



# Real rights of persons with disabilities to vote in European Parliament elections

Information report

Rapporteur: Krzysztof Pater



*European Economic and Social Committee*

**SOC/554**  
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## **INFORMATION REPORT**

Section for Employment, Social Affairs and Citizenship

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## 1. Introduction

- 1.1 This report presents the state of play of the implementation of the right of European Union (EU) citizens with disabilities to vote in elections to the European Parliament (EP). The European Economic and Social Committee (EESC), an EU advisory body, believes it has a duty, in the run-up to the EP elections, to provide EU institutions, Member States and EU citizens with a full picture of how this right is actually implemented. The EESC hopes that at the next elections in 2024, no EU citizen will be deprived of their right to vote because of their disability.
- 1.2 The data for this report was provided by several hundred people, representing a significant number of institutions and organisations from 27 Member States (**the United Kingdom was not considered as it will leave the EU on 29 March 2019, before the 2019 European Parliament elections**) – mostly public authorities in Member States responsible for the election process and organisations representing or supporting persons with disabilities, but also members of the European Parliament from the Disability Intergroup and representatives of the European Disability Forum.
- 1.3 The main areas of the report consist of an initial short legal analysis of basic acts ensuring that persons with disabilities have the right to vote (which are often not upheld in real life) and the legal framework for European Parliament elections, together with possible actions at EU level to improve the situation. Next, the report presents legal barriers at Member State level which deprive EU citizens of the right to vote due to their disability, together with good examples of progress made in recent years in many countries. The report then discusses barriers and also presents several good practices (in the context of persons with disabilities), firstly taking into account areas relevant to all countries: access to information during the pre-election period, organisation of voting in "general" polling stations, ballot papers and their accessibility. The next few sections cover solutions existing in a limited number of Member States – early voting in designated polling stations, postal voting, mobile ballot box voting, proxy voting and electronic voting. Finally some aspects related to arrangements enabling people staying in hospitals and long-term care institutions to vote, the right of persons with a disability to vote in countries where voting is mandatory, and procedures in cases when a person with disabilities has their permanent residence in a different country to their country of origin are presented.
- 1.4 The purpose of the report is not to criticise any of the EU countries. Rather, most of it is made up of positive examples, and arrangements that need improvements or changes are usually discussed without mentioning specific countries affected by a particular problem.
- 1.5 This report covers procedures in European elections, but similar or the same solutions are also applied in national parliamentary elections, local elections or referendums. The EESC hopes that this report will help EU countries draw up comprehensive solutions to remove legal and technical (organisational) barriers preventing some persons with disabilities from voting. The EESC is counting on this information being used by civil society organisations that are seeking to remove barriers to the exercise of voting rights by persons with disabilities, and on public authorities – often from local level – which can implement many practical arrangements without any changes to national law.

## 2. **Conclusions**

- 2.1 In each of the 27 EU countries, there are laws or organisational arrangements which exclude some voters with disabilities from participating in EP elections.
  - 2.1.1 About 800 000 EU citizens from 16 Member States are, on account of national rules, deprived of the right to participate in EP elections because of their disabilities or mental health problems. The extent of this phenomenon is very uneven across individual countries.
  - 2.1.2 Millions of EU citizens have no possibility to vote because of organisational arrangements (technical barriers) which do not take into account the needs resulting from their disability.
  - 2.1.3 The main place of voting is the polling station. Many persons with disabilities, even when given the option of alternative, more convenient forms of voting, want to vote at a polling station, recognising it as the best form of civic participation. In 12 countries, this may not be possible, since national legislation does not allow the polling station designated on the basis of residence to be changed to another which can better accommodate the specific type of disability. In other countries, participation in elections is made difficult by a number of restrictions at polling stations.
  - 2.1.4 In eight Member States, anyone who cannot to get to a polling station is not able to vote, as they do not have the option of an alternative form of voting (postal voting, voting by mobile ballot box or electronic voting). Three of these countries offer the possibility of voting by proxy. However, such a solution cannot be regarded as an adequate alternative. In fact, it does not allow a voter with disabilities to exercise their right to vote, but merely enables the voter to designate someone to whom they can delegate their vote.
  - 2.1.5 In 18 Member States, blind voters have no way of voting independently; they can only entrust somebody accompanying them to cast their vote on their behalf.
  - 2.1.6 Another factor preventing people from voting independently or discouraging them from doing so are specific rules and organisational arrangements – such as the absence of information adapted to different types of disability, obstacles to mobility in the polling station itself and burdensome administrative procedures – governing how voters can exercise their right to vote in an appropriately adapted form.
- 2.2 If the best practices from across all countries were implemented, an ideal system would emerge in which every EU citizen with disabilities not only would have the full possibility to vote but also would be able to choose for themselves the most convenient way in which to vote.
- 2.3 Current EU legislation already addresses a number of issues concerning EP elections. Thus, there are no formal obstacles to this legislation also including guarantees on voting options for persons with disabilities. In any case, however, there is a need for a formal EP legislative initiative and for it to be approved subsequently by all Member States.

### 3. **The main international legal and policy framework applying to the voting rights of persons with disabilities**

#### 3.1 United Nations legal acts

3.1.1 The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948. It states in Article 21 that "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives".

3.1.2 The International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, states in Article 25 that "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: ... (b) to vote ... at genuine periodic elections".

3.1.3 The United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, which came into force on 3 May 2008<sup>1</sup>, is currently the most important UN legal act relating to persons with disabilities.

3.1.3.1 Article 29 of the CRPD<sup>2</sup> explicitly requires States Parties to "ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity ... to vote" and sets out a number of measures to enable this to happen, requiring that:

- "voting procedures, facilities and materials [be] appropriate, accessible and easy to understand and use";
- "the right of persons with disabilities to vote by secret ballot ... without intimidation" be protected;
- persons with disabilities be allowed "assistance in voting by a person of their own choice".

3.1.3.2 Article 29 of the CRPD must be read in conjunction with Article 9 (Accessibility), which requires "Buildings, roads, transportation and other indoor and outdoor facilities" used by the public to be made accessible. This article should also be read in conjunction with Article 12 (Equal recognition before the law)<sup>3</sup>, which recognises that "persons with disabilities have the right to recognition everywhere as persons before the law" and "enjoy legal capacity on an equal basis with others in all aspects of life".

3.1.3.3 The Committee on the Rights of Persons with Disabilities<sup>4</sup> stated, in its General Comment on Article 9, that persons with disabilities would be unable to exercise their rights guaranteed by Article 29 "if States parties failed to ensure that voting procedures, facilities and materials were

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<sup>1</sup> The CRPD has been ratified by the European Union and all Member States.

<sup>2</sup> Malta raised reservations with respect to Article 29.

<sup>3</sup> Estonia, France and the Netherlands made declarations and Poland raised reservations with respect to Article 12.

<sup>4</sup> The body of independent experts which monitors implementation of the Convention by the States Parties. One of its duties is to publish general comments on articles of the CRPD which require interpretation.

appropriate, accessible and easy to understand ... If not, persons with disabilities are deprived of their right to participate in the political process in an equal manner." In the General Comment on Article 12, the Committee underlined that "In order to fully realise the equal recognition of legal capacity in all aspects of life, it is important to recognise the legal capacity of persons with disabilities in public and political life (Article 29). This means that a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote".

### 3.2 European Union legal acts

3.2.1 The Treaty on the Functioning of the European Union clearly stipulates, in Article 20(2)(b), that "Citizens of the Union ... shall have, inter alia: ... (b) the right to vote ... in elections to the European Parliament ... in their Member State of residence, under the same conditions as nationals of that State".

3.2.2 The Charter of Fundamental Rights of the European Union confirms, in Article 39, the right of all EU citizens to vote in European Parliament elections. In Article 21(1) the Charter confirms that "Any discrimination based on any ground such as ... disability ... shall be prohibited". Article 26 states that "The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community".

### 3.3 Other key legal and political acts

3.3.1 Article 15 of the European Social Charter (revised)<sup>5</sup> explicitly guarantees persons with disabilities "the effective exercise of their right to independence, social integration and participation in the life of the community".

3.3.2 The Venice Commission's revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections<sup>6</sup> states that "people with disabilities should ... be able to exercise their right to vote ... on an equal basis with other citizens" and the Code of Good Practice in Electoral Matters<sup>7</sup> notes that "provision may be made for depriving individuals of their right to vote" if this is based on mental incapacity and on condition that it is imposed by an individual decision of a court.

3.3.3 The Recommendation of the Council of Europe Committee of Ministers adopted on 16 November 2011<sup>8</sup> reaffirms that all persons with disabilities have the right to participate in political and public life on an equal basis with others. It also underlines that accessible ballot papers and facilities should be available at the time of voting.

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<sup>5</sup> Ratified by 19 EU Member States.

<sup>6</sup> Adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011).

<sup>7</sup> Adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002).

<sup>8</sup> [CM/Rec\(2011\)14](#).

