

EUROPEAN PARLIAMENT



DIRECTORATE-GENERAL FOR RESEARCH

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**NATIONAL PROVISIONS CONCERNING INELIGIBILITY
AND INCOMPATIBILITY WITH REGARD
TO THE EUROPEAN PARLIAMENT**

"National Parliaments" Series

W - 9

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General remarks

This note is primarily based on information supplied between July and December 1996 by the appropriate departments of the national parliaments¹, and presents an overview of national provisions concerning ineligibility and incompatibility² with regard to elections to and membership of the European Parliament. In the absence of a uniform electoral procedure and subject to the Community law applicable³, the Member States enjoy a large measure of autonomy with regard to elections to the European Parliament and laying down rules on eligibility and incompatibility. National rules in this field remain very diverse.

As far as eligibility is concerned, national legislation also lays down other general conditions which are not dealt with in this study and are not always uniform. These include the minimum age for candidature (18 in Denmark, Germany, Spain, the Netherlands, Portugal, Finland and Sweden; 19 in Austria; 21 in Belgium, Ireland, Luxembourg and the United Kingdom; 23 in France; 25 in Greece and Italy), the definition of the concept of residence, the administrative formalities which candidates must comply with in each Member State, etc. On the other hand, as far as nationality conditions are concerned, all Member States have in general implemented the necessary provisions to comply with Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

The first part of this note concerns ineligibilities arising either from the holding of certain posts or carrying out of certain activities or from an individual criminal law or civil law decision. Under the electoral law of the Member States, national provisions on this subject generally apply both to national elections and to elections to the European Parliament⁴.

Most Member States do not have any provisions concerning ineligibility arising from particular posts or activities. In some Member States (e.g. Greece, Spain and Portugal), however, national legislation

¹ We would particularly like to thank the Correspondents of the European Centre for Parliamentary Research and Documentation of the parliaments of the Member States.

² Incompatibility may be defined as the prohibition by law of the holding of certain posts or exercise of certain occupations simultaneously with membership of Parliament. Once a conflict of this kind has arisen, the successful candidate must choose between the incompatible capacities. Ineligibility, on the other hand, means that the individual in question is *a priori* precluded from standing for election, and, if he does so and is successful, the election is rendered invalid.

³ Particularly the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage, Article 8b(2) of the Treaty on European Union and Council Directive 93/109/EC of 6 December 1993.

⁴ Pursuant to Article 6 of Council Directive 93/109/EC of 6 December 1993 (OJ L 329, 30.12.1993) laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, national electoral law concerning elections to the European Parliament is required to lay down, in general, that any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual criminal law or civil law decision, has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament.

contains a detailed list of such ineligibilities. In principle, the carrying out of activities of these kinds would also give rise to incompatibility for the candidate: Spanish law, for example, explicitly states this.

In most Member States, ineligibility may arise from a conviction in the criminal courts: in some cases a minimum sentence is specified, or ineligibility arises from particular types of particularly serious offence; in others, conviction of specific offences enumerated in the law renders the culprit ineligible.

Ineligibility may arise automatically from the sentence handed down or it may have to be explicitly decided by the court, which often has a discretionary power in this regard.

Ineligibility on grounds of a criminal conviction may also be pronounced by a national parliament in the light of the individual case. In Denmark, any person is deemed ineligible who has been convicted of actions which, according to the consensus of opinion, render him unworthy to sit in the Folketing or the European Parliament. Ineligibility on these grounds is pronounced by the Folketing after the votes have been counted; it cannot be invoked as grounds for preventing a citizen from standing for election.

A declaration of bankruptcy may render an individual ineligible in some Member States, particularly France, Italy, Ireland and the United Kingdom. In a number of Member States, loss of eligibility may arise from negligent or fraudulent bankruptcy, as a result of the handing-down of a custodial sentence; a court decision explicitly depriving the person concerned of the right of suffrage is also required in certain cases (e.g. Belgium, Spain, Luxembourg).

The legislation of most Member States also provides for specific causes of ineligibility, arising from placement under guardianship or confinement on grounds of mental illness. However, in Sweden and Italy, for example, no specific provisions exist concerning this.

The *second part* of this note concerns *incompatibilities* with membership of the European Parliament laid down in national legislation, relating both to membership of a national parliament and to other posts or activities.

Pursuant to Article 5 of the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage, 'the office of representative in the European Parliament shall be compatible with membership of the parliament of a Member State' (cf. in particular the resolution of the European Parliament of 7 July 1988, OJ C 235, 12.9.1988, A2-65/88). However, simultaneous membership of the national parliament and the European Parliament is absolutely prohibited in Belgium, Greece (except for the first two candidates elected from each political party), Spain, Austria and Portugal.

In France there is no legal prohibition on combining membership of the European Parliament with membership of the national parliament. However, in practice dual membership may be affected by provisions of domestic law limiting the total number of elected offices which may be held by the same person. In Finland, membership of the national parliament is suspended for the duration of

membership of the European Parliament. In Ireland, only the Chairmen and Deputy Chairmen of the two houses of parliament are debarred from membership of the European Parliament.

Point 2(b) of the second section of this note details incompatibilities laid down by national legislation concerning *posts or activities other than membership of a national parliament*. Article 6(1) of the Act of 20 September 1976 lays down only that membership of the government of a Member State or the holding of political or administrative office at the Community institutions is incompatible with membership of the European Parliament, while Article 6(2) leaves it to the individual Member States to lay down further rules relating to incompatibility.

The national law of some Member States includes precise and detailed provisions listing incompatible posts at greater or lesser length, in addition to which there may be ineligibilities laid down in the countries' respective electoral laws, while others mention only a very small number of incompatibilities or even confine themselves to those laid down at Community level in the Act of 20 September 1976 (e.g. Denmark and Sweden).

The provisions concerning incompatibilities with membership of the European Parliament generally coincide with those applicable to membership of the national parliament. Their purpose, often pursued in conjunction with the laying down of ineligibilities arising from particular posts or activities, is to maintain the separation of powers between the executive, legislature and judiciary, ensure the freedom of voters by preventing the holders of certain offices from taking advantage of the influence they have acquired by virtue of their office in one constituency or another, to safeguard the independence of members of parliament from private interests or from the government, and to increase the availability of members to carry out their parliamentary duties by preventing them from dividing their time among different responsibilities, a practice upon which the public sometimes looks askance.

The office-holders debarred from membership of parliament on grounds of incompatibility in many Member States fall into all or some of the following main categories: holders of certain high constitutional offices (Head of State, Member of the Council of State, National Ombudsman, etc.), holders of certain elected offices at local and/or regional level, members of the judiciary (only senior judges or alternatively all judges), members of the armed forces and the police, civil servants in general and/or holders of certain other unelected public offices such as those in positions of responsibility in public establishments⁵.

In most Member States, members of parliament may in principle combine membership of parliament with private employment. A unique system exists in the Netherlands, where the salaries of members of parliament are reduced in accordance with a system of predetermined ceilings to offset income from other sources over and above a certain amount per annum.

However, some countries' national legislation lays down a number of incompatibilities or prohibitions on private employment, particularly with the aim of preventing any abuse of

⁵ In general, civil servants are assigned a special status while serving as members of parliament (leave of absence, secondment); exceptions are often made for teaching staff in higher education, who may continue to do their jobs subject to certain conditions.

membership of parliament or safeguarding members' independence. For example, under various national systems (e.g. those in France, Greece and Spain) membership of parliament is incompatible with the holding of positions of responsibility in certain private enterprises, namely those which enjoy particular advantages in relation to the State, those whose purpose is purely financial, those working primarily for the State, etc. Under several national systems, members of parliament who belong to particular clearly defined professions are debarred from performing certain acts; this particularly applies to lawyers.

The *third part* of this study deals with provisions of national legislation concerning measures to be taken when an incompatibility or ineligibility arises during a term of office⁶.

Article 11 of the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage lays down that, pending the entry into force of a uniform electoral procedure, 'the European Parliament shall verify the credentials of representatives. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers'. Pursuant to Article 12(2) of the Act, 'where a seat falls vacant pursuant to national provisions in force in a Member State, the latter shall inform the European Parliament, which shall take note of that fact. In all other cases, the European Parliament shall establish that there is a vacancy and inform the Member State thereof.' Rules on the verification of credentials and the term of office of Members are laid down in Rules 7 and 8 of the Rules of Procedure of the European Parliament⁷.

The national legislations of the Member States are not uniform with regard to the type of body empowered to rule on the incompatibilities provided for at national level for membership of the European Parliament. This may be the national parliament or one of its houses (e.g. Belgium and Germany), a specific court (e.g. Greece - Special Supreme Court; United Kingdom - High Court, Court of Session, High Court of Justice) or another body (e.g. France - Council of State).

⁶ Without prejudice to the powers of the European Parliament with regard to waiving the parliamentary immunity of its Members and verifying their credentials, which are not considered in this note.

⁷ Rule 7(1) notably provides that 'on the basis of a report by the committee responsible, Parliament shall verify the credentials without delay and rule on the validity of the mandate of each of its newly elected Members and also on any dispute referred to it pursuant to the provisions of the Act of 20 September 1976, except those based on national electoral laws'. Rule 7(3) and (4) reads: '3. The committee shall ensure that any information which may affect the performance of the duties of a Member of the European Parliament or the ranking of the substitutes is forwarded without delay to Parliament by the authorities of the Member States or of the Union, with an indication of the date of effect where an appointment is concerned. 4. Until such time as a Member's credentials have been verified or a ruling has been given on any dispute, the Member shall take his seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto.' Pursuant to Rule 8(1) and (2), '1. A Member's term of office shall begin and end as laid down in the Act of 20 September 1976. It shall also end on death or resignation. 2. Every Member shall remain in office until the opening of the first sitting of Parliament following the elections.' Rule 8(4) reads: '4. Incompatibilities resulting from national legislation shall be notified to Parliament, which shall take note thereof. Where the competent authorities of the Member States or of the Union notify the President of appointments to an office incompatible with the office of Member of the European Parliament, the President shall inform Parliament, which shall establish that there is a vacancy.' Rule 8(5) contains provisions concerning the date to be considered as the date of the end of the term of office and the effective date of a vacancy in the event of resignation or of appointment to an office incompatible with the office of a Member of the European Parliament.

The electoral law of several Member States stipulates that membership of the European Parliament lapses if the Member accepts an office deemed incompatible or if, upon being elected, the candidate fails to choose between membership of the European Parliament and the incompatible office, although the exact formulation of the provisions concerning termination of membership varies⁸. Under some national systems, certain incompatibilities are applied automatically: in Spain, electoral law lays down that, in the case of members of the national parliament or of the parliaments of the 'Comunidades Autónomas' who are also elected to the European Parliament, the member serves in the parliament to which he is elected last.

