

Electoral thresholds in European Parliament elections

SUMMARY

An electoral threshold for the allocation of seats is the minimum percentage of votes that a political party or a coalition is required to collect in order to gain a seat in the legislative assembly. Thresholds are said to enable a better balance between governability and representativeness, by favouring the formation of stable majorities and avoiding excessive fragmentation of the legislative assembly. Thresholds are sometimes imposed by law, but in the absence of an explicit legal requirement, they can be the de facto result of the size of the constituency and the relevant electoral law determining the apportionment of seats between constituencies. Provisions for electoral thresholds are common in proportional electoral systems, which tend to favour multipartyism. Thresholds can, however, be problematic when they limit or impede the representation of regional parties and ethnic and linguistic minorities, for instance.

The current European Electoral Act contains a set of common principles to be upheld by the different domestic laws applicable to the election of the European Parliament. The original act of 1976 did not contain any provisions on minimum thresholds. Following modifications introduced in 2002, Article 3 allows Member States to set a minimum threshold for the allocation of seats; this must not exceed 5 % of the votes cast. More recently, a draft legislative act, adopted by the European Parliament in May 2022 and seeking to repeal the 1976 Act, proposes to modify Article 3. Member States would remain free to establish an electoral threshold of no more than 5 % of the valid votes cast, but they would be obliged to establish a threshold – of no less than 3.5 % and no more than 5 % – for national constituencies comprising more than 60 seats.

The electoral thresholds applied in the 2019 European elections ranged between 5 % of the valid votes cast, required in nine Member States (Czechia, France, Croatia, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia) and 1.8 %, required in Cyprus, while 14 Member States set no threshold. Italy, Austria and Sweden applied a 4 % threshold; and Greece 3 %. At the time of writing, it appears that these thresholds will still be applicable for the 2024 European elections.



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Introduction

The electoral threshold for the allocation of seats is the minimum percentage of votes that a political party or a coalition is required to gain in order to be entitled to representation in the legislative assembly. Electoral thresholds facilitate the formation of stable majorities by avoiding excessive fragmentation that could jeopardise the parliament's work, for instance by paralysing the decision-making process. They represent an artificial interference with the principle of equal voting justified by the need to avoid parliamentary fragmentation and ensure stability.¹ Their purpose is to ensure a better balance between governability and representativeness. Provisions for electoral thresholds are often present in proportional electoral systems, which tend to favour multipartyism. In that context, the provision might require a party (or coalition of parties) to win a certain percentage of the vote, at either national or district level, to gain a seat in parliament.

What are electoral thresholds and why do they exist?

As the Venice Commission [reported](#) in 2010, various types of restriction on access to parliament, including electoral thresholds, are understandable in a context where representative democracies imply that we need 'to pass from a few million, or tens of millions, of votes to a few hundred representatives' which necessarily 'entails a degree of simplification, and thus deformation'. The European Court of Human Rights (ECtHR) has also [considered](#) that electoral thresholds for the attribution of seats are acceptable because each electoral system has to marry competing if not conflicting purposes: 'on the one hand to reflect fairly faithfully the opinions of the people and, on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will'. In fact, in *Partija 'Jaunie Demokrāti' and Partija 'Mūsu Zeme' v Latvia*, the ECtHR clarified that Article 3 of [Protocol No 1](#) to the [European Convention on Human Rights](#) (ECHR) does not mean that all ballots have equal weight as regards the election results, or that each candidate has the same chances of winning.

In certain instances, a formal, legal, or artificial electoral threshold is not relevant in practice because of the limited number of seats to be attributed. Party lists in a given country might need to achieve an even higher percentage of the votes cast in order to be allocated a seat. This is [called](#) a 'natural or hidden electoral threshold'. This exclusionary effect (i.e. the exclusion from the allocation of seats of any list that does not reach a certain number of votes), may also arise in the absence of an explicit legal threshold, as a result of the number of seats to be allocated or the size of the constituency. A [constituency](#) with a very small number of seats to be allocated would require a higher proportion of votes to win a seat. Conversely, legal thresholds are more relevant in countries with bigger constituencies, though other factors play a role too, including the formula used to allocate the seats, for example the [d'Hondt method](#), the number of candidates, or the size of the legislative assembly.

