



SOC/638

**The need to guarantee real rights of persons
with disabilities to vote in EP elections**

OPINION

Section for Employment, Social Affairs and Citizenship

**The need to guarantee real rights for persons with disabilities
to vote in European Parliament elections**
(Additional own-initiative opinion)

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1. Introduction

- 1.1 This opinion is a summary of the second phase of the work of the European Economic and Social Committee (EESC), which aims to ensure that all European Union (EU) citizens with disabilities have a genuine right to vote in elections to the European Parliament (EP).
- 1.2 In the first stage, which ended in March 2019, the EESC drafted the information report *Real rights of persons with disabilities to vote in EP elections*¹. The report comprehensively describes the legal and technical obstacles preventing these rights from being realised in all EU Member States. This opinion cites only some of the findings and conclusions of that report, to fully understand the situation, one would need to read the whole report.

2. Conclusions and recommendations

- 2.1 In each of the 27 EU countries, there are rules or organisational arrangements that deprive some voters with disabilities of the possibility of participating in EP elections.
- 2.2 If no major legal changes are made, alongside the ageing of the population, there will be a steady rise in the number of people who do not have a genuine right to vote due to disability – this applies both to people living at home and those in long-term care institutions. This lack of possibility to vote also affects many other people, such as those undergoing short-term care in hospitals, people in the process of treatment or rehabilitation at home and people who are subject to isolation or quarantine due to epidemiological risks.
- 2.3 The EESC considers this unacceptable and contrary to the fundamental values of the EU and the provisions of the Treaty on European Union (TEU). It is also contrary to many international legal and political acts, including the UN Convention on the Rights of Persons with Disabilities, the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the recommendations of the Council of Europe Committee of Ministers.
- 2.4 The EESC calls on the EP, the European Council and Member States to urgently amend the 1976 Electoral Act² by clarifying the principles of universality, directness and secrecy of elections, which would make it possible to implement standards throughout the EU that would guarantee real voting rights for persons with disabilities, in accordance with Article 29 of the Convention on the Rights of Persons with Disabilities. The standards should include at least the following:
- a ban on depriving people of the right to vote in EP elections on the grounds of disability or health status,
 - obligation to provide information on voting rules in a form suitable to the needs resulting from the type of disability,

¹ <https://www.eesc.europa.eu/en/node/68473>

² [OJ L 278, 1976](#), [OJ C 340, 1997](#), [OJ L 283, 2002](#)

- allowing individuals unable to access their polling station due to their disability to vote independently outside the polling station,
- implementing solutions that would enable persons with disabilities in need of significant support – such as persons who are deafblind, blind, visually impaired or having limited manual dexterity - to vote independently, without relying on assistance from other people,
- the possibility of changing the designated polling station to one that is more suited to the needs of voters with disabilities,
- a person's right to freely choose a personal assistant who will support them in exercising their right to vote.

2.5 Implementing these rules will still give Member States broad discretionary powers, but will nevertheless guarantee that as of 2024 every EU citizen will have the real right to elect their representative to the EP, regardless of nationality or country of residence.

3. State of play

3.1 Obstacles encountered by persons with disabilities when exercising their voting rights

3.1.1 Politicians across Europe are aware of the fact that many persons with disabilities are unable to exercise their voting rights as for many years representatives of organizations dealing with the rights of persons with disabilities and human rights, as well as individual persons with disabilities and their families, have been demanding a real right to vote, without any limitations. The President of the European Parliament Antonio Tajani also indicated this problem in the letter he sent in 2017 to all Member States' prime ministers, asking them to take all appropriate measures to ensure that persons with disabilities can exercise their voting rights during the 2019 elections. However, the expected result has not been achieved.

3.1.2 On 20 March 2019, the EESC sent its information report *Real rights of persons with disabilities to vote in EP elections* to EU institutions and Member States.