When ineligibility arises after the elections and during a term of office, some national legislations contain provisions concerning the possible termination of membership of the European Parliament and even, in certain cases, lay down procedures to this end (e.g. France). On the other hand, some electoral laws do not contain any such provisions while, during a term of office and particularly as a result of an individual civil law or criminal law decision, a Member who has been elected to the European Parliament forfeits his right of eligibility pursuant to national law.

Lastly, it may be noted that, under the domestic law of three Member States (France, Greece and Portugal), the temporary forfeiture of eligibility and the termination of membership of the European Parliament may, under certain conditions, arise from failure to declare ownership of property as required by the respective national legislation.

⁸ E.g. the Member 'is deemed to have resigned', his mandate 'expires', he 'is automatically debarred', he 'leaves the European Parliament', etc.

1) Ineligibilities arising from:

1 a) the holding of certain posts or the exercise of certain activities

1 b) an individual civil law or criminal law decision

Belgium

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

Pursuant to Articles 1 and 41(1)(4) of the Act of 23 March 1989 on Elections to the European Parliament, as amended by the Act of 11 April 1994, those persons are ineligible who have been excluded from eligibility or whose eligibility has been suspended as provided for by Articles 6 to 9a of the Electoral Code, particularly: those who have been sentenced to a penalty for a felony (Article 6 of the Electoral Code); those whose electoral rights have been suspended pursuant to Article 7 of the Electoral Code.

The right to vote is suspended in the case of the following:

- those who have had a guardian appointed, those under an extended minority order pursuant to the Act of 29 June 1973 and those held in confinement pursuant to Chapters I to VI of the Act of 9 April 1930 on the Defence of Society against the Abnormal and Habitual Criminals, replaced by Article 1 of the Act of 1 July 1964; the incapacity ceases at the same time as the guardianship or extended minority or simultaneously with the final release of the person concerned;
- those who have been sentenced to more than 4 months' imprisonment, with the exception of those who have been sentenced pursuant to Articles 419 and 420⁹ of the Criminal Code; the incapacity lasts for 6 years if the sentence is between 4 months and 3 years, for 12 years if the sentence is for 3 years or more¹⁰ (Article 7(2) of the Electoral Code as amended by Article 149 of the Act of 21 December 1994 on Social and Miscellaneous Provisions);
- those who have been placed under a hospital order pursuant to Article 380a(3) of the Criminal Code¹¹ or pursuant to Articles 22 and 23 of the Act of 9 April 1930 on the Defence of Society against the Abnormal and Habitual Criminals, replaced by Article 1 of the Act of 1 July 1964; the suspension of such persons' right to vote lapses when the hospital order ceases to apply.

⁹ These provisions concern manslaughter and accidental physical injury.

¹⁰ If the sentence is suspended, the incapacity is suspended for the duration of the suspension of sentence. If the sentence is partially suspended, only the part of the sentence which is not suspended is taken into account for the purpose of applying these provisions. If the sentence becomes enforceable, the suspension of the right to vote arising from it runs from the date of the fresh sentence or of the decision revoking the suspension. Where several sentences are imposed, the incapacities arising from each of them run consecutively, but not for longer than 12 years. The same applies in the event of a fresh sentence to one or more of the above-mentioned penalties being handed down during the period of incapacity arising from a previous conviction, but the incapacity must run until at least six years after the last sentence is handed down.

¹¹ These provisions applies to procurers.

Denmark

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The following are ineligible: any person who has been convicted of an act which, in the eyes of public opinion, renders him unworthy to be a member of the European Parliament (Article 37(3) and Article 6 of the Act on the Election of Danish Representatives to the European Parliament)¹².

As regards individual criminal-law decisions, the provisions must be interpreted in such a way that a person cannot be presumed to have been convicted until his conviction has become final. When determining whether the worthiness requirement is met, the question to be resolved is whether the act of which the person has been convicted is of such a nature as, in the eyes of public opinion, to render the offender unworthy of membership.

The interpretation of the law on this matter may evolve over time, and the members of the Folketing, who, pursuant to Article 37 of the Act, decide whether the worthiness criterion is met, are bound only by their convictions, pursuant to Article 56 of the Constitution. However, their judgment may be influenced only by legal considerations, to the exclusion of personal or political factors.

The individual criminal-law decision on which a declaration of ineligibility on grounds of unworthiness is based does not necessarily have to have been taken by a Danish court or authority. An individual criminal-law decision by a court or authority in another EU Member State or a third country may likewise constitute grounds for a declaration of ineligibility pursuant to the relevant provisions. This means, inter alia, that a citizen of the EU who has been deprived of the right to stand for election in his Member State of origin on account of a serious offence may also be deprived of that right in accordance with the general provisions concerning the worthiness requirement.

Those who have been placed under guardianship with legal effect in Denmark are not eligible (Article 6(1), Article 3(2) and Article 47a (3) of the European Parliament Elections Act).

¹² However, pursuant to Article 6(4) of the Elections Act, a person may always stand for election. If any doubt arises as to the validity of the election of a member or as to his eligibility, the final decision is taken by the Folketing (Article 37(3) of the European Parliament Elections Act).

Germany

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The following are ineligible for election:

a.) those disqualified pursuant to Article 6a(1) of the European Elections Act, b.) those who, by order of a court, have been declared ineligible for election or incapable of holding public office; and: c.) those who, without being German nationals, are Germans within the meaning of Article 116(1) of the Constitution and have acquired this status by renouncing German citizenship pursuant to the Nationality Act of 22 February 1995 (BGBl. IS.65). (Article 6b(3) of the European Elections Act).

Pursuant to Article 6a(1) of the European Elections Act, a person is debarred from voting if a.) he has been debarred from voting by a court decision; b.) a guardian has been appointed, not only by temporary order, to take care of all his affairs; this applies even if the responsibilities of the guardian do not include the affairs referred to in Article 1986(4) and Article 1905 of the Civil Code; c.) if he is in a psychiatric hospital under an order pursuant to Article 63 in conjunction with Article 20 of the Criminal Code.

Greece

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

The constitutional provisions applicable to national elections apply (Article 56 of the Constitution).

Civil servants and holders of salaried public offices, officers in the armed forces and security forces, employees of local authorities or of other legal persons governed by public law, the mayors and chairmen of local authorities, the governors or chairmen of the boards of directors of legal persons governed by public law or public or municipal enterprises, notaries and mortgage and title deed registrars cannot stand as candidates or be elected to parliament unless they have resigned before their candidacy is declared. They must resign in writing. A member of the armed forces who has resigned cannot resume active service; civil servants and public office-holders who have resigned cannot return to their jobs until one year after their resignation.

Higher education teachers are exempt from these restrictions. Provisions are laid down by law concerning their replacement, as they are suspended from their teaching job for the duration of the parliamentary term.

Salaried civil servants, serving military personnel and officers in the security forces, employees of legal persons governed by public law in general, and directors and employees of public or municipal enterprises or public establishments cannot stand for election or be elected to

parliament in any constituency where they have carried out their duties for longer than three months in the three years preceding the elections. The same restrictions also apply to those who have been secretaries-general at ministries in the last six months of the four-year parliamentary term. These restrictions do not apply to candidates for membership of the national parliament or subordinate officials of central state departments.

Civil servants and military personnel in general who, by law, are required to remain in service for a set period cannot stand for election or be elected to parliament during that period.

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The same provisions apply as to national elections (cf. Art. 2(1) of Act 1180/1981 and Art. 5(2) of Act 2196/1994).

Pursuant to Article 51(3) of the Constitution and Article 5(2) of Presidential Decree 92/1994 consolidating electoral legislation, any person who has been definitively convicted of certain offences may be deprived of his political rights (and eligibility). Those placed under guardianship are likewise debarred from voting under the Civil Code. Article 55(3) of the Constitution lays down that possession of the right to vote is a condition of eligibility. Under Articles 59 ff. of the Criminal Code, the imposition of certain sentences results in the loss of political rights. This loss is automatic if the person concerned is sentenced to penal servitude for life (Article 59 (1)). If the sentence handed down is penal servitude for an indefinite period and the offender is a recidivist, he is automatically deprived of his political rights for 10 years (Article 59(2)).

A determinate sentence of penal servitude always results in the loss of political rights for between 2 and 10 years (Article 60). Where the sentence is one of imprisonment, and on condition that the law does not stipulate anything to the contrary, political rights are always lost for between 1 and 5 years if (a) the sentence is of at least 1 year and (b) the circumstances in which the act was committed show the offender to be morally deprived.

Bankruptcy results in a loss of eligibility under the legislation in force (Article 1 of Act 635/1937). However, according to the information available, this provision is not applicable because it is unconstitutional.

Spain

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

Members of the Spanish royal family and their spouses; the Presidents of the Constitutional Court, the Supreme Court, the Council of State, the Court of Auditors and the Council referred to in Article 131(2) of the Constitution (the Economic and Social Council); the magistrates of the Constitutional Court, the members of the General Legal Council, the permanent members of the Council of State and the members of the Court of Auditors; the Ombudsman and his deputies; the Public Prosecutor; the Deputy Secretaries, General Secretaries and Directors-General of the ministerial departments and those considered equivalent to them; in particular, the Directors of the departments of the Prime Minister's office and the Directors of the offices of the Ministers and Secretaries of State; the Heads of Mission accredited on a resident basis to a foreign country or international organization; magistrates, judges and prosecutors currently

in office, military officers having active or reserve status and members of the armed forces, the security forces and the police in active service¹³; the Chairmen, members and secretaries of the Electoral Committees, the delegates of the government in the Autonomous Communities, the Civil Governors and Deputy Governors and similar authorities with territorial powers; the Director-General of RTVE (the state radio and television company) and the Directors of the companies attached thereto; the Chairmen, Directors and officials with similar responsibilities of the autonomous state bodies having competence throughout the national territory, as well as the delegates of the government to those bodies; the Chairmen and Directors-General of the Social Security administration offices having competence throughout the national territory; the Director of the Electoral Census Office; the Governor and Deputy Governor of the Bank of Spain and the Chairmen and Directors of the Official Credit Institute and the other official credit institutions; the Chairman, members and Secretary-General of the General Council for Nuclear Security; persons occupying posts on behalf of and remunerated by a third country¹⁴; the Presidents and members of the governments of the Autonomous Communities, persons appointed to offices by those governments and members of the institutions of the Autonomous Communities who have by law to be elected by the corresponding legislative assembly. These causes of ineligibility (Articles 6, 154(1) and 154(2) of the Organic Law of the General Electoral Regime (LOREG)) shall apply to elections to the European Parliament on the basis of Article 210a of that law.

1 b) Ineligibilities arising from an individual civil law or criminal law decision

Article 6 of the LOREG states that the right to stand for election applies to persons who have the right to vote and do not fall into any of the ineligible categories listed in that law.

It is stated in paragraph 2(1) and (2) of that law that, in particular, the following are not permitted to stand for election:

- a. 'persons definitively sentenced to imprisonment, for the period of their sentence';
- b. 'persons sentenced, even where an appeal has been made, for the crime of sedition or members of terrorist organizations who have been condemned for crimes against human life or the physical integrity or liberty of persons'.