It is argued that limiting the number of political actors helps citizens to gain a better understanding of the positions of the political parties represented in parliament. Electoral thresholds can favour the formation of stronger majorities and also a stronger opposition. While a general assessment of the function and purposes of electoral thresholds is possible, 'any assessment of a threshold clause and of its effects on the specific operation of the electoral system must take account of the need to contextualise the analysis with reference to the relevant political party, historical and social circumstances and, in particular, to the territory within which that electoral system is applied' as [stated](#) by the Italian Constitutional Court in 2018.

A similar principle was stated by the ECtHR in *Yumak and Sadak v Turkey* (see paragraph 131: 'However, the effects of an electoral threshold can differ from one country to another and the various systems can pursue different, sometimes even antagonistic, political aims'). The [2002 Code of good practice](#) in electoral matters adopted by the Venice Commission also stressed the need to evaluate any electoral system in relation to the specific circumstances, as it is accepted that electoral systems might 'pursue different, sometimes even antagonistic, political aims'. In fact, in one country

the main objective of the electoral system might be to ensure fair representation of a large spectrum of parties while in another the main objective could be to avoid fragmentation.

Among the criticisms of electoral thresholds, it is often said that they artificially distort the representativeness of the parliamentary assembly because they create a gap between the elected representatives and those they represent. They are also said to undermine pluralism, which is a crucial pillar of democracy, to artificially force small parties into coalition to overcome the entry barrier, and ultimately to disenfranchise small-party voters. However, as recognised by the [Venice Commission](#): 'no electoral system can be perfectly proportional in practice' as a larger body of electors needs to be translated into a smaller body of elected representatives.

The [problem](#) of inclusiveness is a common issue regarding legal thresholds at national level as they can limit or impede the representation of regional parties, and ethnic and linguistic minorities. This is why certain countries have opted for thresholds at constituency level instead, or have introduced other mechanisms in their electoral laws (for instance, a party that does not reach the national threshold may still be allocated a seat if it won in one or more constituencies). Corrective measures (such as the attribution of seats to ethnic and linguistic minorities) to address imbalances in representation are considered acceptable if they are proportionate and not discriminatory.

The 2005 Venice Commission report on [electoral rules and affirmative action](#) for national minorities recommended a number of measures to ensure and promote fair representation of minorities; two of them related to thresholds. It stated that 'electoral thresholds should not affect the chances of national minorities to be elected' and that electoral districts should be designed with a view to enhancing minorities' participation. Countries have developed a variety of legal thresholds in relation to their legal and political traditions. As pointed out in the 2018 [Venice Commission](#) report, based on an analysis of various domestic electoral laws in Europe, it appears that thresholds operate at different levels (nationwide, or constituency or district level), at different stages in the electoral process (first, second or subsequent rounds of the seat allocation), and with different percentages depending on whether they are applicable to a party or a party coalition. This is the case for instance in Lithuania where, according to Article 168(3) of the [Electoral Code](#), a list of candidates can receive mandates if at least 5 % of the voters who participated in the European elections voted for it, and a joint (or equivalent) list of candidates if at least 7 % of the voters who participated in the European elections voted for it. In some countries, thresholds only apply to a limited number of seats, while in others the percentage of the threshold varies depending on whether it applies to party or independent candidates (see paragraph 64 of [Yumak and Sadak v Turkey](#)).

[Yumak and Sadak v Turkey](#)

This case, decided in July 2008 by the European Court of Human Rights (ECtHR), concerned the imposition of a 10 % threshold in Turkey for national elections, which the claimants argued was infringing Article 3 of Protocol No 1 to the European Convention on Human Rights. This article establishes the principle of effective democracy underpinned by the commitment to run free elections and to ensure free expression of the opinion of the people in the choice of the legislature. The Court however considered that the threshold of 10 % in Turkey imposed on parliamentary elections was aimed at strengthening stability by preventing debilitating parliamentary fragmentation. The ECtHR considered that this aim could be seen as necessary in the circumstances and that it complied with the principle of proportionality.