3.1.2.1 The report comprehensively describes the legal and technical obstacles encountered in all EU Member States by persons with disabilities when exercising their voting rights. It also presents more than 200 examples of good practices, namely solutions that make it easier for them to take part in elections.

3.1.2.2 The report provides an analysis of the rights of persons with disabilities to participate fully in political life, including the right to vote, arising from the most important international legal and political acts.

3.1.2.3 The report also provides a detailed description of the rules in force in the EU which govern how EP elections are conducted and how these rules can be amended.

3.1.3 The limitations described in the report were confirmed by reports from European media and civil society organisations from the last EP elections on 23-26 May 2019.

3.1.4 During the two months between the publication of the report in March and the EP elections in May, legal changes were decided in Germany³ and France⁴, enabling people to vote who had previously been deprived of that right. Despite this, national laws of 14 Member States still exclude a total of around 400 000 EU citizens from voting in EP elections on the grounds of intellectual disabilities or mental health problems – usually following the decision to place them under plenary or partial guardianship.

3.1.5 Organisational arrangements (technical limitations) arising from rules or practices in Member States cause millions of EU citizens to be unable to vote in EP elections. For example:

- in eight Member States, people who cannot get to a polling station due to disability or illness, including people in 24-hour care institutions, do not have any other way to vote;
- in 18 countries, blind people are not able to vote independently;
- in 12 countries, voters with disabilities cannot select their preferred polling station;
- in nine countries, voters must write the candidate's identification number, their name or the name of the party they are supporting on the ballot paper, which constitutes a serious barrier, and not only for the blind;
- only one EU country has rules defining the equipment and operation of the polling stations so that they would be suited to the needs of persons with different disabilities (they apply to half the stations in the country).

3.1.6 In each of the 27 EU countries, there are rules or organisational arrangements which deprive some voters with disabilities of the possibility to participate in EP elections. However, if the best practices from all countries were implemented, there would be an ideal system whereby every EU citizen who has a disability would not only have the full possibility to vote, but would also be able to choose the method of voting most comfortable for them from several options.

3.1.7 The COVID-19 pandemic has prompted the countries organising elections in 2020 to implement new, often innovative solutions, creating the possibility of voting without having to come to the polling station, thus expanding the range of positive solutions applied in the Member States which are useful not only for persons with disabilities.

3.2 Demographic and health determinants

3.2.1 According to Eurostat forecasts⁵, the share of people aged 65 or over in the overall EU population will rise from 19.8% in 2018 to 31.3% in 2100.

3.2.2 According to EUROSTAT "a girl born in 2015 could expect to live an average of 63.3 years in a healthy state free from any form of disability, while a new-born boy could expect to live

3 https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/04/qs20190415_2bvq002219en.html

4 <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038261631&categorieLien=id>

5 https://ec.europa.eu/eurostat/statisticsexplained/index.php/Population_structure_and_ageing#The_share_of_elderly_people_continues_to_increase

62.6 years free from disability"⁶. As average life expectancy of this girl was 83.3 years and of a boy was 77.9 years – the average women born in 2015 will live 20 years experiencing disability while the men born in the same year – about 15 years.

3.2.3 According to Eurostat estimates⁷, the rate of persons with disabilities in the 15-64 age group is 11-14%, depending on the definition adopted. If the definition given in Article 1 of the UN Convention on the Rights of Persons with Disabilities, ratified by the EU and all Member States, is used as a reference then the rate exceeds 15%.

3.2.4 It can therefore be estimated that almost 20% of adult EU citizens, approximately 80 million people, currently experience some form of disability that makes it difficult to function in day-to-day life, and this rate will increase by 1% on average every six years.

3.2.5 The UN Convention on the Rights of Persons with Disabilities applies to people "who have long-term physical, mental, intellectual or sensory impairments." However, the EESC emphasises that other people who are not formally considered to have a disability because their impairment is temporary also experience the same limitations when it comes to the possibility of voting.