3.3.4 The European Convention on Human Rights does not stipulate a right to vote; however, the European Court of Human Rights has established that Article 3 of Protocol No 1 guarantees individual rights, including the right to vote, and that the withdrawal of this right must be subject to a strict assessment of proportionality. In the *Alajos Kiss v. Hungary*<sup>9</sup> judgment, the Court accepted that the right to vote "is an area in which, generally, a wide margin of appreciation should be granted to the national legislature in determining whether restrictions on the right to vote can be justified in modern times", but at the same time underlined that it cannot be accepted "that an absolute bar on voting by any person under partial guardianship, irrespective of his or her actual faculties, falls within an acceptable margin of appreciation", and that "if a restriction on fundamental rights applies to a particularly vulnerable group in society, who have suffered considerable discrimination in the past, such as the mentally disabled, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question". The Court subsequently confirmed this position in other cases.

### 3.4 Comments

3.4.1 It is clear that, for many years, the right to vote has been guaranteed for EU citizens thanks to many legal acts.

3.4.2 In the 21st century, international and European law on the right to vote for persons with disabilities is changing, from rather general declarations to more detailed solutions, focusing on the actual implementation of voting rights for such persons.

3.4.3 As regards the technical barriers preventing persons with disabilities from voting in elections, attention is focusing on various aspects of accessibility – including access to polling stations and other forms of voting and the ability to fill in or select ballot papers.

3.4.4 As far as legal barriers are concerned, what is crucial is the change in attitude towards persons with intellectual disabilities or mental health problems who are covered by protective measures yet who are being deprived of voting rights. The judgments of the European Court of Human Rights provide a clear indication that all countries whose legal systems automatically remove voting rights from persons who are deprived of legal capacity should align their systems with international obligations, at the very least by providing individual judicial assessments. It is very likely that, in the coming years, the position of the Committee on the Rights of Persons with Disabilities will confirm that no deprivation of voting rights is acceptable in the framework of the United Nations Convention on the Rights of Persons with Disabilities.

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[Judgment No 38832/06, 20 May 2010.](#)



## 4. Legal basis for European Parliament elections

### 4.1 Historical context

4.1.1 The Assembly, set up under Article 137 of the Treaty establishing the European Economic Community (EEC Treaty), was initially, according to Article 138(1) of the EEC Treaty, composed of delegates appointed from among members of national parliaments in accordance with the procedure laid down by each Member State. However, it was clearly indicated in Article 137 that "The Assembly ... shall be composed of representatives of the peoples of the States united within the Community".

4.1.2 At its first session, which took place from 19 to 21 March 1958, the Assembly took the name "Assemblée parlementaire européenne" in French, "Assemblea parlamentara" in Italian and, more significantly, "Europees Parlement" in Dutch and "Europäisches Parlament" in German. On 30 March 1962, the Assembly decided to harmonise its name in the various official languages and opted for "Parlement européen" in French and "Parlamento europeo" in Italian. Since then, the name "European Parliament" has been in common use, in spite of the fact that the title "Assembly" still remains in legal acts.

4.1.3 Article 138(3) of the EEC Treaty created the legal basis for electoral rules for the European Parliament. This article provided that "The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. The Council, acting by means of a unanimous vote, shall determine the provisions which it shall recommend to Member States for adoption in accordance with their respective constitutional rules."

4.1.4 In keeping with these provisions, the Assembly made a legislative proposal to the Council with a view to introducing direct universal suffrage, and the Council approved it, unanimously adopting the Act concerning the election of the representatives of the Assembly by direct universal suffrage, appended to Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (Electoral Act of 1976), creating the legal basis for the first direct elections to the European Parliament, which took place in 1979.

### 4.2 Current rules

4.2.1 The Electoral Act of 1976 established the following rules for the election process to the Assembly:

- establishing the election of representatives to the Assembly by direct universal suffrage (Article 1) and the number thereof elected in each Member State (Article 2);
- determining the term of office of the Assembly's representatives as being five years (Article 3);
- stating the individuality, personal character and independence of the representatives' votes (Article 4);
- ensuring the compatibility of the office of representative with a national parliamentary mandate (Article 5);

- stating the incompatibility of the office of representative with other national or European offices (Article 6);
- prohibiting voting more than once in elections of representatives to the Assembly (Article 8);
- laying down the electoral period and date of the first elections (Articles 9 and 10);
- establishing the verification of credentials (Article 11);
- setting out the procedure for filling vacant seats during the five-year term of office (Article 12).

4.2.2 The Electoral Act of 1976 established the basic rules for the election process to the Assembly. It was able to lay down only some provisions of universal electoral suffrage and not, as Article 138(3) provides, a "uniform procedure in all Member States". The Electoral Act of 1976 contained a number of common rules and principles, which could be recognised as a "legislative framework" rather than a "uniform procedure".

4.2.3 The Electoral Act of 1976 was amended by Council Decision 2002/772/EC, Euratom which included the following substantive changes:

- an obligation on Member States to provide for the election of members of the European Parliament on the basis of proportional representation using the list system or the single transferable vote, with permission for Member States to authorise voting based on a preferential list system (Article 1(1)(2));
- free and secret elections (Article 1(3));
- freedom for Member States to establish constituencies for European Parliamentary elections, provided that the proportional nature of the election is not affected (Article 2);
- the possibility for Member States to set a national minimum threshold not exceeding 5% of votes cast and to set a ceiling for candidates' campaign expenses (Article 2A and 2B);
- the insertion of new grounds for incompatibility with the office of member of the European Parliament, including being a member of a national parliament (Article 6(2));
- establishment of the principle that the electoral procedure shall be governed by national provisions in each Member State, provided that the proportional nature of the European elections is not affected (Article 7);
- a ban on making the results of national counts public until the polls in the last voting Member State are closed (Article 9(2));
- clearer provisions for filling seats falling vacant during the five-year term of office (Article 12).

4.2.4 The amendments introduced to the Electoral Act of 1976 were adopted on the basis of Article 190(4) of the Treaty establishing the European Community (consolidated version, hereinafter "EC Treaty"), which provided in this article (ex Article 138 of the EEC Treaty) that "The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements."

4.2.5 Article 8b(2) of the EC Treaty stated that "Without prejudice to Article 138(3) and to the provisions adopted for its implementation, 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, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State."

4.2.6 The essence of this provision is now included in Articles 20(2)(b) and 22(1) of the Treaty on the Functioning of the European Union, which reiterates the right of migrant EU citizens to vote and stand as candidates in European Parliament elections in their state of residence on equal terms with nationals of that state.

4.2.7 In keeping with Article 8b(2) of the EC Treaty, Council Directive 93/109/EC<sup>10</sup> was adopted. The main provisions introduced with this Directive were:

- the possibility for EU citizens to vote and stand as candidates in European Parliamentary elections in a Member State other than their home state under the same conditions as nationals of that state, with the possibility for a Member State to restrict these rights to EU voters who have resided for a minimum period not exceeding 5 years (for voting) and 10 years (for standing for office), if the number of non-national voters exceeds 20% of the total number of EU citizens residing in that state;
- the establishment of a procedure for non-national voters or candidates to express the wish to vote or stand as candidates in their state of residence;
- the establishment of a procedure for checking whether non-national voters or candidates have been deprived of the right to vote or stand as candidates in their home state and the ban on double votes and candidacies in both the state of residence and the home state.

4.2.8 It is important to point out, however, that the scope of Directive 93/109/EC is very limited and does not concern the way in which European elections are organised, for which the Electoral Act of 1976 is the sole basis.

#### 4.3 Possibility to amend the current rules

4.3.1 At present, the legal basis for amendments to the current legal framework on the election of members of the European Parliament is enshrined in Article 223(1) of the Treaty on the Functioning of the European Union (TFEU) (ex Article 190(4) and (5) EC Treaty), which states that "The European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

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<sup>10</sup> [OJ L 329, 30.12.1993, p. 34.](#)

The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component Members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements."

- 4.3.2 The current legal basis for future modifications to the European electoral system is similar to the previous one under Article 137 of the EEC Treaty and Article 190(4) of the EC Treaty.
- 4.3.3 It is also necessary to mention that a lighter, less invasive, type of measure could be introduced, based on Article 13 of the Electoral Act of 1976, which states that "Should it appear necessary to adopt measures to implement this Act, the Council, acting unanimously on a proposal from the Assembly after consulting the Commission, shall adopt such measures after endeavouring to reach agreement with the Assembly in a conciliation committee consisting of the Council and representatives of the Assembly".
- 4.3.4 Based on Article 13, measures may be adopted as long as they serve to implement provisions or principles already contained in the Electoral Act of 1976. Implementing measures should be proposed by the Parliament after consulting the Commission and shall be adopted by the Council by unanimity.
- 4.3.5 On 11 November 2015, the European Parliament adopted a legislative initiative resolution on the reform of the electoral law of the European Union (2015/2035(INL))<sup>11</sup>. This initiative followed the approach of the previous framework, which did not establish a uniform election procedure, but laid down common principles. The national parliaments of some Member States have submitted opinions claiming non-compliance with the principle of subsidiarity.