Article 68(5) of the Constitution states that the full enjoyment of one's political rights is a condition for standing for election.

¹³ Magistrates, judges and prosecutors, military officers having active or reserve status and members of the armed forces, the security forces or the police wishing to stand for election must request transfer to the relevant administrative status, and shall, in all circumstances, have the right to have a post kept in reserve for them, subject to the conditions laid down by the specific rules concerned.

¹⁴ This provision shall only be applicable to citizens of the European Union having the right to stand for election where the exercise of the functions concerned would disqualify them from standing for election in their Member State of origin.

Article 3(1) of the LOREG states that the following categories of person shall be deprived of the right to vote (and, therefore, of the right to stand for election)¹⁵:

- a. 'persons definitively sentenced by a court of law to the main or subsidiary punishment of being deprived of the right to vote for the period of the sentence;
- b. persons definitively declared to be incapable by a court of law, provided the court has expressly declared that the incapacity relates to the exercise of the right to vote;
- c. persons undergoing treatment in a psychiatric hospital by decision of a court of law, for the period of their hospitalization and subject to an express statement in the court order by the judge that the patient is incapable of exercising the right to vote'.

These causes of incapacity shall also apply to elections to the European Parliament, pursuant to Article 210a of the LOREG.

France

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

The only explicit provision is that the National Ombudsman is ineligible (Article L.O. 130-1 of the Electoral Code). For other posts or activities, see 2 ("incompatibilities").

1 b) Ineligibilities arising from an individual civil law or criminal law decision

Any person who is either permanently or temporarily debarred from being entered on the electoral roll is ineligible (Articles L.O. 129 and L.O. 130 of the Electoral Code).

Pursuant to Articles L.5, L.6 and L.7 of the Electoral Code, the following persons are debarred from being entered on the electoral roll:

- adults who have been placed under intensive guardianship;
- for a period set in the judgment, any person who has been prohibited by a court from voting or standing for election pursuant to the laws which authorize this¹⁶;
- for a period of five years from the date on which the conviction becomes final, persons convicted of any of the offences provided for by Articles 432-10 to 432-16 of the Criminal Code (offences against public administration committed by public office-holders and constituting a failure of integrity, particularly misappropriation, accepting bribes, 'log-rolling', illegal promotion of interests, infringement of the freedom of access and equality of candidates for public contracts, misappropriation and embezzlement), by Articles 433-1 to 433-4 of the Criminal Code (offences against public administration committed by private individuals, particularly bribery and 'log-rolling', intimidation of public office-holders,

¹⁵ Paragraph 2 of the same law states: 'For the purposes of this article, the judges or courts responsible for hearing cases relating to declaration of incapacity or compulsory hospitalization shall expressly declare whether or not the person concerned shall be deprived of his right to vote. Where this is the case, they shall inform the registration office, which shall take note of the circumstance.'

¹⁶ In criminal cases, for example, offenders may be deprived of the right to vote and to stand for election in the circumstances provided for by Articles 131-26 to 131-29 of the Criminal Code: the period of deprivation cannot exceed 10 years in the case of conviction of a felony and 5 years in the case of conviction of a misdemeanour.

misappropriation and unlawful removal of goods from a public warehouse), or for concealing any of these offences.

A person who is temporarily debarred from being entered on the electoral roll on account of a conviction is ineligible to stand for election for twice the period of that debarment. (Article L.O. 130(1) of the Electoral Code).

In addition, the following, in particular, are ineligible:

- those who, while retaining the right to vote, are debarred from standing for election by a court decision pursuant to the relevant legislation (Article L.O. 130(3)(1) of the Electoral Code). They may, for example, be debarred from holding elected public office for five years in connection with a declaration of personal bankruptcy pursuant to Articles 194 and 195 of Act No 85-98 on the Restoration and Judicial Liquidation of Enterprises);
- adults who have been placed under intermediate guardianship (Article L.O. 130, last paragraph, (2) of the Electoral Code);
- for one year, any person who has failed to lodge a declaration of assets as required by the Electoral Code, any person who has failed to deposit his campaign accounts under the conditions and within the time limit laid down, and any person whose campaign accounts have been rejected with good reason. Any person who exceeds the limit for election expenses may likewise be declared ineligible for the same period (Article L.O. 128 of the Electoral Code).

Ireland

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

A person who is not eligible to become a Member of Dáil Eireann (members of the Garda Síochána, wholetime members of the Defence Forces, or civil servants who are not by the terms of their employment expressly permitted to be Members of the Dáil, judges, Comptroller and Auditor General) or who holds the office of Attorney General, is not eligible to stand for election to the European Parliament.

1 b) Ineligibilities arising from an individual civil law or criminal law decision

A person is ineligible to stand for election if he/she :

- is a person of unsound mind or
- is undergoing a sentence of imprisonment for any term exceeding six months, whether with or without hard labour, or of penal servitude for any period imposed by a court of competent jurisdiction in the State, or
- is an undischarged bankrupt under an adjudication by a court of competent jurisdiction in the State.

Italy

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The causes of ineligibility laid down in Italian law include lack of the right to vote (Articles 56 and 58 of the Constitution).

The right to vote may be limited in cases of legal incapacity or as a result of an irrevocable criminal conviction or in the cases of moral unworthiness laid down by law (Article 48 of the Constitution).

As regards legal incapacity, Presidential Decree 223/1967 (Article 3) used to stipulate that any person who had been placed under guardianship or declared incapable on account of mental illness could be debarred from voting. This provision was repealed by Article 11 of Act 180/1978, and the legislation in force thus does not provide for any possibility of limiting the right to vote in connection with forms of legal incapacity.

Debarment from voting on account of an irrevocable criminal conviction is currently provided for (Article 2 of Presidential Decree 223/1967)¹⁷ in the case of offenders whose sentence entails permanent or temporary disqualification from public office, a supplementary penalty provided for by the Criminal Code for the most serious crimes and certain other categories of offence. In the event of temporary disqualification, deprivation of the right to vote applies throughout the period of disqualification. A specific possibility of limiting the right to vote is provided for by Article 113 of Presidential Decree 361/1967, which lays down that any person who is convicted of an electoral offence entailing a custodial sentence shall have his right to vote suspended. If the offence is committed by a candidate, the right to vote and to stand for election is suspended for between 5 and 10 years.

The instances of moral unworthiness entailing limits on the right to vote are as follows:

- a. where preventive measures are instituted against a person, such as remand in custody, supervised liberty or a ban on residence: for the duration of such measures;
- b. where a person is declared bankrupt: throughout the duration of the bankruptcy, but not for more than 5 years from the date of the declaration of bankruptcy.

¹⁷

As amended by Article 1 of the Act of 16 January 1992, n. 15.

Luxembourg

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The cases in which a person may be debarred from voting or standing for election are listed exhaustively by Article 53 of the Constitution (cf. Article 98 of the Act of 25 February 1979 on the Election of the Representatives of the Grand-Duchy of Luxembourg to the European Parliament, as subsequently amended). Those debarred are as follows:

1. those sentenced to a penalty applicable to a felony¹⁸,
2. those convicted of a misdemeanour whose electoral rights are suspended by order of the court¹⁹;
3. adults who have been placed under guardianship.

Article 53 lays down that no other case of debarment may be provided for. It should be noted that, where the right to vote has been suspended in connection with a criminal conviction, it may be reinstated as an act of grace.

¹⁸ Those sentenced to hard labour, penal servitude or imprisonment automatically forfeit the right to vote and to stand for election.

¹⁹ Article 33 of the Criminal Code lays down that 'courts may, in the cases provided for by law, wholly or partially deprive of the rights listed in Article 31, for 5 to 10 years, those who have been convicted of misdemeanours'. The rights listed in Article 31 of the Criminal Code include the right to vote and to stand for election and eligibility. The provisions concerning theft, breach of trust, fraud, indecent assault and handling stolen goods, in particular, explicitly refer to the possibility of temporary withdrawal of the rights referred to in Article 33 of the Criminal Code. When the Constitution was last revised (13 June 1989), Article 53 was amended: in the case of misdemeanours, rather than providing an exhaustive list of offences or resorting to the criterion of a minimum prison sentence, an optional system of temporary deprivation of rights was adopted, at the discretion of the court, which must determine in each individual case whether the additional penalty of deprivation of electoral rights is appropriate and if so, for how long it should apply. On the other hand, Article 53 no longer provides for automatic deprivation of the right to vote and to stand for election upon a declaration of bankruptcy. This is because bankrupts are not always at fault. However, an insertion was made in Article 489 of the Criminal Code stipulating that where a bankrupt is at fault, 'negligent bankrupts may in addition have rights suspended as provided for by Article 33' (cf. draft revision of Article 53 of the Constitution, documents no 3231 of the Chamber of Deputies, 1988-89 session).

Netherlands

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The following shall be debarred from the franchise:

- a. those whose franchise has been suspended by an irrevocable court order. This supplementary penalty may be imposed in the case of certain offences if a custodial sentence of more than one year is handed down;
- b. those who have been declared incapable of entering into legal transactions on grounds of mental illness, by an irrevocable court order. Debarment shall be determined by the situation which obtains on the date of candidacy.' (Franchise Act, Art. B 5).

Austria

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

1 b) Ineligibilities arising from an individual civil law or criminal law decision

Pursuant to Art. 23a(4) of the Federal Constitution Act, debarment from voting or standing from election is possible only as a result of a judicial conviction. Pursuant to Article 3 of the European Electoral Roll Updating Act, any person is debarred from voting - and hence from standing for election - who, on account of a criminal offence committed in Austria, '(1) ... has been validly sentenced to a custodial sentence of more than one year by an Austrian court on account of one or more crimes committed with malice aforethought. This debarment shall lapse after six months. The period of debarment shall begin as soon as the sentence has been served and any preventive measures associated with custody have been carried out or have lapsed; if the sentence has been served purely through pretrial detention, the period of debarment shall begin when the judgment acquires legal force; (2) if other statutory provisions preclude legal consequences, or if the legal consequences have lapsed or the offender has been excused all legal consequences or debarment from the right to vote, he shall not be disqualified from voting. Debarment from voting shall also not take effect if the court has conditionally suspended the sentence. If the conditional suspension is revoked, the debarment from voting shall take effect as of the date when this decision becomes effective. '

Portugal

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

The following categories of person may not stand for election to the European Parliament (Article 5 of the law governing elections to the European Parliament):

- a. the President;
- b. the Prime Minister;
- c. Civil Governors and Deputy Civil Governors currently in office;
- d. citizens belonging to any of the general categories of persons who may not stand for election laid down by the law governing elections to the Assembly of the Republic, in particular: magistrates or public prosecutors currently in office; permanent military personnel and permanent members of militarized forces on active service; and career diplomats currently in office;
- e. persons exercising diplomatic functions on the date of submission of names of candidates, where not covered by the previous paragraph;
- f. judges currently in office, where not covered by paragraph d);
- g. members of the National Electoral Commission;
- h. citizens who are debarred from standing election by the applicable Community rules.