3.2.5.1 This includes, for example, short-term hospital patients and people undergoing treatment or rehabilitation at home who, due to the temporary constraints caused by their current state of health, are not able to vote at a polling station. This could apply to several hundred thousand patients in the EU.

3.2.5.2 This may also be important to people who, due to epidemiological risk, are subject to restrictions on movement, including isolation in a closed institution or not being able to leave their home. Experience from the COVID-19 pandemic shows that many millions of EU citizens could be affected at the same time.

4. **The most important international legal and policy framework applying to the voting rights of persons with disabilities**

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

4.2 According to Article 25 of the International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966, "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:[...] To vote [...]"

⁶ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=People_in_the_EU_-_statistics_on_an_ageing_society&oldid=458862

⁷ <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/34409.pdf>

4.3 The UN Convention on the Rights of Persons with Disabilities, which entered into force on 3 May 2008:

- 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, [...] 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" (Article 29);
- emphasises 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" (Article 12);
- requires that people with disabilities have access to commonly used "buildings, roads, transportation and other indoor and outdoor facilities" (Article 9).

4.4 The UN Committee on the Rights of Persons with Disabilities noted in 2015 *"that across the European Union, persons with disabilities, especially those deprived of their legal capacity or residing in institutions, cannot exercise their right to vote in elections and that participation in elections is not fully accessible" and recommended to "take the necessary measures ... to enable all persons with all types of disabilities ... to enjoy their right to vote"*⁸.

4.5 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: [...] 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."

4.6 The Charter of Fundamental Rights of the European Union confirms, in Article 39, the right of all EU citizens to vote in EP elections. Furthermore, in Article 21(1) the Charter stresses 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 [...] participation in the life of the community."

4.7 The Recommendation of the Council of Europe Committee of Ministers of 16 November 2011⁹ reaffirms that all persons with disabilities have the right to participate in political and public life on an equal basis with others and "that accessible ballot papers and facilities should be available at the time of voting."

5. Action to be taken

5.1 The EESC emphasises that in accordance with Article 10(2) of the Treaty on European Union (consolidated version) "citizens are directly represented at Union level in the European Parliament." Article 14(3) of the Treaty states that "Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot." These provisions do not

⁸ [Concluding Observations on the initial Report to the European Union](#)

⁹ [Recommendation CM/Rec\(2011\)14](#)

provide a basis for any differentiation in the right to vote in EP elections between people with disabilities depending on their citizenship or country of residence.

5.2 There are currently many examples in the EU of unjustified differentiation in the rights of people with disabilities and, therefore, discrimination against them. For example:

- a person with citizenship of two EU Member States could, depending on the identity document they chose, either vote completely independently or be deprived of the right to vote due to their intellectual disability;
- a person who is bedridden and requiring 24-hour care cannot vote because they are unable to get to the polling station and there is no other possibility of voting in the country of residence. However, if the same person lived in another EU country, they could vote freely by post, at a mobile ballot box or by internet;
- a blind person in one Member State can vote fully independently, without any support whatsoever, but if they lived in another country it would be impossible – they could only vote at a polling station with the assistance of another person;
- someone who had Parkinson's disease would be able to vote independently in a country where voting is based on making a simple graphic sign (e.g. "X") or selecting the relevant card from a package of cards they have received, but in a country where it is necessary to write a number, name or surname legibly on the ballot would face an insurmountable barrier;
- someone with serious mobility issues (e.g. requiring crutches or a wheelchair) would be able to choose a suitable polling station in some countries, while other countries do not allow free choice of polling stations, which often prevents such people from participating in elections.

The EESC considers such situations unacceptable and contrary to the basic values of the EU and the provisions of the TEU.

5.3 Member States are responsible for organising the EP elections and establishing their rules. However, their discretionary power is limited by EU law. The Electoral Act of 1976, which is the legal basis for the EP elections, sets out requirements which are sometimes different from Member States' rules for local or national elections¹⁰. The EESC believes that amending this Act by requiring Member States to implement standards that guarantee persons with disabilities a genuine right to vote is an appropriate and quick way to remove existing practices that discriminate against these EU citizens.