#### 4.4 Comments

- 4.4.1 Only one legal act aimed at the European Parliament's election system sets out provisions safeguarding EU citizens' voting rights. These apply to people residing in a Member State other than their home country.
- 4.4.2 No legal act touches upon real rights to vote, especially those of persons with disabilities.
- 4.4.3 As any change to the existing electoral system requires support from the majority of European Parliament members and a unanimous decision by the Council, followed by Member States' approval in keeping with their respective constitutional requirements, it seems unlikely that this system will be amended significantly in the near future. However, it may be possible to adopt non-controversial changes in a short space of time if they are proposed by the European Parliament, on the condition that such a proposal is limited in scope. Regulations aimed at improving real rights to vote for EU citizens with disabilities may be an idea which could attract widespread support in a short space of time.

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<sup>11</sup> The legislative initiative report P8\_TA(2015)0395 was authorised on 5 February 2015 by the European Parliament's Conference of Presidents.

## 5. Legal barriers to voting rights

### 5.1 Deprivation of voting rights

- 5.1.1 To protect the interests of some persons with intellectual disabilities or mental health problems, various concepts of guardianship have been introduced across the EU. The common feature is that the guardian (also called "trustee", "protector", "curator", "counsellor") receives legal authority to take decisions on almost all (plenary guardianship) or some (partial guardianship) areas of their ward's life, or at least the right to approve some decisions taken by a ward (blocking power). In many legal systems, such legal measures are linked to the deprivation of the ward's legal capacity and hence to the deprivation of their right to vote.
- 5.1.2 Under the legal systems of nine countries, many people under various protective measures (at least under plenary guardianship) are automatically excluded from political participation and thus denied the right to vote. These provisions are usually included in parliamentary legislation, sometimes directly in the constitution. This is the case in **Bulgaria, Cyprus, Estonia, Germany, Greece, Lithuania, Luxembourg, Poland and Romania**.
- 5.1.3 According to seven national laws, placing a person under guardianship does not automatically mean the loss of voting rights. The appointment of a guardian is usually done by the court/judge, who also normally takes a decision on the scope of the guardian's responsibilities on the basis of an individual assessment. In one country, however, such a decision is taken by a special Medical Board. Following this procedure, the separate decision to deprive the ward of voting rights may also be taken by the court. This may happen in **Belgium, the Czech Republic, France, Hungary, Malta, Portugal and Slovenia**.<sup>12</sup>
- 5.1.4 In 11 Member States (**Austria, Croatia, Denmark**<sup>13</sup>, **Finland, Ireland, Italy, Latvia, the Netherlands, Slovakia, Spain, Sweden**)<sup>14</sup>, in no circumstances may an individual be deprived of the right to vote.
- 5.1.5 The procedures either to establish guardianship leading automatically to the deprivation of voting rights or to deprive voting rights on the basis of an individual assessment vary between Member States. In some of them, these procedures are aimed only at people in a very severe medical condition without any possibility to make contact with other people, while in other countries thousands of people must go through a complicated process which sometimes even includes a general knowledge test with very detailed questions<sup>15</sup>.
- 5.1.6 Exact or approximate data on the number of people deprived of their voting rights because of a disability is available only for some Member States. However, on the basis of those figures, it is

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<sup>12</sup> The number of persons who are deprived of voting rights in a majority of these countries is very small.

<sup>13</sup> See details in item 5.2.2

<sup>14</sup> And also the United Kingdom.

<sup>15</sup> In one Member State, a person who wanted to keep his voting rights had to answer, among other things, the following questions: What is the speed of light? Who was Catherine the Great?

possible to estimate that about 800 000 EU citizens are prevented from participating in EP elections on account of national legislation. That said, the extent of this issue is very uneven across individual countries. In **Portugal**, for example, around 100 people are unable to exercise their right to vote, but there are also countries where this figure is above 50 000 or even around 300 000.

## 5.2 Recent changes in Member States' laws

5.2.1 A clear tendency can be observed in recent years in the Member States' legal systems. Instead of automatic deprivation of voting rights of all citizens who are placed under guardianship (who lose legal capacity), the systems are moving towards solutions with either no deprivation of voting rights or a limited number of cases of deprivation, decided by a court on the basis of an individual assessment.

5.2.2 The following changes were made in the Member States during the past eight years:

- the new constitution which entered into force on 1 January 2012 in **Hungary** has changed the existing system of automatic deprivation of voting rights of all citizens who were deprived of legal capacity into a system whereby a court decision is required in each individual case to deprive somebody of their voting rights. According to Article XXIII(6) of the amended constitution: "Those disenfranchised by a court for ... limited mental capacity shall not have the right to vote";
- amendments to Section 356 of the Civil Law made in **Latvia** on 29 November 2012, in force since 1 January 2013, envisage that "A person shall not be restricted in personal non-financial rights", which also means that persons deprived of legal capacity shall not be denied the right to vote;
- the legal reform implemented in December 2012 in **Croatia**, as a reaction to criticism presented by the Ombudsman for Persons with Disabilities, abolished removing the right to vote from persons divested of legal capacity (Article 64 of Act on Voter Registry);
- according to the new Civil Code, adopted in the **Czech Republic** on 3 February 2012, which came into force on 1 January 2014, the concept of automatic deprivation of voting rights was abolished and instead "A court may limit the legal capacity of an individual to the extent to which the individual is unable to make juridical acts due to a mental disorder which is not only temporary, and shall define the extent to which it has limited the capacity of the individual to make independent juridical acts" (Article 57(1));
- the Law of 17 March 2013 adopted in **Belgium** "reforming disability schemes and introducing a new protection status in accordance with human dignity" introduced the presumption of capacity. It is assumed that all people (including persons with intellectual disabilities) are entitled, as far as possible, to exercise their rights by themselves. The "justice of the peace", when setting up a "tailor-made" scheme, must specify the acts of which the protected person is considered to be incapable (both in terms of managing assets and exercising personal rights). Voting rights may be included among these acts, so the possibility of the automatic deprivation of some persons' voting rights was changed into a more flexible mechanism;



other key documents adopted by international entities, but first and foremost as an important element of human dignity.

5.3.2 There is no reason why the provisions aimed at protecting the rights of persons with disabilities, based on the assistance or guardianship models, should be combined with provisions that do not allow them to vote – exercising their fundamental rights as a citizen.

5.3.3 The European Parliament and other EU institutions should take all possible measures to accelerate the process of changes in the Member States' legal systems, leading to the abolition of all legal restrictions related to the voting rights of persons with disabilities.

## 6. Technical barriers to voting rights

### 6.1 Access to information for persons with disabilities in the run-up to election day

6.1.1 Arrangements exist in many Member States to provide persons with disabilities with information about elections in a form tailored to their needs. Often, such practices are based on long-standing customs and are not expressly provided for by law. Providing such information is the responsibility of public authorities, and measures taken by election committees representing parties or candidates, NGOs or the media on their own initiative and at their own expense can only complement this information, not replace it.

6.1.2 The right to reliable information about the date of elections, the method of voting and forms of voting other than going to a polling station, is inextricably linked to the right to participate in elections. The public institutions responsible for elections in the vast majority of EU countries provide voters at their place of residence with basic information on the subject and, in some countries, also with helpline numbers and the web address of that institution. This information takes the form of leaflets or brochures sent directly to homes or notices displayed in residential buildings and public spaces, or special named ballot papers provided to all voters, as is the case, for example, in **Denmark** or **Lithuania**. In eight Member States, however, the information from public institutions is very limited and is provided via the media and the internet only.

6.1.3 Only in some countries does the information given to voters take account of the needs of persons with disabilities. For example:

- The election authority website in **Sweden** (Valmyndigheten) provides full information for voters not only in Swedish and 30 other languages but also in easy-to-read Swedish and sign language<sup>16</sup>;
- also in **Sweden** and in **Germany**<sup>17</sup>, a "speaking" internet portal is available where blind and visually impaired persons and those with difficulties reading text (for example, persons with dyslexia) are able to listen to information read aloud;

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<sup>16</sup> [Valmyndigheten - Teckenspråk](#)

<sup>17</sup> [Der Beauftragter - Barrierefreiheit - Wahlen](#)