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The following categories of person may not vote or stand for election: persons deprived of their civil rights by decision of a court of law; persons publicly recognized not to be in possession of their mental faculties, even if not deprived of their rights by a court of law, where they are hospitalized in a psychiatric institution or their condition has been certified by a panel of two doctors; persons deprived of their political rights by decision of a court of law (Articles 2 and 4 of the law governing elections to the Assembly of the Republic, applying by virtue of Articles 1 and 4 of the law governing elections to the European Parliament).

Pursuant to Article 65(2) of the Penal Code, the law may punish certain crimes by forbidding the offender to exercise certain rights or certain professions. Thus, for instance, Article 246 of the Penal Code (Decree-Law No 48/95 of 15 March 1995) states that a person sentenced for crimes against peace and humanity may, in the light of the seriousness of the offence and its implications for the civic acceptability of the offender, be deprived of the right to elect the holders of certain posts, including the members of the European Parliament, and of the right to be elected to those same posts, for a period of two to ten years.

Article 14a of Law No 14/87, as supplemented by Law No 4/94 of 9 March 1994, states that a person who stands simultaneously for election to the European Parliament in Portugal and another Member State may incur the additional punishment of being deprived of the right to stand for election in the elections to the European Parliament immediately following.

Finland

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

Active service in the armed forces (excluding service as a conscript) - see also 2.b).

1 b) Ineligibilities arising from an individual civil law or criminal law decision

Under section 7 of the Parliament Act (cf. Section 3 of the Act on the Election of Representatives of Finland to the European Parliament), every person entitled to vote and not under guardianship may stand for election.

The Penal Code has recently been amended (1995) and offences no longer entail ineligibility. If an elected Member has been sentenced to a term of imprisonment for certain types of offence, Parliament may determine whether the offender is still worthy of the trust and respect required (see 3.)

Sweden

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

Sweden has not enacted any legislation going beyond the rules laid down in the Act of 20 September 1976 concerning the election of representatives to the European Parliament by direct universal suffrage (Article 6.1).

Swedish law has no provisions to prevent people pursuing particular occupations or belonging to other kinds of groups from standing as candidates in elections to the Riksdag.

1 b) Ineligibilities arising from an individual civil law or criminal law decision

There are no specific provisions in Sweden regarding ineligibility for membership of the Riksdag or the European Parliament arising from civil incapacity or court decisions on civil, commercial or criminal matters.

United Kingdom

1 a) Ineligibilities arising from the holding of certain posts or the exercise of certain activities

A person is disqualified for the office of representative to the European Parliament if he is disqualified, whether under the House of Commons Disqualification Act 1975 or otherwise, for membership of the House of Commons or if he is a Lord of Appeal in Ordinary. He is also disqualified for the office of representative to the Parliament for a particular constituency if he is disqualified under the 1975 Act for membership of the House of Commons for any particular parliamentary constituency comprised in that constituency. Disqualifying offices include for example, civil service, regular armed forces, public police forces, judicial offices and certain

offices listed in the 1975 Act (e.g. government-nominated directors of commercial companies, some local government officers, etc)²⁰.

1 b) Ineligibilities arising from an individual civil law or criminal law decision

The disqualifications for the membership of the House of Commons apply :

- Mental illness²¹
- Bankruptcy - by section 427 of the Insolvency Act 1986 a debtor who is adjudged bankrupt is incapable of being elected to or of sitting or voting in the House of Commons, or on any committee thereof, until the adjudication is annulled, or until he obtains from the court his discharge²².
- Offenders sentenced to more than one year's imprisonment (Representation of the People Act 1981)²³.

²⁰ However, according to paragraph 5 (3) of the European Parliamentary Elections Act, "A person is not disqualified for office as a representative to the European Parliament by reason only (a) that he is a peer, (b) that he has been ordained or is a minister of any religious denomination; or (c) that he holds an office mentioned in section 4 of the House of Commons Disqualification Act 1975 (stewardship of Chiltern Hundreds etc.) or (d) that he holds any of the offices for the time being described in Part II or Part III of Schedule 1 to the 1975 Act which are for the time being designated in an order as non-qualifying offices in relation to the European Parliament (...)".

²¹ Mental illness, formerly described as lunacy or idiocy, is a disqualification at common law. There is also, under section 141 of the Mental Health Act 1983, a statutory procedure for vacating a seat of a sitting Member of the House of Commons of unsound mind.

²² "A court which adjudges a Member bankrupt shall forthwith certify the adjudication to the Speaker. Following such a certification the court shall further certify to the Speaker either that the adjudication has been annulled or that a period of six months has expired without the adjudication being annulled. In the latter case, the seat of the Member thereupon becomes vacant; and, if the House be then sitting, a new writ may be issued; or if the Speaker receives the certificate during a parliamentary recess, he issues his warrant for a new writ to supply the vacancy which the bankruptcy has created. As no penalty attaches to a bankrupt for sitting and voting, and as no official notice of his bankruptcy is required to be given to the Speaker for six months, a bankrupt Member may sit with impunity, unless the House takes notice that he is incapable of sitting and voting, and orders him to withdraw." (in Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 21st Edition, London Butterworths, page 43).

²³ The Representation of the People Act 1981 provides (a) for the disqualification of any person who is detained anywhere in the British Islands or the Republic of Ireland (or who is unlawfully at large at a time when he would otherwise be detained) for more than a year for any offence, (b) that the election or nomination of such persons shall be void, and (c) that the seat of a Member who becomes so disqualified shall be vacated.

- Corrupt practices at elections (sections 159 and 160 of the Representation of the People Act 1983)²⁴.

²⁴ Under sections 159 and 160 of the Representation of the People Act 1983, a candidate at a parliamentary election who is reported by an election court as personally guilty of a corrupt practice is incapacitated, during five years from the date of the report, from being elected for any constituency and during ten years from being elected for the constituency for which the election was held; persons convicted of corrupt practices are also, under section 173, subjected to a total incapacity to be elected for any constituency for five years. If reported by the election court as being guilty through his agents of a corrupt practice or personally guilty of an illegal practice, a candidate is incapacitated during seven years from being elected for the constituency for which the election was held; this local incapacity lasts only for the duration of the Parliament for which the election was held if the court reports that a candidate is guilty of an illegal practice by his agents. Under section 174 of the same Act there are provisions for mitigation and remission of incapacities as a result of further proceedings, where incapacity has arisen as a result of the report of an election court.

2) Incompatibilities and, if applicable, prohibitions
2 a) membership of a national parliament and the EP
2 b) other posts or activities

Belgium

2 a) Membership of a national parliament and the EP

Incompatible (Article 42(2) of the Act of 23 March 1989).

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

Member of the Flemish Council, of the Council of the French Community or the Council of the Brussels-Capital Region, member of a Regional Council, member of a Community or Regional Government, member of a permanent deputation, member of a conurbation committee, mayor, alderman or chairman of a social aid centre in a commune with more than 50 000 inhabitants (Article 42 of the Act of 23 March 1989).

The incompatibilities which, under Belgian law, apply to Members of the Belgian Parliament also apply to Members of the European Parliament (see, in particular, Articles 50, 51 and 119 of the Constitution). Pursuant to the Act of 6 August 1931, members of the legislative chambers cannot simultaneously be civil servants or salaried employees of the state (provincial registrars), ministers of religion whose stipend is paid by the state, titular advocates in the public administration, agents of the state cashier or government commissioners appointed to limited companies; they cannot, in particular, plead or follow any legal proceedings on behalf of the state or advise it on such matters other than free of charge. However, the aforementioned civil servants or salaried employees of the state have the right to leave of absence to enable them to serve as members of parliament. In addition to the Act of 6 August 1931 there is a whole series of legal and regulatory provisions laying down incompatibilities with particular posts. These include membership of the Court of Audit or of the Council of State, membership of the judiciary, the posts of governor, vice-governor, director, trustee or auditor of the National Bank of Belgium and other clearly defined posts with certain public bodies or establishments of public benefit.

Denmark

2 a) Membership of a national parliament and the EP

Compatible²⁵

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

Article 42 of the European Parliament Elections Act confines itself to reproducing the incompatibilities laid down in Article 6 of the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage.

Germany

2 a) Membership of a national parliament and the EP

Compatible (Art. 1(2), European Elections Act)²⁶.

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

- President of the Federal Republic
- Judge at the Federal Constitutional Court
- Parliamentary Undersecretary
- Parliamentary Commissioner for the Armed Forces
- Parliamentary Commissioner for Data Protection
- Member of the Government of a *Land*.
- Any of the following offices in another Member State of the European Community: Head of State, constitutional court judge or member of a government comparable to the government of a German *Land*, or acceptance of a post comparable to that of a parliamentary undersecretary in the Federal Republic.

If a salaried civil servant is elected to the European Parliament, his rights and obligations as a civil servant are suspended from the date of acceptance of election for the duration of membership, with the exception of the duty of official secrecy and the prohibition on accepting rewards and gifts. The same applies if a member of parliament is appointed to the civil service, from the date on which his appointment becomes effective (Article 8 of the Members of the European Parliament Act, Article 5(1), 1st and 2nd sentences, of the Members of the

²⁵ There is no national legislation prohibiting simultaneous membership of both parliaments. Decisions on the compatibility of membership of the national parliament with membership of the European Parliament are taken by the various political parties.

²⁶ This provision is purely declaratory, as Article 5 of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage lays down that membership of the European Parliament is compatible with membership of the parliament of a Member State. Accordingly, membership of the parliament of a *Land* or of municipal representative bodies is also compatible with membership of the European Parliament. However, details can be laid down only by the legislation of the *Land*. None of the *Länder* have any legislation on incompatibility.

Bundestag Act). The same rules apply *mutatis mutandis* to judges, professional members of the armed forces and temporary members of the armed forces (Article 8 of the Members of the European Parliament Act, Article 8(1) of the Members of the Bundestag Act, Article 36(2) of the Judiciary Act, Article 25 of the Military Personnel Act).

However, professors may teach, carry out research and supervise candidates for doctorates and for membership of a university teaching staff while serving as members of parliament (Article 8 of the European Elections Act, Article 9(2), 1st sentence, of the Members of the Bundestag Act).

On the other hand, those liable for compulsory military service have their service deferred until the election if they have agreed to stand as a candidate, *inter alia* in an election to the European Parliament. Once they have agreed to election, they can be called up before their membership of parliament lapses only with their own consent (Article 12(3) of the Conscription Act). A soldier performing compulsory military service must be released from that service if he agrees to stand as a candidate, *inter alia* in an election to the European Parliament (Article 29(1)(8), Conscription Act).