5.3.1 The EESC believes that the principle of universal suffrage set out in Article 1(3) of this Act must be clarified by stating that no EU citizen may be deprived of their right to vote in EP elections because of a disability or health condition on the basis of national regulations.

¹⁰ See footnote 1 – Part 4.

5.3.2 The EESC considers it essential to clarify the principles of the directness and secrecy of the elections referred to in Article 1(3) of this Act by stating that when outlining detailed voting principles Member States are required to:

- enable persons who, due to disability, are unable to vote in a polling station to cast their votes directly and independently,
- provide information on voting rules in a form adapted to the needs resulting from all types of disability,
- decide on a kind of voting method and implement the necessary technical arrangements for persons with disabilities in need of significant support – such as people who are deafblind, blind, visually impaired or having limited manual dexterity - to be able to vote independently without the assistance of others,
- guarantee all persons who have disabilities the possibility to change their designated polling station if they consider a different station to be better suited to their disability,
- ensure all voters with disabilities the right to freely choose the person who will help them vote (personal assistant).

5.4 The EESC believes that it is possible to take advantage of the wealth of positive experience of many countries to quickly implement the proposed solutions, taking into account the specific features and electoral traditions of each Member State.

5.4.1 17 EU countries already have arrangements in place for voting by mobile ballot box for certain groups of voters. In eight countries people can vote by post. In one country it is possible to vote online. Some EU countries organise closed stations in 24-hour care facilities. These solutions enable people who are not able to get to their designated polling station to vote.

5.4.2 Nine Member States have implemented solutions for blind people to vote independently. This takes the form of special covers for ballot papers on which a simple graphic symbol is placed when voting, or entails preparing envelopes for polling cards inscribed with Braille so that the voter can easily find the right card to put into the ballot box. Special covers are also very helpful for visually impaired people as well as those with reduced manual dexterity. Countries that currently require voters to include a candidate's consecutive number or surname on the ballot paper can benefit from this expertise if they decide to change the system to a more convenient one.

5.4.3 15 countries provide voters the possibility to change polling stations, at least when justified by a disability. In 10 countries it is possible at least for certain groups of people to vote in advance, most often in facilities well adapted to the needs of persons with different types of disabilities. Because no EU country has all of its polling stations adapted for persons with all kinds of disabilities, giving voters the right to freely choose the appropriate station is the only appropriate solution.

5.4.4 In many countries, any person chosen by voters with disabilities can perform the function of an assistant during elections. However, a large group of countries limit the right to freely choose an assistant. This can only be considered justifiable in a situation where it would have to be a person who is performing other duties at the same time (for example, a member of the electoral

commission or an observer). In other cases, the restrictions are not justified and the procedure for selecting an assistant used in some countries is detrimental to the dignity of voters with disabilities.

5.5 The implementation of these principles will by no means limit the discretionary power of Member States, and would guarantee that every EU citizen who has a disability would have a real right to elect their representative in the EP regardless of nationality or country of residence. The EESC believes that it is essential to adopt these principles so that the next EP elections can be considered truly universal.

5.5.1 Article 223(1) of the TFEU provides 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. 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."

5.5.2 In light of this and with a view to guaranteeing all EU citizens who have disabilities the right to vote in the EP elections in 2024, the EESC calls on:

- The European Parliament to urgently draw up a draft amendment to the 1976 Electoral Act,
- The European Council to lay down revised rules in accordance with the objectives set out in this opinion,
- Member States to approve the rules laid down by the Council without undue delay.

5.5.2.1 The EESC is aware that many, often controversial, proposals to amend the rules governing EP elections have been discussed in recent years. Nevertheless, it believes that the proposals on voting rights of persons with disabilities should be excluded from this general debate and put forward as a separate project, as only this approach offers the prospect of reaching a broad consensus and implementing the proposed changes quickly.

Brussels, 11 November 2020

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