- the Central Election Commission in **Bulgaria** has published a film on voting procedures on its website, which is aimed at persons with a disability. The film is also in sign language;
- the Library for the Blind in **Slovakia** issues materials on how to vote using the ballot paper and a complete list of candidates in Braille and as an audio recording;
- in **Germany**, blind and partially blind persons may order ballot paper templates from their organisation – the Deutscher Blinden- und Sehbehindertenverband, which is legally obliged and publicly financed to produce and distribute these templates. The template is sent together with a CD on which the instructions for the template and official information about the election are provided;
- in **Spain**<sup>18</sup> and in **Poland**<sup>19</sup> the films presenting the voting methods for blind voters are published on the internet by public authorities and NGOs;
- in the **Czech Republic** the Ministry of the Interior sends a general information leaflet (in the form distributed to all citizens) to the Government Board for People with Disabilities, which distributes it to several specific organisations for persons with disabilities to prepare this information for their members/clients in a form tailored to their needs;
- in **Belgium**, a tutorial is recorded prior to elections demonstrating in an accessible way how electronic voting takes place in polling stations<sup>20</sup>;
- in **Slovenia**, before each election, the relevant ministries send a notice to hospitals and long-term social care institutions stating how the people staying there can exercise their voting rights;
- also in **Slovenia**, the lists of confirmed candidates are distributed to all households in the country no later than 15 days before polling day;
- in **Romania**, the Permanent Electoral Authority provides an online map containing all the polling stations; with this map voters can identify the location of the polling station and the way to it either from their current location or from a selected location on the map;
- in **Finland** the election information leaflet in Braille is paid for by the Ministry of Justice but produced and distributed by the Finnish Federation of the Visually Impaired (Näköammaisten liitto ry); information about upcoming elections is published online in several languages, including written brochures in simple Finnish and simple Swedish and in video form in two sign languages (Finnish<sup>21</sup> and Finland-Swedish) as well as in simple Finnish<sup>22</sup>, simple Swedish and simple English;
- in **Poland**, local authorities' websites include information about the possibility of transport to polling stations for persons with disabilities;
- in **Spain**, the Electoral Census Office provides a special website where voters can enter their national identity card number, or their name and birthday, to get information about the polling station and electoral commission where they can cast their vote;

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18 <https://www.youtube.com/watch?v=ThjZtOyIM3U>

19 <http://www.wyborybezbarier.org/braille.html>

20 e.g. <https://www.youtube.com/watch?v=8sWrV4S-P4c&feature=youtu.be>

21 <https://www.youtube.com/watch?v=8vOHkq7ugUA&index=1&list=PLBOD3s07Ie2xrtsEnxJT5gLZ6U5zBHEI>

22 <https://www.youtube.com/watch?v=482izpHIOqY>

- in **Ireland** there is a free hotline available also on the day of election, with an easy-to-remember phone number (which reflects the day of election), which offers a detailed explanation of how to vote for persons with a disability;
- all press conferences of the National Electoral Commission in **Poland** that are devoted to the elections and broadcast on TV and the Internet, are available with sign language interpretation<sup>23</sup>.

6.1.4 For persons with reduced mobility (including those using wheelchairs), blind people or those with significantly impaired vision, it is very important to get information on how a specific polling station has been adapted to their needs and whether assistance from public authorities can be provided on request. The right to such information is ensured in very different ways across individual countries. In some countries, public authorities assume that since there is a legal obligation to make all polling stations accessible, then every station does actually have to be fully adapted to the needs of persons with disabilities. Another group is made up of countries where there is an obligation to vote at the polling station linked to the voter's place of residence and there is no possibility to change it. For this reason, the authorities recognise that such information would be of little use and they do not need to provide it. In the vast majority of countries, however, the authorities try to pass on this important information – mostly this is done by local authorities which are usually obliged to prepare the polling stations in their respective areas – either by phone or via their website. Often this information is also available on the page of the central institution organising elections or via a telephone helpline. It is sometimes the case, however, that the process of getting hold of information about the accessibility of a given polling station is excessively formal – a written request must be submitted, for example.

6.1.5 There are also many positive examples in the EU:

- in **Lithuania**, an electronic map with marked polling stations tailored to persons with reduced mobility is available on the website of the Central Electoral Commission, and a similar solution exists in **Poland**;
- in **Estonia** it is possible to obtain even very detailed, technical answers as each polling station has its own telephone number;
- in **Germany** the election notification sent to all voters must contain information on whether or not the polling station is accessible and a service telephone number where information can be obtained on accessible polling stations.

6.1.6 Comments

- a) Information about the date of elections, basic rules and possible forms of voting, as well as adaptation to the needs of persons with disabilities, must be duly passed on in a way that considers the different types of disability among voters, taking particular account of the needs of blind, visually impaired and deaf people and those with intellectual disabilities.

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E.g. <https://www.youtube.com/watch?v=S9tStaM5XSQ>

- b) When drawing up and communicating such information, the public authorities should cooperate with organisations representing persons with disabilities in order to ensure that the information is passed on in the most effective way possible; the financing of activities undertaken by these organisations should also be considered by the public authorities.
- c) Persons with disabilities often have limited independent mobility and are more dependent on support from those around them. It is therefore very important to provide information directly in a form adapted to the individual needs arising from the type of disability. Public media and the internet, even though they are important tools of communication, cannot be the sole channel for reaching out to these people.
- d) Every voter in the EU should be able to easily find out how accessible a given polling station actually is for persons with limited independent mobility.
- e) It is very important to be able to get information by telephone and by asking additional questions. One concern is the small number of Member States currently offering such a solution, which should be widely available.
- f) Images seem to be one of the most effective ways to provide proper information to persons with intellectual disabilities. Unfortunately this tool is very rarely used in the European Union.

## 6.2 Voting at a polling station

6.2.1 The basic, most popular and, in some countries, the only form of participating in elections is to vote at a polling station. It is therefore very important for those stations to be fully accessible for persons with various disabilities and for the electoral commissions, being the bodies responsible for the election process in the polling stations, to be equipped and allowed to provide the necessary assistance in accordance with the needs of these people. Other legal and organisational solutions enabling such voters to participate (e.g. postal voting, voting using a mobile ballot box, voting by proxy, early voting in some polling stations) may be regarded as complementary options for persons with disabilities, but not as substitutes for their right to vote in person at a polling station on election day.

6.2.2 In 12 Member States, persons with disabilities are not entitled to change polling stations – for example, because they consider another polling station more convenient for them, due to their disabilities, than the polling station assigned on the basis of their place of residence. Fortunately, in 15 Member States there is such a possibility. Usually the procedure is simple. For example:

- in **Hungary**, anyone can indicate (via the website of the National Election Office, by visiting the municipality office in person, or by sending a request by post) his/her need for an accessible polling station – as late as two days before an election. A similar procedure exists in some other countries, including **Slovenia** with a three-day time limit and **Denmark** with an eight-day time limit;

- in **Italy** such a procedure is possible even on the day of the election and, in addition, the local authorities provide transport for persons with limited mobility to take them to a polling station tailored to their needs. The transport is provided also in **Bulgaria**;
- in **Croatia** and in **Poland**, voters have two options – they can vote away from their domicile, provided that they follow the procedure for prior registration (in the register of voters voting away from their domicile) or obtain a certificate allowing them to vote in any polling station;
- in **Slovakia**, a voter can request a voting card at the municipality of his/her permanent residence in person, even on the last working day before election day (then the card will be given to him/her immediately) or by letter or email at least 15 working days before election day (then the municipality will send the card within three working days from the reception of the request);
- a very flexible procedure was implemented in **Lithuania** as it may be completed on election day in the polling station selected by the voter; the electoral commission sends an electronic request to the polling station assigned to the voter on the basis of the place of residence and, after receiving electronic confirmation that the voter has not voted in any other polling station, the person is included on the voters' list of the polling station he/she has gone to;
- in the **Netherlands** too, it is possible to vote in a freely chosen polling station;
- in **Germany**, every voter can apply for a polling card (Wahlschein), until 6pm of the penultimate day before election day, and with that polling card a person is able to vote in any polling station in her/his administrative district or town.

6.2.3 The question of adapting polling stations to the needs of persons with disabilities is dealt with very differently under the laws of the Member States. Eleven EU countries apply the general principle that all polling stations must be adapted. A closer look reveals, however, that this accessibility is understood rather narrowly in practice – only as a lack of physical barriers for wheelchair users arriving at a polling station accompanied by other people who may, if necessary, help push the wheelchair. A number of other issues have been overlooked, however – such as the needs of blind people, appropriate organisation of the areas where people are moving from place to place, and the design and presentation of official notices displayed at polling stations. Six Member States have no rules on adapting polling stations to the needs of persons with disabilities. Several Member States have made the accessibility of polling stations a general rule, which should be taken into account when deciding where stations should be set up.

6.2.4 Only some Member States have realistically acknowledged that they are unable to fully adapt all polling stations in the short term. At the same time, they have realised the need to specifically lay down an obligation to ensure the accessibility of at least some polling stations, by introducing quantitative indicators:

- in **Poland**, at least 50% of polling stations must be accessible;
- in **Austria**, there should be at least one accessible polling station for each municipality and one in each district of Vienna;
- in **Hungary** and in **Ireland**, there must be at least one accessible polling station in each settlement.

- in **Lithuania**, the Central Electoral Commission, Lithuanian Disability Forum and Lithuanian Municipality Association have signed, on 26<sup>th</sup> November 2018, agreement to guarantee that at least 50% polling stations are fully accessible.