Greece

2 a) Membership of a national parliament and the EP

Incompatible. However, candidates occupying the first two places on their party's electoral list for the European Parliament are eligible for membership thereof, on condition that they have been elected to the Greek Parliament on behalf of the same party (Article 13(1), Act 1443/1984 (O.J. A', 93)).

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

The constitutional provisions concerning posts and activities incompatible with membership of the national parliament (Article 57 of the Constitution) are applicable. Thus membership of the European Parliament is incompatible with acting as or being a member of the board of directors, or a governor, director-general or deputy of any of these, or an employee, of a commercial company or an enterprise which enjoys special privileges or receives a state subsidy or has been granted a public enterprise concession.

Members cannot enter into supply, study or works contracts with the State, local authorities or other legal persons governed by public law or public or municipal enterprises, or contract to collect State or local taxes, or rent real estate belonging to the aforementioned persons, or accept any kind of concession on such real estate. A breach of these provisions entails deprivation of membership of parliament and nullity of the acts. These acts are void even if they have been transacted by commercial companies or enterprises in which the Member acts as director, member of the board of directors or legal adviser, or in which he participates as a collective associate, proxy or limited partner.

See also 1 a) - 'ineligibilities arising from the holding of certain posts or the exercise of certain activities'.

Spain

2 a) Membership of a national parliament and the EP

Incompatible (Article 211(1)(c) of the LOREG).

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

The factors entailing ineligibility to the European Parliament are the same as those for incompatibility (cf. 1a). The following incompatibilities also apply:

- incompatibilities of parliamentary origin:
 - . membership of a legislative assembly of an Autonomous Community;
- incompatibilities of administrative origin:
 - . holding of one of the following offices: President of the Court for the Protection of Competition; member of the Management Board of the RTVE public enterprise; member of the government, minister or secretary of state; delegate of the government to an autonomous port, waterway confederation or motorway toll authority; president or member of the administrative board, administrator, director-general, manager or equivalent of a public enterprise, state monopoly or enterprise with majority public participation, direct or indirect and of whatever nature, or publicly constituted savings bank; civil servant or holder of any other post at the service of or included under the budget of national, regional or local government or a public body or enterprise;
- incompatibilities of a strictly economic nature:
 - . the duties of a Member of the European Parliament must be carried out on the basis of exclusive dedication, on the same terms as those applying to members of the Congress of Deputies and the Senate as set out in the LOREG. Membership of the European Parliament is incompatible with the exercise, whether directly or via a substitute, of any other function, profession or activity, public or private, self-employed or as an employee, remunerated by means of a wage, salary, charge, fee or any other payment. Should the person concerned transfer to a different administrative or employment situation, his post shall be kept in reserve for him under the conditions laid down by the applicable legislation. Members of the European Parliament may only exercise the private activities referred to in Article 159(3)(a) and (b)²⁷ and those not specified in Article 159(2) of the LOREG (see Articles 212 and 213 of the same law).

However, Members of the European Parliament who are members of a university teaching staff may take part, within their own university, in teaching or research activities of an

²⁷ The following exceptions, and only those exceptions, shall be permitted to the prohibition on the exercise of public or private activity referred to in Article 157(2) and in the present article: a) the simple administration of personal or family property. However, private activity shall under no circumstances be considered to fall under this heading where the person concerned, his spouse or domestic partner or his relatives in the descending line who are minors have a joint or separate participation exceeding 10% in business or professional activities of whatever kind involving any agreement, concession or contract with bodies or enterprises pertaining to the public sector at national, regional or local level; b) literary, scientific, artistic or technical production or creation, and publication relating thereto, provided such activity falls outside the scope of any of the provisions of Article 157(2) or paragraphs 1 and 2 of the present article.'

extraordinary nature which do not affect the management or evaluation of the services concerned. Their remuneration for such activity shall be that applicable under the rules in force and no other.

France

2 a) Membership of a national parliament and the EP

Compatible.

However, simultaneous membership of the two assemblies - the national parliament (as a member of either house) and the European Parliament - cannot be combined with any of the following elected offices: regional councillor, member of the Corsican Assembly, member of the council of a *département* or of Paris, mayor of a municipality with more than 20 000 residents other than Paris, deputy mayor of a municipality with more than 100 000 residents other than Paris (Articles L.O. 141 and L. 46-1 of the Electoral Code). Supplementary provisions lay down that the same system applies to members of the deliberative assemblies of the overseas territories and local authority councils in those territories with special status.

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

Membership of the European Parliament cannot be combined with more than one of the following elected offices: member of the national parliament (see 2a), regional councillor, member of the Corsican Assembly, member of the council of a *département* or of Paris, mayor of a municipality with more than 20 000 residents other than Paris, deputy mayor of a municipality with more than 100 000 residents other than Paris (Articles L.O. 141 and L. 46-1 of the Electoral Code). Supplementary provisions lay down that the same system applies to members of the deliberative assemblies of the overseas territories and local authority councils in those territories with special status.

Pursuant to Article 6 of Act No 77-729 of 7 July 1977, Articles L.O. 140, L.O. 142c to L.O. 150 and L.O. 152 of the Electoral Code (i.e. the provisions applicable to members of the two houses of the French parliament) apply to members of the European Parliament. Consequently, the following, in particular, are incompatible with membership:

- membership of the Constitutional Council (Article L.O. 152 of the Electoral Code);
- the post of judge (Article L.O. 140 of the Electoral Code);
- unelected public office, except certain posts in higher education and certain public cultural offices corresponding to the concordat system applicable to certain departments (Article L.O. 142 of the Electoral Code)²⁸;
- an office conferred by a foreign state or an international organization (Article L.O. 143 of the Electoral Code);
- the continuation for longer than six months of a temporary mission on behalf of the government (Article L.O. 144 of the Electoral Code);

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Other provisions stipulate that membership is incompatible with active membership of the administrative courts and administrative appeal courts and with acting as a judge in a regional chamber of audit.

- the post of president, member of the board of directors, director or assistant director, or adviser, in national enterprises and national public establishments, with certain exceptions, particularly as regards appointments arising from local elected office (Article L.O. 145 of the Electoral Code);
- certain senior management posts which are *de facto* exercised in certain companies or enterprises, particularly: companies which derive advantage from the State or a public body; companies whose purpose is purely financial and which publicly solicit the deposit of savings; companies whose main activity is carrying out works, providing supplies or rendering services for the account or under the control of certain public bodies; companies carrying on certain activities in the field of real estate; companies whose capital mainly consists of share-holdings by companies of the aforementioned kinds (Article L.O. 146 of the Electoral Code); however, exemptions from these provisions exist concerning unsalaried posts in various bodies which are deemed to be of regional or local benefit (Article L.O. 148 of the Electoral Code).

However, certain posts or activities which are compatible with membership if they were embarked upon before membership began cannot be embarked upon during membership. It is prohibited:

- to become an adviser, except for members of the professions subject to statutes or whose title is protected (Article L.O. 146-1 of the Electoral Code);
- to accept a post as a member of the board of directors or supervisory board of a company as referred to in the aforementioned Article L.O. 146 (Article L.O. 147 of the Electoral Code).

Lastly, there are certain acts which a member of parliament is debarred from performing pursuant to Articles L.O. 149 and L.O. 150 of the Electoral Code:

- a. pursuant to Article L.O. 149, an **advocate** registered at the bar may not, during membership of parliament:
 - perform, directly or indirectly through the intermediary of an associate, a colleague or a secretary (other than before the High Court and the Court of Justice of the Republic), any act of his profession in cases in which criminal proceedings have been brought for offences against the Nation, the State or the public peace or concerning the press or damage to credit and savings;
 - plead or consult, under the same conditions, for the account of any of the companies, enterprises or establishments referred to in Articles L.O. 145 and L.O. 146 (see point 2 above) which he did not habitually advise or represent before his election, or against the State, national companies or public authorities or establishments (except for certain cases relating to actions concerning liability for damage caused by vehicles);
- b. pursuant to Article L.O. 150, members of parliament are not permitted to cause or allow their names to be published with an indication of the fact that they are members of parliament in any **publicity** pertaining to a financial, industrial or commercial enterprise.

Ireland

2 a) Membership of a national parliament and the EP

Compatible.

However, a Member of the European Parliament elected in Ireland may not at the same time hold the office of *Chairman or Deputy Chairman of Dáil or Seanad Eireann* (subsection (2) of section 7 of the European Assembly Elections).

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

- Minister of State.
- Disqualifications applicable to membership of Dáil Eireann and the office of Attorney General (see 1.a).

The legislation governing the establishment of specific State-sponsored bodies generally provides that Board members shall cease to hold such office when nominated as candidates for election to the Parliament. Generally the legislation also provides that employees of such bodies who stand as candidates for election to the Parliament stand seconded from that employment for the period of their candidacy and membership of the Parliament.

Italy

2 a) Membership of a national parliament and the EP

Compatible (Art. 5 of Act 18/1979 on the Election of the Representatives of Italy in the European Parliament).

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

President or member of the Regional Council (Art. 6 of Act 18/1979).

Act 18/1979 provides only (Art. 52(2)) that employees of the State and of other public administrative bodies, judges and employees of corporations and establishments governed by public law subject to State supervision are governed by the provisions which apply in the case of national elections. In particular, such persons are granted leave of absence throughout their membership of parliament, they cannot be promoted while actually serving as members of parliament, but the period of leave of absence is taken into account for the purpose of career development. These provisions were integrated by Decree-Law 29/1993, Article 71 of which lays down that employees of public administrative bodies who are elected to the European Parliament and are automatically granted unpaid leave of absence for the duration of their membership may opt to continue to receive their civil service salary rather than the parliamentary salary.

Luxembourg

2 a) Membership of a national parliament and the EP

Compatible²⁹.

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

- Member of the Government, member of the Council of State, member of the judiciary, member of the Chamber of Audit, district commissioner, State tax collector or accounting officer, or career soldier on active service (Article 54 of the Constitution);
- official or waged or salaried employee paid by the State, by a public establishment subject to government supervision, by a local authority, an association of local authorities, or a public establishment subject to local authority supervision (Article 100 of the Elections Act);
- paid employee of Luxembourg National Railways (Article 100a of the Elections Act).

It should also be noted that, pursuant to Article 102 of the Elections Act, members of the Chamber of Deputies are not permitted to be related to one another up to the second degree by blood or marriage. If two or more candidates who are so related are elected simultaneously, the oldest of them serves. This article also applies to the election of the representatives of the Grand-Duchy of Luxembourg to the European Parliament by universal suffrage.

Netherlands

2 a) Membership of a national parliament and the EP

Compatible.

