law of 18 February 2003, at least five years' residence is required (previously ten years) to enable a Community national to stand for election to the European Parliament. Moreover, a list may not comprise a majority of candidates who do not have Luxembourgish nationality.

## **E. Nominations**

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

## **F. Election dates**

In accordance with national traditions, the voting takes place on:

- Thursday in Denmark, Ireland, the Netherlands and the United Kingdom,
- Sunday in all other countries.

The last elections were held on 10 and 13 June 2004. The next will take place on 4 and 7 June 2009.

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

In some states (Germany, Spain, France, Greece and Portugal) voters cannot alter the order in which candidates appear on a list. In others (Austria, Belgium, Denmark, Finland, Italy, Luxembourg, the Netherlands and Sweden) the order on the list may be changed using transferable votes. In Luxembourg voters may vote for candidates from different lists. In Sweden, voters may also add names to the lists or remove them. The list system is not used in Ireland, Malta and the United Kingdom.

### **H. Allocating seats**

Most Member States have adopted the d'Hondt rule for allocating seats. Germany uses the Hare-Niemeyer method and Luxembourg a variant of d'Hondt method, the Hagenbach-Bischoff method. In Italy seats are allocated by the whole electoral quota and largest remainder method, in Ireland by the single transferable vote method, in Greece by the weighted method of proportional representation known as 'Eniskhimeni Analogiki', and in Sweden by the Sainte-Laguë method (division by successive odd numbers but modified to make the largest common divisor 1.4).

### **I. Verification of the result and rules on election campaigns**

There is provision for the EP to **verify the election results** in Denmark, Germany and Luxembourg, and for the courts to do so in Austria, Belgium, Finland, France, Italy, Ireland and the United Kingdom, while both are provided for in Germany. In Spain the result is verified by the 'Junta Electoral Central'; in Portugal and Sweden a verification committee does so.

Contrary to the practice in national elections, no special rules on **election campaigns** have been laid down. For a long time, political parties at the European level received no direct allowances for election campaigns. Recently, however, a system for the funding of European political parties was established (Regulation EC 2004/2003), which also allowed the establishment of political foundations at the European level.

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

In some Member States (Austria, Denmark, Finland, France, Italy, Luxembourg, the Netherlands and Portugal) seats falling vacant following 'open' resignation are allocated to the first unelected candidates on the lists (possibly after permutation to reflect the votes obtained by the various 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 on the same list; if there are not enough substitutes, by-elections are held. The European Parliament is currently preparing a resolution on changing its rules applying to MEPs in the event of maternity or paternity, taking into account national legislation on the filling of seats.

## **ROLE OF THE EUROPEAN PARLIAMENT**

Since the 1960s Parliament has repeatedly voiced its opinion on issues of electoral law in reports, resolutions and in written and oral questions and has put forward proposals in accordance with Article 138 of the EEC Treaty. Parliament adopted three resolutions, in 1991, 1992 and 1993, on establishing a uniform electoral procedure, but the Council did not consider

them as proposals within the meaning of Article 138 and in any case adopted only the proposal concerning the allocation of seats among the Member States.

Article 190 of the EC Treaty, modified by the Amsterdam Treaty, provides for Parliament to draw up a proposal for elections in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. In 1997, Parliament's Committee on Institutional Affairs decided to draw up a report which resulted in a resolution on a proposal for a uniform electoral procedure. The Council's decision of 25 June 2002 incorporates the substance of the EP's proposal but does not take over the proposal for the establishment of a single European constituency for the election of 10% of the seats.

The continuing lack of a genuine uniform procedure for election to the European Parliament shows how difficult it is to harmonise different national traditions. The Amsterdam Treaty's option of adopting common principles has to some extent made it possible to overcome these difficulties. The Treaty of Lisbon would provide a legal base for the adoption of a uniform procedure, requiring the consent of the European Parliament.

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