6.2.5 The polling stations are most frequently located in public buildings (for example schools, healthcare institutions, local administration offices), which are available for election purposes free of charge. Unfortunately, many of them are in old buildings, not adapted to the needs of persons with disabilities. An interesting solution was found in **Lithuania**<sup>24</sup>. If it is not possible to adapt and equip polling stations to accommodate the needs of persons with disabilities, suitable premises for polling stations should be rented and the cost will be covered by the state budget.

6.2.6 It often happens that the voter, as a person with disabilities, wants to be accompanied to the polling station by someone of her/his choice who can assist with at least some voting-related activities, including collecting the ballot paper, marking or entering the choice on the ballot paper, and putting the ballot paper in the ballot box. In most Member States, such assistance is permitted and the rules in this area are very flexible. The choice of an assistant by the voter is generally binding and cannot be challenged by anyone. A most common restriction is that a member of an electoral commission may not undertake the role of an assistant. However, in **Sweden, Luxembourg, Denmark and Germany** for example, voters may also designate a member of such a commission as their assistant, in **Finland** they may designate both a member of the commission and the so-called electoral assistant present in every polling station, in **Hungary** the voter may be assisted either by a freely chosen person or by two commission members acting together.

6.2.7 Many countries have no age limit and therefore assistance may also be provided by someone who is still not eligible to vote (e.g. the child or grandchild of a voter). This is the case, for example, in **France, Belgium, Poland, Germany, Sweden, Austria and Lithuania**. Many countries require, however, that the assistant be eligible to vote (and therefore that they meet the age limit), and even that they have the right to vote in that specific polling station. This poses difficulties for voters and in some cases may prevent them from voting. Occasionally, the electoral commission is required to assess whether the assistant designated by the voter with disabilities will be capable of providing assistance or whether the specific voter actually needs the help of an assistant. In one Member State voters must first swear an oath that they are in fact blind and require an assistant. The law specifies the text of the oath and also the set of detailed questions for the chosen assistant. The whole procedure must be completed up to two hours before the polling station is closed, otherwise the vote with an assistant can be rejected. These requirements, as well as rules on the type of disability entitling a voter to the help of an assistant (e.g. only blind people) and requests for voters (mainly those with visual disabilities) to submit a medical certificate stating that they are not able to vote independently and need assistance, should be considered unjustified. The same applies to the obligation for the assistant accompanying the person with disabilities to be registered in advance.

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Recent changes to the Law on Elections to the European Parliament, effective on 1 July 2019

- 6.2.8 There are doubts about a rule applied in two countries, under which only the members of an electoral commission are authorised to perform the tasks of an assistant. This is at odds with the principle of secret ballots, particularly in small communities where everyone knows everyone else, and may discourage people from taking part in elections.
- 6.2.9 In the great majority of Member States it is compulsory to use a designated area (e.g. voting booth) in order to freely make the choice on the ballot paper. In most cases, however, this rule is not restrictively observed. There is a similarly flexible approach to the requirement that voting booths may only be used by one person at a time, at most together with his or her assistant.
- 6.2.10 In **Slovakia**, if a polling station is not accessible for someone with disabilities, the ballot paper and ballot box are brought outside the polling station to allow that person to vote. In **Belgium**, a voter may use a voting booth specially adapted to the needs of persons with disabilities, placed in an accessible area, even if it is located outside the polling station. In **Croatia**, the members of the election committee bring the ballot paper outside and give it to the person unable to access the polling station, take the folded ballot paper with the marked choice which has been placed in an envelope by that person, and finally, take it inside the polling station, remove the ballot paper from the envelope and put it into the ballot box.
- 6.2.11 The issue of the organisation of polling stations in different Member States, including voting booths, raises many concerns. No EU Member State has implemented comprehensive solutions to standardise the way in which polling stations are fitted out and run such that they could be regarded as being user-friendly for all voters. That said, in **Poland**, for example, there are very detailed rules laying down the standards to be met by those polling stations that are officially recognised as accessible for persons with disabilities. In **Belgium**, meanwhile, a detailed guide is drawn up for local authorities before every election on how to prepare polling stations. These instructions are published on the Internet, so that they are widely available for voters too. They specify, among other things, the font size of notices, the minimum width of corridors, the slope of ramps and forecourts, the preparation of parking areas in front of polling stations, and the dimensions of ballot boxes<sup>25</sup>.
- 6.2.12 A very common error is the absence of a concept for the area in which people are moving from place to place, and therefore the lack of thought given to the location of the subsequent voting stages in the polling station (location of voter registration and receipt of ballot papers, voting booths and ballot boxes). This means that voters often have to pass each other in small spaces, and this is burdensome not only for persons with disabilities.
- 6.2.13 Some of the most frequent difficulties include: excessively small voting booths, major difficulties in using them by wheelchair users (for instance, they often have to take away a chair in order to get the wheelchair up to the table), lack of choice of how to fill out the ballot paper (sitting or standing), overly small tables to fill in ballot papers (generally the only place where a voter can put their bag, for example, is on the floor), location of the slot in the ballot box in a way that prevents some voters with disabilities from independently inserting their ballot.

6.2.14 In most countries the rules are flexible when it comes to inserting ballot papers in the ballot box. The ballot paper may be placed in the ballot box not only by a voter, but also by another person designated by them. This is often done by children when the whole family goes to the polling station. In the **Czech Republic, Germany** or **Greece**, for example, any commission member may also provide help, even if they are not an assistant, and in **Portugal** the ballot paper is always returned to a representative of the electoral commission who puts it in the ballot box. However, there are concerns over the principle of final contact, i.e. the practice in two countries which requires the voter – even those with disabilities – to be the last person to touch the ballot paper before it is placed in the ballot box.

6.2.15 Access to information at a polling station is an important aspect of participation in elections. National law precisely defines the scope of information available at polling stations and limits it to two matters – basic, official information on all candidates and instructions on how to vote. Most often persons with disabilities are given oral explanations by members of the electoral commission, which enables concerns to be dealt with quickly and information to be passed on in a way that is adapted to the needs of the specific voter. Difficulties may arise when the person needing clarification is deaf and uses sign language, as in only a few Member States is it possible to make use of a sign language interpreter available online.

6.2.16 Very often at polling stations official notices are displayed which have been issued by the national body carrying out the elections. A common error is the display of such notices at an inconvenient height, that is to say, in such a way that they cannot be read by wheelchair users, for example. Although in **Poland**, for example, the rules very explicitly stipulate that information must be readable by all.

6.2.17 Some countries are also introducing additional solutions for persons with specific types of disability, available at polling stations:

- in **Spain**, the easy-to-read/information leaflets on elections and accessibility available on the election website are also printed and sent to every polling station – these leaflets are designed for every election by the Ministry of the Interior in cooperation with the main associations of persons with disabilities;
- in **Lithuania**, the leaflets issued by the Central Electoral Commission with written information on how to vote, also issued in Braille, are available in polling stations;
- in **Malta**, the law stipulates that each polling station must be equipped with audio players and a Braille template which lists the candidates and parties that are on the ballot paper;
- in **Portugal** and in **Ireland**, an expanded copy of the ballot paper is posted in each polling station;
- in some Member States (e.g. **Sweden, Belgium, the Netherlands**), voters may use a magnifying glass which is provided in each polling station.

6.2.18 Comments

- a) Despite the existing rules, the vast majority of polling stations in the EU are not fully or generally adapted to the needs of persons with various types of disabilities and this cannot be corrected quickly. Therefore, the best remedy to this situation for the time being is to allow

voters with disabilities to change polling stations, if the polling station has been designated in connection with the place of residence. The administrative procedure leading to such a change should be simple and quick.

- b) All voters with disabilities should be free to choose the person who will assist them during elections at the polling station. The additional conditions for such assistants in many countries do not seem warranted.
- c) Many countries have introduced interesting, practical arrangements providing voters with various disabilities good access to information at polling stations. The most important of these, which can also be introduced quickly, are as follows: the display of official notices and copies of ballot papers in appropriate sizes and at a height that enables them to be read easily; making information available in Braille for blind people; the possibility to use a sign language interpreter online.
- d) It is of the utmost importance to draw up very detailed principles (in the form of legal rules or instructions for local authorities and electoral commissions) specifying the electoral commissions' facilities and how their work is organised. Those rules should specify, among other things, the structure of areas in which people may move around unhindered; the size, location, and facilities of voting booths; the accessibility of the ballot box; as well as parking arrangements and access to the polling station.

### 6.3 The ballot paper

6.3.1 The way in which votes are cast in elections to the EP varies greatly across the EU. It is often one of the factors that determines the actual possibility for persons with disabilities to vote independently. It is sometimes the case that the design of the ballot paper and the required form of voting is a barrier that cannot be overcome and voting requires the assistance of another person, to whom the choice of vote must be disclosed.

6.3.2 Where the electoral system stipulates that a voter must perform some kind of activity and, in addition, may still perform some other activity (e.g. they must indicate a political party and, on top of that, they may, but do not have to, indicate their preferred candidate), the system must create possibilities for voters with disabilities to exercise all of their rights.