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

1. 'A Member of the European Parliament elected in the Netherlands cannot simultaneously be:
 - a. a minister;
 - b. a state secretary (junior minister);
 - c. a member of the Council of State;
 - d. a member of the General Chamber of Audit;
 - e. a member of the Supreme Court or Procurator-General, Deputy Procurator-General or Advocate-General thereat;
 - f. National Ombudsman or Deputy Ombudsman.
2. The following posts cannot be held during membership of the European Parliament:
 - a. King's Commissioner;

²⁹ The possibility of simultaneous membership of the national parliament and the European Parliament is, incidentally, implicitly provided for by Article 97 of the Elections Act, which lays down, inter alia, that any person who is a member of both shall receive only one parliamentary salary.

- b. member of the armed forces on active service;
 - c. official of the Council of State, the General Chamber of Audit or the Office of the National Ombudsman;
 - d. official of a ministry, including the agencies, services and businesses falling thereunder;
3. 'Official' as referred to in paragraph 2(c) and (d) shall also be deemed to refer to persons employed under a civil-law contract.
 4. A Member of the European Parliament cannot simultaneously be a conscript on active service or a recognized conscientious objector undertaking alternative service' (States-General and European Parliament Incompatibilities Act, Art. 2).

Austria

2 a) Membership of a national parliament and the EP

Incompatible (Art. 59 of the Federal Constitution Act)

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

Pursuant to Art. 23b(3) of the Federal Constitution Act, all posts which, under that Act, are incompatible with membership of the National Council are also incompatible with membership or former membership of the European Parliament. The following posts are therefore incompatible with membership of the European Parliament:

- President of the Federal Republic (Art. 61 of the Federal Constitution Act);
- President of the Court of Audit (Art. 122(5) of the Federal Constitution Act);
- President, Vice-President or member of the Supreme Court (Art. 92(2) of the Federal Constitution Act), of the Administrative Court (Art. 134(4) of the Federal Constitution Act) and the Constitutional Court (Art. 147(4) of the Federal Constitution Act); in addition, the President and Vice-President of these courts are not permitted to have been Members of the European Parliament within the past four years³⁰.

Pursuant to Art. 23b(1) of the Federal Constitution Act, public servants who are elected to the European Parliament are granted unpaid leave of absence for the duration of their membership. However, under Art. 23b(2) higher-education teachers may continue to teach, carry out research and conduct examinations while serving as Members of the European Parliament.

³⁰ The provisions of the Economic Incompatibilities Act do not apply to Austrian Members of the European Parliament.

Portugal

2 a) Membership of a national parliament and the EP

Incompatible (Article 6(3b) of the law governing elections to the European Parliament)

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

The following offices are incompatible with membership of the European Parliament: member of the government; Minister of the Republic; member of the Supreme Legal Council; Public Prosecutor; Ombudsman and Deputy Ombudsman; member of the government organs of the Autonomous Regions; Governor, member of the government or member of the Legislative Assembly of Macao; Civil Governor or Deputy Civil Governor; Mayor or full-time member of a municipal council; President of the Economic and Social Council; member of the High Authority for the Media, of the National Commission for the Protection of Computerized Personal Data or the Commission for Access to Administrative Documents; public administrator or member of the board of a public institute; member of the management board of a limited liability company funded exclusively or primarily from public sources, whatever the method of appointment; diplomatic office in the external representation of the Portuguese state, where such office is filled by a non-civil servant; the offices referred to in Article 2 of Decree-Law No 196/93 of 27 May 1993³¹; the offices referred to in Article 6 of the Community Act of 20 September 1976; civil servant or other official employed by the state or any other public collective entity (this restriction shall not affect unpaid teaching activity in higher education or research activity; see Article 6 of the law governing elections to the European Parliament).

The electoral law does not lay down any restrictions other than those deriving from the rules on ineligibility to stand for election and incompatibility. Law No 64/93 of 26 August 1993, as amended by Law No 28/95 of 18 August 1995, stipulates, however, in Article 8, that where more than 10% of the capital of an enterprise is held by the holder of a political office (this includes Members of the European Parliament, pursuant to Article 1(2g)), that enterprise is not permitted to respond to calls for tender for the supply of goods or services in the context of a commercial or industrial activity involving contracts with the state or any other public collective entity. In addition, Article 9 of the same law (No 64/93) states that holders of public office may not act as arbitrators or experts, remunerated or otherwise, in any proceedings to which the state or any other public collective entity is a party; this restriction applies for one year after the person concerned has ceased to hold office.

³¹ This category includes, in particular, the posts comprised by: the President's office and secretariat; the office of the President of the Assembly of the Republic and the secretariats of the parliamentary groups; the Prime Minister's office; the offices of the members of the government; the offices of the Ministers of the Republic for the Autonomous Regions; the offices of the members of the Regional Governments; the offices of the Civil Governors and Deputy Civil Governors; and the secretariats of the Mayors and full-time members of municipal councils.

Finland

2 a) Membership of a national parliament and the EP

The dual mandate is not categorically forbidden, but exercise of the national parliamentary mandate is suspended for the period of membership of the European Parliament.

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

The Chancellor and Assistant Chancellor of Justice, Justices of the Supreme Court and the Supreme Administrative Court, the Parliamentary Ombudsman and the Assistant Parliamentary Ombudsman. If a Member is elected President of the Republic, his mandate shall expire (sections 8 and 9 of the Parliament Act; section 3.9 of the Act on the Election of Representatives of Finland to the European Parliament).

Sweden

2 a) Membership of a national parliament and the EP

Compatible³².

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

Sweden has no specific rules concerning functions or activities incompatible with the office of Member of the European Parliament. Incompatibilities are the same as those laid down in the Act of 20 September 1976.

³² Sweden did not lay down any rule about the dual mandate in Law 1995:374. The government bill summarized the situation as follows: "Under Art. 5 of the 1976 Act, the dual mandate is permissible. This provision is binding, and it is therefore not possible to forbid the dual mandate by means of national rules. (...) From the Swedish point of view, there could be no reason to forbid dual mandates in a way contrary to EU provisions. Each mandate is so demanding that this alone prevents dual mandates. It could therefore be expected that an MP who is elected as an MEP would resign from the Riksdag". All MPs elected as MEPs in the September 1995 election resigned on 9 October 1995 when they formally took their seats in the European Parliament.

United Kingdom

2 a) Membership of a national parliament and the EP

Compatible³³.

2 b) Incompatibilities and, if applicable, prohibitions concerning other posts or activities

A person is disqualified for the office of representative to the European Parliament if he is disqualified, whether under the House of Commons Disqualification Act 1975 or otherwise, for membership of the House of Commons or if he is a Lord of Appeal in Ordinary. He is also disqualified for the office of representative to the Parliament for a particular constituency if he is disqualified under the 1975 Act for membership of the House of Commons for any particular parliamentary constituency comprised in that constituency. Disqualifying offices include, for example, civil service, regular armed forces, public police forces, judicial offices and certain offices listed in the 1975 Act (e.g. government - nominated directors of commercial companies, some local government officers, etc)³⁴.

³³ There is no legal prohibition on a "dual" mandate. There have been and there currently are examples of dual mandates. This is a matter for political parties or candidates themselves. For example the practice is "actively discouraged" by the Labour Party, but is "quite acceptable" in the Conservative Party. A peer (sitting in the House of Lords), who is also an MEP, cannot be said to have a mandate, in any electoral sense, for membership of the UK Parliament.

³⁴ However, according to paragraph 5 (3) of the European Parliamentary Elections Act, "A person is not disqualified for office as a representative to the European Parliament by reason only (a) that he is a peer, (b) that he has been ordained or is a minister of any religious denomination; or (c) that he holds an office mentioned in section 4 of the House of Commons Disqualification Act 1975 (stewardship of Chiltern Hundreds etc. or (d) that he holds any of the offices for the time being described in Part II or Part III of Schedule 1 to the 1975 Act which are for the time being designated in an order as non-qualifying offices in relation to the European Parliament (...)"

3) Measures to be taken when an incompatibility or ineligibility arises during a term of office

Belgium

The Chamber of Representatives rules on the incompatibilities provided for by Belgian law. A member of the European Parliament cannot accept a post or office which is incompatible with membership of the European Parliament unless he has previously resigned his membership of the European Parliament (Article 42 of the Act on Elections to the European Parliament of 23 March 1989).

It is up to the Assembly concerned to decide that one of its members should be stripped of his membership if, after election and while serving as a member, he ceases to fulfil one of the eligibility conditions referred to under 1.b). In the case of the European Parliament, the Act of 23 March 1989 does not contain any specific provisions.³⁵

Denmark

Pursuant to Articles 37(3) and 41 of the Act on the Election of Danish Representatives to the European Parliament, if any doubt arises, either during the elections or while a member is serving, as to the validity of the election of a representative or whether a member has ceased to be eligible, the final decision is taken by the Folketing. Pursuant to Article 42(2) of the Act, 'a representative who, if he is appointed to one of the posts referred to in paragraph 1 (posts incompatible with membership of the European Parliament), resigns from the European Parliament, may, after his membership of the latter has ceased, be entered on the list of substitutes in the order of succession corresponding to the number of votes cast for him.'

Germany

Pursuant to Article 22(2) of the European Elections Act, a Member of the European Parliament loses his membership if:

1. his acquisition of membership was invalid,
2. the election result is redetermined,
3. he ceases to fulfil one of the preconditions for constant eligibility,
4. he resigns,
5. the Federal Constitutional Court rules that the party or organizational unit of a party to which he belongs is unconstitutional pursuant to Article 21(2), second sentence, of the Constitution,
6. the political association to which he belongs is banned by a final decision in the constituency,
7. he agrees to stand for election as President of the Federal Republic,
8. he is appointed a judge at the Federal Constitutional Court,
9. he is appointed Parliamentary Undersecretary,

³⁵ Article 43 of this Act stipulates only that 'the Chamber of Representatives shall rule on the *validity of elections* in the case both of full members and of their substitutes. It shall rule on complaints lodged pursuant to this Act. Any complaint about the election must be submitted in writing and lodged with the clerk of the Chamber of Representatives within ten days of the election.'

10. he is appointed Parliamentary Commissioner for the Armed Forces,
11. he is appointed Parliamentary Commissioner for Data Protection,
12. he stands for election as or is appointed member of the Government of a *Land*,
13. he is appointed to any of the posts referred to in Article 6(1) of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, under which membership of the European Parliament is incompatible with membership of the government of a Member State or the holding of office in a European Community institution,
14. appointment to a post which, under other statutory provisions, is incompatible with membership of the European Parliament, or
15. acceptance of any of the following offices in another Member State of the European Community: Head of State, constitutional court judge or member of a government comparable to the government of a German *Land*, or acceptance of a post comparable to that of a parliamentary undersecretary in the Federal Republic.

If the Federal Constitutional Court rules that the party or organizational unit of a party to which he belongs is unconstitutional pursuant to Article 21(2), second sentence, of the Constitution, the Member ceases to be a Member of the European Parliament, and those ranked lower on the same list forfeit their entitlement to replace him, if they have belonged to the party or organizational unit at any time between the date of application (Article 43 of the Federal Constitutional Court Act) and the announcement of the decision (Article 46 of the same Act). The seats of Members who forfeit their membership in this way remain vacant (Article 22(4), European Elections Act).

Paragraph 4 applies *mutatis mutandis* if any other political association is banned by a final decision under the Associations Act in the constituency (Article 22(5) of the European Elections Act).'

Decisions on loss of membership pursuant to Article 22(2) are taken:

1. in the case of numbers 1 and 3, during the procedure for the scrutiny of votes,
 2. in the case of numbers 2, 5 to 12, 14 and 15, by the Council of Elders of the Bundestag,
 3. in the case of numbers 4 and 13, by the European Parliament, by declaring the seat vacant.'
- (Article 23(1))

If a decision on loss of membership is taken during the procedure for the scrutiny of votes, the Member's membership of the European Parliament lapses when the decision becomes binding.'

(Article 23(2))

If the Council of Elders of the Bundestag decides on loss of membership, the Member's membership of the European Parliament lapses upon service of the decision. The decision shall be taken immediately and automatically. Within two weeks after service of the decision, the person concerned may apply for a decision by the Bundestag on the loss of membership as part of the procedure for the scrutiny of votes. Notification of the decision shall be served pursuant to the Administrative Service Act.'

(Article 23(3))

If the European Parliament decides on loss of membership, the Member's membership of the European Parliament lapses when the decision declaring the seat vacant is announced.'

(Article 23(4))

The Speaker of the Bundestag shall immediately inform the President of the European Parliament of the reason for and time of loss of membership if the decision concerning it has been taken as part of the procedure for the scrutiny of votes or by the Council of Elders of the Bundestag.'

(Article 23(5)).

Greece

Members who carry out incompatible activities or hold incompatible posts are required to declare within eight days after their election has become final whether they are opting for membership or for the activities or posts concerned. If no decision is declared within the time limit, they are automatically stripped of their membership of the European Parliament. Members who accept any duties or activities defined as incompatible with membership or as rendering them ineligible for membership (Articles 56 and 57 of the Constitution) are automatically stripped of membership. In addition, pursuant to Article 55(2) of the Constitution, any Member who is deprived of the right to vote is automatically stripped of membership. The Special Supreme Court rules on incompatibilities or loss of membership pursuant to articles 55(2) and 57 of the Constitution (Article 100(1)(c) of the Constitution).

Pursuant to Act 2429/96 of 10 July 1996, Article 24(1d) and 27(3), Greek Members are required to submit a statement of assets every year; if they fail to do so or submit an inaccurate statement, they may be imprisoned or fined and stripped of their political rights for between one and four years.

Spain

Should a Member of the European Parliament be appointed or elected to a position or office the holding of which creates an incompatibility or renders him ineligible for membership of the European Parliament, he shall be obliged to choose between that position or office and his membership of the European Parliament. In the case of members of the Cortes or members of the legislative assemblies of the Autonomous Communities, the incompatibility shall be resolved in favour of the parliamentary status more recently acquired (LOREG, Article 211(3))³⁶.

When one of the conditions for ineligibility referred to under 1(b) above arises during a Member's term of office, this shall normally lead to the suspension or cessation of his mandate. The LOREG

³⁶ In other words, a member of parliament or a senator (or a member of any regional legislative assembly) may stand as a candidate for election to the European Parliament, but if he is elected he automatically ceases to be a member of the Spanish parliament, a senator or a member of the legislative assembly in question (conversely, if a Spanish Member of the European Parliament stands for election to the Cortes, the Senate or one of the 17 regional assemblies and is elected, his membership of the European Parliament automatically lapses).

However, according to one formal and restrictive interpretation of the expression 'parliamentary status more recently acquired', a member, senator or member of a regional legislative assembly who has stood for election to the European Parliament (and conversely a Member of the European Parliament who has stood as a candidate in national or regional elections) has the right to withdraw his candidacy before the official proclamation of the election results. It is only when this proclamation is made that the winning candidate is deemed to have acquired his membership. If one accepts this interpretation, a list candidate, by resigning his membership in advance (or, to be more exact, by surrendering the option of becoming a member), automatically gives the next candidate on the list the opportunity of taking the seat. This implies that there is a certain temptation for popular members or senators to stand for election as the first, second or third candidate on the list with the sole aim of resigning the day after the elections and allowing less well-known and less influential candidates, for whom the voters would not have voted, to take their place. But this situation has not so far arisen, so there is no precedent which could either refute or support this interpretation, which is by no means unanimously accepted by specialists in electoral law.' (Information supplied by the appropriate departments of the Congress of Deputies).

does not include any specific provisions for Members of the European Parliament relating to the procedure governing cessation of the mandate of a Member elected in Spain who is in this situation.

France

If a serving member ceases to be eligible, his membership lapses. The loss of membership is proclaimed by decree.

Article 5(2) of Act no 77-729 of 7 July 1977 also lays down that a member of parliament who has been elected in France and is declared elected in another EU Member State forfeits his membership by decree.

As regards incompatibility, pursuant to the last two paragraphs of Article 6 of the said Act, any serving member who accepts a post or office referred to by the Act (see point 2 above) must, within 15 days, put an end to the incompatibilities. Any voter may seek a declaration of incompatibility from the Council of State (which is also the body responsible for resolving electoral disputes). If the Council of State decides that incompatibility exists, the Member is deemed to have resigned.

Ireland

Where a Member of the Parliament elected in Ireland becomes subject to any of the disqualifications referred to above or becomes the holder of an office referred to, he/she ceases to be a Member of the Parliament (European Assembly Elections Act, section 7).

Italy

Article 6 of Act 18/1979 lays down that two offices are incompatible with membership at national level: those of president or member of a regional council. Any person who holds one of these posts must inform the National Electoral Office, within 30 days of being elected, which post he wishes to retain. If he fails to do so, the Office declares his membership of parliament invalid and replaces him with the next candidate on the list; however, a candidate who has been stripped of membership in this way may appeal within 20 days of being informed of the decision.³⁷

In principle, if a serving member loses the right to vote, his membership lapses. However, Act no 18 of 24 January 1979 does not contain any specific provisions concerning the procedure for stripping Italian Members of the European Parliament of their membership following an individual civil or criminal law decision if the latter is handed down after the elections and while the Member is serving.

³⁷ It may be noted that a candidate who is elected in more than one constituency must likewise declare his choice (within 8 days of the declaration of the election result) and that, in Italy, doubts have arisen concerning the interpretation of the rules in relation to the fact that a successful, but incompatible, candidate can serve as a Member of the European Parliament for the first 30 days (in such cases it is not possible to prevent the Member from taking part in any meetings of the European Parliament if his membership has not yet been declared invalid).

Luxembourg

Article 88 of the Act of 25 February 1979 on the Election of the Representatives of the Grand-Duchy of Luxembourg to the European Parliament, as subsequently amended, lays down that 'the Chamber of Deputies, exclusively, shall determine the validity of electoral operations regulated by national law. Any complaint about these operations must be formulated, on pain of debarment, in writing and lodged with the Clerk of the Chamber of Deputies within 10 days of the election'.

Article 89 of the same Act lays down that 'the European Parliament shall verify the credentials of Members and rule on any disputes based on the Act concerning the election of the representatives of the European Parliament by direct universal suffrage. However, disputes based on the national provisions to which this Act refers shall be settled by the Chamber of Deputies (...)'

Pursuant to Article 101 of the Elections Act, 'if a member accepts an office, post or duty incompatible with his membership or if (...) he resumes his previous duties, he shall automatically be stripped of membership.'

Article 99 of the Elections Act of 31 July 1924, as amended, lays down that if a member ceases to fulfil one of the eligibility conditions, his membership lapses. This provision likewise applies to MEPs elected in Luxembourg, pursuant to Article A of the Act of 25 February 1979, as amended.

Netherlands

'Art. Y 28 (Franchise Act)

As soon as it has been irrevocably established that a Member of the European Parliament does not fulfil one of the membership requirements referred to in Article Y 4 or holds a post incompatible with membership pursuant to national provisions, his membership shall lapse. The Speaker of the Lower House of Parliament shall immediately inform the President of the European Parliament and the Chief Electoral Officer of the Central Polling Station hereof.

Art. Y 29 (Franchise Act)

1. If either of the circumstances referred to in Article Y 28 applies to a Member of the European Parliament, he shall immediately inform the Speaker of the Lower House, stating the reason.
2. If the notification has not been given and the Speaker of the Lower House considers that either of the circumstances referred to in Article Y 28 applies to a Member of the European Parliament, he shall inform the person concerned in writing.
3. The latter shall be at liberty to submit the matter to the judgment of the Lower House not later than the eighth day following the date of the communication referred to in paragraph 2.'

Austria

Pursuant to Article 141(1)(A) or (C), the Federal Constitutional Court adjudicates on disputes concerning elections to the European Parliament or, upon application by at least 11 Austrian Members of the European Parliament, on the loss of membership of the European Parliament by a Member elected in Austria.

Portugal

The law governing elections to the European Parliament does not include any specific provisions on this point. However, the various laws contain a number of references to situations of incompatibility or ineligibility arising after a Member has been elected.

Thus, Law No 64/93, whose scope of application was extended to Members of the European Parliament by Law No 28/95, states in Article 10 that the holder of a political office must, within ten days of taking office, deposit with the Constitutional Court a declaration that no circumstances of incompatibility or ineligibility applies to him, listing all his current posts, functions and activities in the professional field as well as any existing interests. This statement is examined, verified and validated by the Constitutional Court. The deliberate non-presentation of this statement to the Constitutional Court leads to the Member's automatic disqualification.

A Member who deliberately fails to submit a declaration of income to the Constitutional Court within the required time-limit may be required to resign, and may even be disqualified from standing for office for a period of between one and five years (Article 3 of Law No 4/83 of 2 April 1983, as amended by Law No 25/95 of 16 July 1995, concerning public verification of the income of the holders of political office).

Law No 34/87 of 16 July 1987, on offences committed by the holders of political office, states that where it is established that an elected office-holder has committed an offence in the exercise of his duties he shall be deprived of his mandate (Article 29)³⁸. Article 36 states that Members of the European Parliament elected in Portugal, if imprisoned or sentenced for offences committed in the exercise of their duties, shall be subject to the relevant Community legislation and, insofar as this is compatible with the nature of the European Parliament, to the relevant provisions of Law No 3/85 of 13 March 1985, allowing for the necessary adaptations (Members' Statute of the Assembly of the Republic, as regulated by Law No 7/93)³⁹.

Article 66 of the Penal Code states that the holder of a public office who, in the course of the exercise of the activity for which he was elected, commits an offence bearing a prison sentence of over three years shall not be permitted from exercising those functions for a period of between two and five years, where the offence: a) was perpetrated by means of a flagrant and serious abuse of his position or a severe breach of the duties inherent to it; b) was such as to make him unworthy of exercising the office; c) destroyed the confidence necessary for the exercise of the function.