6.3.3 The activities in Member States that voters must carry out in order to vote can be divided into three types:

- making some kind of mark on the ballot paper in a designated place ("x", "+", "v", filling in a box, circling a number);
- selecting one card from a group of cards including the names of political parties;
- entering something on the ballot paper (number, name or surname).



6.3.4 Taking into account these types of voter actions, Member States can be categorised as follows:

- countries where voting consists of making a mark (e.g. "x", "+"), circling a number or filling in a particular box in one or several places on the ballot paper (indicating either a party or a specific candidate, or candidates from a party list): **Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Germany, Hungary, Luxembourg, the Netherlands, Poland, Portugal, Romania and Slovenia;**
- countries where the voter first selects a card with the name of the party from the package they have received, then they indicate on it their choice of candidate or candidates by making a mark (e.g. "x" or "+") or filling in a particular box: the **Czech Republic, Greece, Latvia, Slovakia;**
- countries where voting consists of making a mark next to the name of a political party, but the voter must or can also enter a number or surname of a specific candidate (or candidates): **Italy, Lithuania;**
- countries where voting consists of writing the choice on the ballot paper (name of party, number or surname of a particular candidate): **Finland and Estonia;**
- countries where voters do not make any mark or enter anything on the ballot paper – from the package they receive, they select a card with the name of the party and put it in the ballot box: **France and Spain;**
- countries where numbers indicating preferences are entered in boxes next to the surnames of candidates: **Malta and Ireland;**
- country with a complicated ballot paper system: **Sweden** (the choice is between three cards of different colours and then, depending on the specific card there is also, but not always, the possibility to mark a box or to write the name of either a party or a candidate).

6.3.5 For voters who receive a ballot paper with the printed names of candidates and names of the political parties, the size of the characters and of the ballot papers is hugely important. The font size and often the size of the ballot paper as well are usually determined by the body responsible for organising elections. However, there are also countries where the dimensions of the paper are determined by law. There are big differences here between EU countries, ranging from A4 format to formats even larger than A2. The rules in **Belgium** are very interesting, concerning exclusively the length of the ballot paper, which depending on the region can be 36 or 72 cm, while **Cyprus** has decided that the maximum size of the ballot paper should be 16x70 cm. In **Bulgaria**, a special booklet is put together in the event of a long list of candidates.

6.3.6 The most popular, and at the same time the simplest, form of voting in EP elections is to put an "x" or similar in a box next to the candidate's name or the name of the political party. This solution is used in 12 countries, in two countries this box must be filled in, and in two other countries the "x" is placed next to the name or surname with no specially designated place for it.

6.3.7 Other ways of marking a choice include drawing a circle around the candidate's reference number (**Slovakia, Slovenia**) or making a mark next to the candidate's name using a stamp obtained from the electoral commission (**Romania**). In **Luxembourg**, drawing a circle or putting an "x" (or similar) in the upper part of the ballot paper is regarded as an endorsement of the entire list, although the voter is also entitled to split their six votes among their preferred

candidates; one candidate may receive a maximum of two votes (indicated by putting two "x" signs next to the name).

- 6.3.8 The legislation of most Member States generally applies a very flexible approach to the quality of marks put on a ballot paper, though in **Poland**, for example, the two lines of the "x" must meet inside the designated box if the vote is to be considered valid. In many countries, it is recognised, however, that if there are no doubts as to the intentions of the voter, then there is no need to create overly formal rules under which, for example, a vote would be regarded as invalid if the intersection of the two lines is not precise or if the circle is incomplete. In **Portugal**, for example, the vote is considered if it clearly indicates the will of the voter, even if the mark put by the voter is not perfect or is outside the box.
- 6.3.9 The question of the validity of a vote is linked to the availability of the technical means enabling persons with disabilities, particularly blind and visually impaired persons and persons with limited manual ability, to cast their vote independently and with the certainty that their votes will be properly recognised and counted. In seven Member States the voter may receive a special cover on the ballot paper which precisely designates the place where the appropriate mark should be made<sup>26</sup>. However, in some of them there are no Braille signs, which makes it extremely difficult for blind people to vote independently. In other countries such solutions are lacking for blind and visually impaired persons and those who have difficulty writing clearly, meaning that they have to rely on the support of their relatives/close friends when casting their vote.
- 6.3.10 Only two Member States (**Spain** and **Sweden**) from among seven countries where the voter selects a card with the name of the political party (election committee) from a package of cards containing the names of all parties (as the only or first stage of the voting procedure), have implemented arrangements allowing blind people to find the appropriate card independently – the cards are sealed in envelopes marked in Braille, allowing the appropriate card to be easily removed.
- 6.3.11 In seven Member States, voters write on the ballot paper the registration number or name of the chosen candidate or the name of the party for which they are voting. This solution poses serious difficulties for many people, and increases the risk of their votes being declared invalid for illegible handwriting (often due to disability), their preferences for particular candidates not being taken into account, or only their votes for specific political parties being counted. In the case of one Member State, any other mark or word, other than the candidate's registration number, causes the ballot paper to be treated as void. Among these Member States, only **Malta** provides assistance to persons who are visually impaired – a Braille template and audio equipment can be made available upon request, but no advance notice is required and if the person is still unable to vote, the electoral assistants will help, depending on the need; the polling booth area is closed for other people while assistance is being given.
- 6.3.12 In some Member States, voting does not consist of a single straightforward action; the voter has several different options which can be difficult to understand. In **Lithuania** it is possible to

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In Ireland too, such covers are available but only during a referendum and presidential elections.

select zero to five preferred candidates; in **Slovakia** it is possible to select up to two candidates; in **Luxembourg** the voter has a specific number of votes that may be awarded to candidates, and one person may even be awarded two votes; in **Malta** a hierarchy of preference for a maximum of five candidates is indicated; and in **Sweden** the voter must first choose one of three ballot papers and then proceed in various ways depending on the selected card, and beyond that, in special circumstances it is not only possible to choose a preferred candidate from the list but also to write in the name of a person not included on the list. The information guides provided by the authorities in these countries try to explain the effects of making use of the individual options available to voters. In **Sweden**, which has the most complicated system, there are posters with step-by-step pictures explaining how to vote.

### 6.3.13 Comments

- a) For voters with disabilities, the technical aspect of voting is as important as access to information or access to the polling station. The most convenient solution is to make a selection by putting an "x" or similar in a sufficiently large box. For blind and visually impaired persons, and those who find it difficult to write clearly with a pen, special covers for ballot papers, both marked using Braille and with easily readable text (e.g. only the reference numbers of the candidates) are a very good solution. However, voting by drawing a circle, e.g. around the candidate's reference number, poses a major obstacle for voters with limited use of their hands.
- b) If the voter selects a card with the name of a political party from the package of cards they have received, the font on the cards of the individual parties must be sufficiently large and all cards must be also printed in Braille or made available in envelopes marked in Braille so that blind people can select the right card.
- c) Voting by writing the number or name of the candidate or the name of the party on the ballot paper is burdensome and creates a risk of the vote being declared invalid. Therefore, irrespective of a country's electoral traditions, it is worth considering changing this rule.
- d) For persons with intellectual disabilities, information about voting procedures should be adapted accordingly. The best approach is to have text with simple sentences or graphic instructions. This is particularly important in countries with a complicated voting process, which involves the voter making a number of decisions and carrying out related activities. Not only do the next steps in the process have to be explained to those voters, but also their consequences.

## 6.4 Early voting – before official election day, in designated polling stations

6.4.1 Ten Member States offer, at least for some groups of voters, the possibility to vote in advance by appearing in person at a designated polling station – usually on the premises of the local authorities. These polling stations are located in premises tailored to the needs of persons with limited independent mobility.

6.4.2 In eight countries, this right applies to all citizens, while in the remaining two, there are particular groups of citizens who are allowed to vote in advance. Disability is not a justification for early voting; however people in hospital or who are expected to be in hospital on election day are allowed to vote in advance.

6.4.3 In the vast majority of countries, early voting does not require voters to undertake any administrative tasks. In some countries, however, it is required to register in advance for early voting. They simply go to the polling station during opening hours. In **Finland** early voting takes place in, among other places, polling stations set up in hospitals and long-term care institutions.

#### 6.4.4 Comments

a) Early voting may be an effective way of helping persons with disabilities to take part in elections. Since it occurs over the course of at least a few days, it is easier for local authorities to arrange transport to take people to such polling stations.

b) In long-term care institutions, it is easier to organise such voting on a working day, since usually more staff are at work than on a Sunday, the traditional day of elections in most countries.

#### 6.5 Postal voting

6.5.1 In some Member States, voters living in the country of voting are able to obtain the ballot paper in advance (before election day) to be completed by them personally and then sent by post/courier or delivered to the electoral commission by another person (other than a member of that commission). For the purposes of this report, all these types of voting are called postal voting.

6.5.2 In **Spain, Luxembourg and Germany** all citizens may vote by post. In **Austria, Ireland, Poland, Slovenia and Sweden** this form of voting is allowed for narrowly defined groups of people who cannot come to the polling station on election day, including persons with disabilities.

6.5.3 In **Denmark** there is a mixed system that incorporates elements of postal voting. There is broad scope for early voting – from three weeks up to two days – in designated polling stations. In the case of people unable to go to a polling station, early voting also takes the form of postal voting. In institutions such as hospitals and care homes, the management collects appropriately secure ballot papers from people staying in those institutions and forwards them to the electoral commission. Special electoral officials deal with the reception of completed ballot papers from persons with disabilities in their homes.

6.5.4 In countries where voters must declare their wish to vote by post in order to obtain a ballot paper, user-friendly procedures are applied – the form is always submitted to an office (not necessarily in person by the voter), and some countries also accept the application sent by mail, a form filled in online, or even a phone call. Most often, ballot papers are sent free of charge to

the home address; in **Ireland** and **Spain** they can be picked up from designated offices. In **Spain**, a person with disabilities who cannot go to the post office to ask for the postal vote or to collect the ballot paper may call a notary public who, free of charge, will issue a power of attorney so that the person appointed by the voter with disabilities may complete the postal voting requirements. In **Germany**, voters with disabilities may ask public authorities for assistance in obtaining the necessary documents to cast their ballot by post.

6.5.5 Ballot papers filled in by voters are sent free of charge (by post or courier). In **Sweden**, the envelope containing the completed ballot paper is collected from the voter by a special representative (the postman, for example) and delivered to the electoral commission – this ballot paper is inserted into the envelope by the voter (or if necessary by someone assisting) in the presence of that representative and a witness. In **Poland**, **Austria** and **Sweden**, a voter who expressed a wish to vote by post and who has received a ballot paper may change their mind and – instead of sending back the ballot paper – may take it in person to the ballot box in their polling station on election day.

6.5.6 In **Germany** and **Poland**, blind voters may obtain special covers for ballot papers (the same as those available in the polling stations), allowing them to vote completely independently.

#### 6.5.7 Comments

- a) Postal voting makes it considerably easier for persons with disabilities to participate in elections.
- b) The effectiveness and popularity of this solution, however, depends on the simplicity of procedures and the absence of fees: an expression of a desire to participate, the means of collecting the ballot paper and how to return it upon completion.
- c) Voters should be sent not only the ballot paper but also information in a form adapted to the type of disability of the specific voter and, where necessary, also the covers for blind and visually impaired persons.

#### 6.6 Voting by mobile ballot box

6.6.1 This type of vote, with differences in terms of its scope, is used in 17 Member States. In 12 of them, it is possible to vote using a ballot box that is delivered to the voter's place of current residence (e.g. domicile, hospital bed or long-term care institution) or, to take another example, a location in front of the polling station (in cases where entering the polling station is too much effort for the voter). From the voter's point of view, the same situation occurs in five other countries when the vote is not cast in the ballot box (because the vote is not physically brought to the ballot box); rather, an appropriately secured ballot paper is collected in an envelope (which represents the voting box) directly from the voter by members of the electoral commission.

6.6.2 This type of voting can be used by persons whose disability or medical condition prevents them from getting to the polling station. In many countries, being in hospital or a long-term care

institution on the day of the vote is sufficient, as is – in **Lithuania** – being 70 years of age. Some countries have provisions specifically setting out formal requirements; in others, individual situations are assessed more flexibly, and a temporary lack of mobility (e.g. a patient staying at home following an operation) is also taken into account.

- 6.6.3 The procedure to declare one's intention of voting using a mobile ballot box is very flexible in the EU Member States; as well as filling out a formal application, phoning or sending an email are often acceptable. Only one country has a requirement to submit a medical certificate substantiating the inability to get to the polling station.
- 6.6.4 Twelve countries have the most flexible solution: bringing a ballot box to a voter's residence. The most common constraint here is the requirement that the voter's residence be situated in the municipality where the voter's assigned polling station is located. In three countries, the use of a mobile ballot box is restricted to only hospital patients and people staying in care institutions who are bedridden and unable to move about independently. Two other countries permit the ballot box to be moved within the polling station if physical barriers prevent a voter from being able to get to it. It is even possible to bring the ballot box and ballot papers out in front of the polling station.
- 6.6.5 **Slovakia, Finland** and **Estonia** also allow people providing permanent care for voters with disabilities to vote simultaneously in the same ballot box. The conditions are: prior notification, assignment to the same electoral commission, and a close relationship with the voter.
- 6.6.6 About half of the Member States make use of voting using a mobile ballot box on election day, and the others in the days in the run-up to the election. The voter is usually informed of the timeframe when the ballot box is to be delivered to their home; however, this timeframe is relatively short (not exceeding three hours) in only four countries.
- 6.6.7 Voters with disabilities who vote using a mobile ballot box can enjoy the same aids as in a polling station – covers for blind people (if available in that country) or the help of another person (assistant).
- 6.6.8 Comments
- a) A mobile ballot box is a very effective way to enable persons with disabilities to take part in voting. However, with regard to cost, it is worth combining this solution with postal voting, as these two forms can complement each other.
  - b) As a provisional solution until the accessibility of polling stations is improved, consideration should be given to taking ballot papers and a small additional ballot box outside the front of the polling station so that voters can cast their vote there.
  - c) For people who are ill or who have a serious disability, waiting several hours for the commission to arrive with the ballot box may be very burdensome. The timeframe within which the ballot box is to be delivered should be short.

## 6.7 Proxy voting

- 6.7.1 Proxy voting concerns only those cases where the voter authorises another person to cast a vote on their behalf when voting at a polling station. This is popularly known as delegating voting rights. The proxy casts a vote on behalf of a voter and at the time of voting, the voter is not accompanied by his/her proxy.
- 6.7.2 This option is possible in four Member States – in **France** and the **Netherlands**, all voters can vote by proxy; in **Poland** it is restricted to persons with disabilities and people over the age of 75; and in **Belgium**, quite large groups of voters, including people who are ill and persons with disabilities, have this right, upon providing an appropriate medical certificate.
- 6.7.3 The proxy must have the right to vote in the same polling station as the voter delegating voting rights. Exceptions to this rule require separate administrative procedures.
- 6.7.4 In **Poland** and **France**, voting rights must be delegated in the presence of a local official; this may also take place in the voter's home. In **Belgium**, voting rights are delegated by using a special form and this does not require official confirmation.
- 6.7.5 Other restrictions in all these countries also underline the exceptional nature of this form of voting. In **Belgium**, a person is allowed to act as proxy for only one person; in the **Netherlands** two; in **France** one, as a rule, and a second only if appointed as proxy by a person abroad; in **Poland** two, in so far as at least one of the people delegating voting rights is an immediate family member.
- 6.7.6 Comments
- a) Proxy voting can be considered a complementary solution, but must not be used as a pretext for disincentivising efforts to enable all voters to genuinely and directly participate in elections.
  - b) Particular attention should be paid to the way that voting rights are delegated (requirement for signature). Voters with disabilities need to be enabled to delegate their voting rights at their place of residence.
  - c) Limiting the number of people for whom one person can act as proxy is an appropriate solution, so as to prevent irregularities in the electoral process.

## 6.8 Electronic voting

- 6.8.1 All citizens in **Estonia** can vote electronically. This is one element in a comprehensive system that enables citizens to communicate with the national authorities and deal with almost all official matters. Use of this system is so widespread that there is no need to organise basic training. Electronic voting is the most convenient solution for many Estonians with disabilities. This kind of voting involves putting the candidate's registration number, as in traditional polling

stations. Another advantage is that it is more convenient to view the list of candidates on a computer screen rather than studying the paper lists available at the polling station.

6.8.2 The way that voting is organised in **Estonia** protects voters from attempts to coerce them into voting a particular way, which is very important for persons with disabilities, who often depend on carers. The principle of the last vote is applied: the person voting electronically can change their mind and vote again, and the system considers the last vote cast. The voter can change their mind even if the option of electronic voting has already passed. In that case, however, the voter must go in person to the polling station.

6.8.3 In certain regions of **Belgium**, voting in polling stations is done using special stationary devices with a screen (similar to an ATM). However, for persons with disabilities, this is not a substantial improvement: problems could arise due to the height of the screen and its legibility, as well as the manual dexterity needed to use the equipment.

#### 6.8.4 Comments

a) Electronic voting can be another form of voting that is suited to some persons with disabilities, in so far as it is part of a comprehensive framework of electronic communication between citizens and the national authorities. Setting up a system with an eye only to elections does not make sense. Notwithstanding the technical conditions relating to security, for example, substantial investments would be needed in raising awareness about this voting method, especially given the fact that conveying this information to persons with various disabilities requires a tailored approach.

b) Electronic voting using stationary devices in polling stations does not currently represent a substantial improvement to the accessibility of elections for persons with disabilities. To change this, it is necessary to put in place technical arrangements allowing persons with various disabilities to operate these devices independently and their location must ensure genuine privacy and secrecy for voters.