³⁸ The offences included in this law include high treason, sedition against the constitutional state or coercive action against constitutional bodies, breach of the rules governing implementation of the budget, passive and active corruption, embezzlement, abuse of powers and violation of secrecy laws. This law explicitly applies, by virtue of its Article 3(e), to Members of the European Parliament.

³⁹ Article 8(1)(a) of the Members' Statute of the Assembly of the Republic provides for the removal from office of members who 'are affected by any of the disqualifications or incompatibilities existing in law, even by reason of facts prior to their election', and states that 'the Assembly shall not be empowered to reassess facts which have been the subject of a decision of a court of law or a previous decision by the Assembly itself'.

Finland

If an elected representative loses his eligibility for office or is appointed or elected to one of the offices mentioned in 2.b), his parliamentary mandate shall expire (section 3 of the Act on the Election of Representatives of Finland to the European Parliament)⁴⁰.

Sweden

Appeals against results of elections to the European Parliament may be lodged with an Elections Review Committee appointed by the Riksdag (article 43 of the Act on Elections to the European Parliament). Legislation on this point makes reference to the Swedish Electoral Law (Chapter 15, articles 4, 5, 6 and 9).

As to disqualification for, or suspension from, the European Parliament during the mandate, there is no rule about how a Member may be relieved of his mandate in cases other than the case referred to in the preceding paragraph⁴¹.

United Kingdom

If a representative to the European Parliament becomes disqualified under paragraph 5 of the European Parliamentary Elections Act 1978, his seat shall be vacated.

⁴⁰ Under section 8, fourth paragraph, of the Finnish Parliament Act, "If, after the election, an elected representative has been sentenced to a term of imprisonment for an intentional offence or for an electoral crime, electoral bribery, fraudulent voting or falsification of electoral results in a parliamentary election, then Parliament shall have the authority to determine whether he may still be permitted to serve as a representative. When the nature of the offence or the manner of its commission indicates that the offender is not worthy of the trust and respect required by his parliamentary mandate, Parliament may, after having obtained a statement on the matter from the Committee for Constitutional Law, revoke his parliamentary mandate by a decision supported by not less than two thirds of the votes cast, unless the offender himself has petitioned Parliament for such a discharge. This provision shall be complied with after the Court of Appeal has issued its decision, though it be not yet final. However, and notwithstanding the right of appeal, Parliament shall take up the matter for consideration following, and on the basis of, the decision of lower court, if the decision of Parliament to this effect is supported by not less than five sixths of the votes cast. (21 April 1995/580)". However, given the wording of section 3.9 of the Act on the Election of Representatives of Finland to the European Parliament (which includes a general reference to sections 8 and 9 of the Parliament Act, but refers only to the holders of the offices and positions listed in those sections) and in the absence of comments concerning this matter in the explanatory notes for section 3 of the European Parliament Election Act in Government Bill 351/1994, there is no basis, or at least no incontrovertible basis, for stating that the rule laid down in paragraph 4 of section 8 of the (Finnish) Parliament Act applies equally to the elected representatives of Finland in the European Parliament in such a situation.

⁴¹ Regarding general elections to the Swedish Riksdag (verification and the consequences of ineligibility or of incompatibility), legislation provides that the Elections Review Committee may decide that a Member of the Swedish Riksdag has to surrender his mandate when the Member is found to be ineligible under Article 10, Chapter 3 of the Instrument of Government (right to vote and eligibility). A Member of the Swedish Riksdag may also be relieved of his mandate if, by reason of a criminal act, he has proved himself manifestly unfit for the position. Any decision to this effect has to be taken by a court of law (Article 7, Chapter 4, of the Instrument of Government).

Paragraph 6 of the European Parliament Elections Act 1978 ("Judicial proceedings as to disqualification under paragraph 5") : 1) "Any person who claims that a person purporting to hold office as a representative to the European Parliament is disqualified or was disqualified at the time of, or at any time since, his election may apply to the court for a declaration or, as the case may be, declarator to that effect, and the decision of the court on the application shall be final (...)". (3) No declaration or declarator shall be made under this paragraph in respect of any person on grounds which subsisted at the time of his election if there is pending, or has been tried, an election petition in which his disqualification on those grounds is, or was, in issue. (4) Any declaration or declarator made by the court on an application under this paragraph shall be certified in writing to the Secretary of State forthwith by the court. "(5) The court for the purposes of this paragraph is the High Court, the Court of Session or the High Court of Justice in Northern Ireland according as the European Parliamentary constituency to which the application relates is in England and Wales, or Scotland, or Northern Ireland; and in this paragraph "disqualified" means disqualified under paragraph 5 above for the office of representative to the European Parliament (whether generally or in relation to a particular European Parliamentary constituency)."

4. Legal basis

Belgium

- Act of 23 March 1989 on Elections to the European Parliament, as amended by the Act of 11 April 1994.
- Act of 6 August 1931, as amended, laying down the incompatibilities and prohibitions pertaining to ministers, former ministers and ministers of state and members of the Legislative Chambers.

Denmark

- Act on the Election of Danish Representatives to the European Parliament, Lb n° 157 of 4 March 1994, Chapters 2 and 11.

Germany

- European Elections Act; revised version of 8 March 1994 (Bundesgesetzblatt I p. 423) as corrected on 14 March 1994 (BGB1. I p. 555).
- Federal Elections Act of 7 May 1956 as revised on 23 July 1993 (BGB1. I p. 1288, corr. p. 1594), as last amended by Art. 1, 12th Amending Act of 10 May 1994 (BGB1. I p. 993), in so far as the European Elections Act does not provide otherwise.
- Regulation on the Preparation and Holding of Elections to the European Parliament of Representatives from the Federal Republic of Germany of 27 July 1988 (BGB1. I p. 1453, 1989 I p. 228), as last amended on 15 March 1994 (BGB1. I p. 544). This Regulation was adopted by the Federal Ministry of the Interior pursuant to Article 25 of the European Elections Act.
- Act on the Legal Status of Members of the European Parliament from the Federal Republic of Germany of 6 April 1979 (BGB1. I 413), as last amended by the Act revising the Legal Status of Members of Parliament of 15 December 1995 (BGB1. I p. 1718, 1721, Art. 3) and Seventeenth Act amending the Members of the European Parliament Act of 19 June 1996 (BGB1. I p. 843, Art. 2).
- Act on the Legal Status of Members of the Bundestag, version published on 21 February 1996 (BGB1. I p. 326).
- Judiciary Act, version published on 19 April 1972 (BGB1. I p. 713).
- Act on the Status of Military Personnel (Military Personnel Act), version of 15 December 1995 (BGB1. I p. 1737).

Greece

- Act 1180/1981, Act 1443/84, Act 2196/1994 laying down procedures for the election of Greek Representatives to the European Parliament.
- Constitution of Greece (Articles 51, 55, 56, 57).
- Presidential Decree 92/1994 consolidating electoral legislation.
- Criminal Code (Articles 59 and 60).

Spain

- Organic Law of the General Electoral Regime (No 5/1985) of 19 June 1985 (Official Bulletin of the State (BOE) No 147, 20 June 1985), as amended by Organic Law No 1/1987 of 2 April 1987 (BOE No 80, 3 April 1987), by Organic Law No 8/1991 of 13 March 1991 (BOE No 63, 14 March 1991), by Organic Law No 6/1992 of 2 November 1992 (BOE No 264, 3 November 1992) and by Organic Law No 13/1994 of 13 March 1994 (BOE No 77, 31 March 1994).

France

- Act n° 77-729 of 7 July 1977 on the Election of Representatives to the Assembly of the European Communities, as amended by Decree n° 79-160 of 28 February 1979, supplemented and amended by the Act of 5 February 1994 on the Exercise by Citizens of the European Union resident in France of the Right to Vote and to Stand as a Candidate in Elections to the European Parliament (Act n° 94-104, Official Journal of 8 February 1994, p. 2124-2155).
Under Law n° 77-729, several articles of the Electoral Code applicable to members of the national parliament also apply to Members of the European Parliament.

Ireland

- European Assembly Elections Acts 1977, 1984, 1993; European Parliament Elections Regulations 1994.
- Electoral Act, 1992, sections 41 and 42.
- Constitution, Articles 33.3 and 35.3.

Italy

- Act of 24 January 1979, No 18 - Election of Representatives of Italy in the European Parliament, as amended by Act 9/1989 and Decree-Law No 408/1994, Articles 3, 4, 5 and 6.
- Presidential Decree of 20 March 1967, No 223, Article 2.

Luxembourg

- Act of 25 February 1979 on the Direct Election of the Representatives of the Grand-Duchy of Luxembourg to the European Parliament, as amended by the Act of 28 January 1994.
- Elections Act of 31 July 1924, as amended.
- Constitution, Articles 53 and 54.

Netherlands

- Franchise Act, Art. Y 3, Y 4, B 5, Y 28, Y 29.
- States-General and European Parliament Incompatibilities Act, Art. 2.

Austria

- European Electoral Roll Updating Act, 1996.
- Act on the Election of Members of the European Parliament from Austria, 1996.

Portugal

- Law governing elections to the European Parliament (No 14/87) of 29 April 1987, as amended by Law No 4/94 of 9 March 1994
- Law governing elections to the Assembly of the Republic (No 14/79) of 16 November 1979, as amended by Law No 10/95 of 7 April 1995
- Law No 64/93 of 26 August 1993, as amended by Law No 28/95 of 18 August 1995 (legal regime governing incompatibilities and disqualifications applying to the holders of political offices).

Finland

- Act on the Election of Representatives of Finland to the European Parliament, sections 2 and 3.
- Parliament Act, sections 6-9.

Sweden

- Act on election to the European Parliament (1995:374)⁴².

United Kingdom

- The European Parliamentary Elections Acts 1978, 1981 and 1993, the regulations governing the elections to the European Parliament in Northern Ireland and Scotland, the European Parliamentary Elections Regulations 1994.
- The House of Commons Disqualification Act 1975.
- The Representation of the People Acts of 1983 and 1985.

⁴² A temporary law (1994:1650 *Riksdagens val av företrädare för Sverige i Europaparlamentet*) was enacted for the election within the Swedish Riksdag of the first Swedish representatives to the European Parliament. The law referred to the general election provisions in the Riksdag Act for appointments within the Riksdag. Another law was enacted for the general election to the European Parliament in September 1995 (1995:374 *Val till Europaparlamentet*). This law referred in parts (concerning the conduct of the election) to the Swedish Electoral Law. The Act on election to the European Parliament (1995:374) was proposed by the government in a bill (Proposition 1994/95:154). The act was only valid for the 1995 election since the general Electoral Law will be changed before the next election to the European Parliament. In the government's bill, it was said that the basic rules and principles enshrined in the law would continue to apply in future. The information provided in this note refers to the Act on election to the European Parliament (1995:374).