#### 6.9 Voting in long-term care institutions and hospitals

People in long-term care institutions and hospitals are often prevented from exercising their electoral rights. If voters in a certain country can, under certain conditions, make use of other forms of voting than in a polling station (e.g. via portable ballot box or postal voting), these are of course also available to people who are in these institutions. However, some countries have brought in special arrangements targeted specifically at such people, comprehensively supporting their participation in elections. Thus these voters do not need to comply with special formalities before elections, in contrast to voters in similar health but who live in their own homes.

6.9.1 Seven countries provide "closed polling stations" for these people. These are open on election day, and usually have the same opening hours as normal polling stations. In **Poland**, these electoral commissions are allowed to close early if all entitled voters have cast their vote. In **Italy**, the opening hours of the polling station are set by the head of the hospital or care



institution, and are usually significantly shorter than the opening hours of the other polling stations in the country.

- 6.9.2 The decisive factor determining whether to open a polling station in an institution is the number of people staying there. This varies widely: in **Bulgaria**, 10 people is sufficient; in **Poland**, 15; the threshold in **Malta** is 50 people in the case of old people's homes while the names of major hospitals are directly indicated in the electoral law; in **Italy** it is 200 people. In **Germany** and **Croatia**, electoral commissions are formed in larger establishments, while special mobile electoral commissions or representatives of regular commissions can travel to smaller hospitals and long-term care institutions.
- 6.9.3 Special forms of voting, only accessible to people in hospitals and long-term care institutions, have been implemented in other countries. In **Lithuania**, people who are able to move around are brought to vote before election day in designated post offices. People who are unable to access this kind of location are visited by a special commission with ballot papers, ensuring that they are completed independently or by an assistant chosen by the voter and under the voter's supervision. In **Finland**, voting follows similar rules as in closed polling stations, but in the run-up to election day (11 to 5 days prior to the elections). The situation is similar in **Estonia**. In **Ireland** voters living in long-term care institutions may apply, by submitting a medical certificate, to be included in the Special Voters List and, after completing this procedure, they are visited individually by Special Returning Officers who collect their votes.
- 6.9.4 Bedridden people requiring round-the-clock care are allowed to vote in all countries where voting is held in hospitals and long-term care establishments. Most of them vote in their room or ward, putting their ballot into the mobile ballot box supplied by the electoral commission. In two countries, these voters are transported in beds or wheelchairs to an adequately prepared polling station. When a voter is unable to independently state their choice, this is indicated by the person they have selected and under their supervision.
- 6.9.5 Specific relationships develop between patients and staff in such institutions, often with a high level of dependency, which risks influencing voters' decision. Therefore, distance voting (e.g. by post or over the internet) should not be promoted within these institutions; instead, direct forms should be the focus, enabling the independent commission to check that no member of staff is attempting to compel the voter to vote a certain way.
- 6.9.6 In many countries, people in such institutions – if a polling station has not been set up there – can make use of other forms of voting on election day or earlier, primarily voting using a mobile ballot box or by post, or by being brought to the normal polling station. These options are very often coordinated by the institution's management. In some countries, this takes the form of a mobile electoral commission which arrives at the hospital or care institution and does not require a prior request from the institutions' residents to participate in voting.
- 6.9.7 In almost one third of Member States, people in round-the-clock care institutions or undergoing long-term treatment in hospitals have no opportunity to participate in elections. It can happen in a significant number of countries that while voting is, in theory, possible, exercising this right in practice requires a great deal of effort and support from the family. In the remaining countries,

most of these people are able to participate in elections, but the systematic solutions that are in place are conducive to only a sub-set of voters – mainly those who are in larger institutions.

#### 6.9.8 Comments

- a) Demographic change and ageing societies are factors that will lead to a rise in the number of people in care institutions and hospitals. The Member States' administrations should devote particular attention to ensuring the conditions are in place so that these people can exercise their right to vote.
- b) Experience has shown that running a closed polling station is the best systematic solution if the institution holds at least 50-100 people, with voting via a mobile ballot box supplied by a mobile electoral commission for the people staying in smaller institutions. Of course, bedridden people should always be able to vote using a mobile ballot box.
- c) Given the specific relationships, with a high level of dependency, between patients and staff in such institutions, the risk of voters' decisions being influenced must be minimised. Therefore, the focus should be on direct forms of voting in such institutions, enabling the independent commission to check that no member of staff is compelling the voter to vote a certain way.

#### 6.10 Compulsory voting

- 6.10.1 Participating in elections is mandatory in three EU countries. The law in **Belgium** and **Greece** does not set out exceptions to this rule. Voting in **Luxembourg** is not compulsory for people over 75 years of age.
- 6.10.2 In **Belgium** and **Luxembourg**, failure to take part in an election is justified by means of written correspondence, potentially accompanied by substantiating evidence. In **Greece**, this is done by means of an interview with an official. There are no specific procedures tailored to the situation of persons with disabilities.
- 6.10.3 This is often a source of additional stress for persons with disabilities – first, they are unable to vote due to unsatisfactory arrangements and then they have to justify their lack of participation in the election. Additionally, there is always the risk that the justification will not be considered sufficient and might result in penalties.
- 6.10.4 Only in **Greece** is this rule – despite the fact that it is part of the legal framework – treated very flexibly by the authorities in practice: failure to participate does not entail any sanctions. In **Belgium**, a first unjustified failure to participate in an election can result in a warning or a fine of EUR 40-80. Subsequent unjustified failures to participate lead to higher fines (EUR 80-200); a failure to participate four times within 15 years means that the elector is struck off the electoral register for 10 years. In **Luxembourg**, a first unjustified failure to participate results in a fine of EUR 100-250; subsequent instances (within five years) lead to fines of EUR 500-1000, and the law also lists penal sanctions, although in practice this provision is unlikely to be applied.

#### 6.10.5 Comments

- a) Making it mandatory for citizens to vote in elections should strongly prompt the authorities in certain countries to put in place solutions enabling each person with a disability to participate in elections.
- b) This must not lead to a situation where a person with disabilities has to convince a public authority that they were unable to participate in a vote because that country had not tailored the conditions of participation in an election to their disability.

#### 6.11 Voting rights in a country of permanent residence different from country of origin

6.11.1 All EU citizens living in a Member State other than their country of origin are entitled to vote in elections to the European Parliament in their country of residence. However, in order to avail themselves of this right, they must be registered in the electoral register.

6.11.2 In a large majority of Member States, inclusion in the electoral register is either automatically linked to inclusion in the register of residents or taxpayers, or the potential voter may declare their wish to vote in European Parliament election at the same time as (or after) the resident/taxpayer registration procedure is completed. In seven countries, the procedure is more complicated. In four of them, EU citizens who want to vote have to complete a separate registration procedure by filling in a registration form. In three countries, an application must be submitted, which is then examined by the local authorities.

6.11.3 The technical arrangements for inclusion on the electoral register is crucial for persons with disabilities. In 12 Member States the only possibility is to carry out all formalities in person at the relevant office. In the other 15 Member States, other, more convenient, methods are also possible. Fourteen countries make it possible to send in a paper request, while in 10, this request may be submitted electronically – i.e. by sending an email together with attachments, or by completing an online form. In the case of notification by email, an authorised electronic signature is generally required, but in **Lithuania**, for example, it is enough to send a scan of the completed application form along with the necessary annexes. However, no country with the option of an online form has adapted the form to visually impaired persons, or provided adjusted solutions for deaf people, such as information in sign language. Some countries do have the possibility of procedures individually tailored to the specific needs of persons with disabilities. For example, in **Malta**, a government official may even go to the home of the person who is registering so that they can fill in the form; in **Lithuania**, another person can submit or send the form.

6.11.4 Only two countries oblige citizens of other EU Member States who are on the electoral register to re-register to vote before the next election – which seems to be an unnecessary administrative burden. In the other countries, they are always already recorded in the electoral register.

6.11.5 The deadline by which an application for inclusion on the electoral register can be submitted is a very important issue. In most EU countries, the deadline falls well in advance of the elections:

more than four weeks; 60 days in some countries; and in one country as much as 90 days before the election. Thus potential voters have to register to vote before information appears in the media about the principles governing participation in the election, including arrangements for persons with disabilities, enabling them to weigh up whether they will be able to independently take part in the election. Only two countries have a deadline that falls less than one week before the election: registration in **Lithuania** is possible seven days before the election, and in **Poland** five days (and even later in exceptional cases).

#### 6.11.6 Comments

- a) Registering voters living in a different EU country to their country of origin should happen only once; the process should not be repeated in subsequent elections.
- b) Many persons with disabilities can find registering in person at an office impossible or extremely onerous. Therefore, other ways to register – including personalised methods, in particularly justified cases – should be made possible and constantly expanded.
- c) In many Member States, procedures for registration do not take sufficient account of the needs of blind and visually impaired persons and deaf people. This needs to be urgently improved.
- d) The deadlines in EU Member States for registering to vote varies widely, from 90 to 3 days before the election. It is hard to justify these divergences. The electoral register should be closed no earlier than two weeks before the election.

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