In its 2007 [Resolution 1547](#), the Parliamentary Assembly of the Council of Europe (PACE) recommended a threshold for parliamentary elections not higher than 3 % for 'well-established democracies', arguing that in these democracies it should 'be possible to express a maximum number of opinions because excluding 'groups of people from the right to be represented is detrimental to a democratic system'. In a subsequent [Recommendation 1791](#), PACE recommended that Member States decrease the thresholds for parliamentary elections to 3 % and take into consideration both the principle of fair representation and the need for parliament to be effective. The [Venice Commission](#) considered a threshold higher than 5 % to be problematic, while thresholds

between 3 % and 5 % were acceptable when other conditions were also met, for instance that safeguards were in place to ensure representation of national minorities. In 2007, the European Court of Human Rights in [Yumak and Sadak v Turkey](#) stated that Turkey's 10 % threshold was not in violation of Article 3 of Protocol 1 to the ECHR (right to free elections), though it recognised that it was exceptionally high – compared to 5 % in most European countries – and recommended it be lowered. The plaintiff alleged that the 10 % threshold interfered with the free expression of the opinion of the electors in the choice of legislature. To evaluate the alleged breach of Article 3, the ECtHR assessed whether the challenged measure served a legitimate aim, whether there was any arbitrariness and finally whether the measure was proportionate in relation to the aim pursued. The ECtHR recognised that this high threshold could deprive part of the electorate of representation, but accepted that it was introduced to ensure a stable majority in parliament and thus governability. The Court stressed once again that countries enjoy a wide margin of appreciation in establishing their electoral systems. In the Court's view, due consideration should also be given to the different objectives at stake: the need to faithfully reflect the opinion of the voters and the need to channel the votes to enable the emergence of a 'clear and coherent political will'. Against this background, the ECtHR clarified that not all votes must necessarily have equal weight regarding the election outcome or all candidates have equal chances of victory. 'No electoral system can eliminate wasted votes' (paragraph 112).

EU electoral law

Already [modified](#) a number of times since its initial adoption in [1976](#) (in particular in [2002](#) and [2018](#), although the later amendment is not yet in force), the current [European Electoral Act](#) does not provide for a uniform electoral system applicable in all the EU Member States in European elections. On the contrary, it contains a set of common principles that must be upheld in the different domestic laws applicable to European elections. The original act did not contain any provisions on minimum thresholds. Following the [modifications](#) introduced in 2002, Article 3 in its current wording **allows Member States to set a minimum threshold for the allocation of seats; it may not however exceed 5 % of the votes cast**. EU law does not therefore require Member States to apply a threshold, but should they decide to do so, the threshold cannot exceed 5 % of the votes cast. In its 2012 [resolution](#) on the upcoming 2014 European elections, the European Parliament stressed the need to build 'reliable majorities in Parliament' for the stability of the EU. In order to ensure both appropriate representation but also the smooth functioning of the Parliament itself, Parliament called on the Member States to set 'appropriate and proportionate minimum thresholds' in accordance with Article 3 of the European Electoral Act.

In 2018, the Council agreed to further amendments to the 1976 Act (Council Decision (EU, Euratom) [2018/994](#)) which were expected to enter into force before the 2019 European elections. The decision was approved by the Council (26 Member States voted in favour while Belgium and the United Kingdom [abstained](#)). It is still not in force, however, because three Member States (Germany, Cyprus and Spain) have not yet approved it, in accordance with their respective constitutional requirements. Among the novelties introduced by the 2018 amendments to the 1976 Act there is the obligation for Member States to establish an electoral threshold of between 2 % and 5 % for constituencies comprising more than 35 seats, including for single-constituency Member States. Portugal is [reported](#) to have voted for the mandatory threshold on the assumption that it would never be applicable in Portugal (it currently has 21 seats in the European Parliament) as Article 152(1) of the [Portuguese Constitution](#) explicitly prohibits electoral thresholds: 'The law may not set limits on the conversion of votes into seats by requiring a minimum national percentage of votes cast'.

In the ninth legislative term, Parliament's willingness to harmonise the rules applicable to the European elections was clearly expressed in the [draft legislative act](#) adopted in May 2022 and seeking to repeal the 1976 Act. The draft legislative act proposes to further harmonise [several aspects](#) of the electoral procedure applicable in European elections, including the rules applicable to thresholds. It reiterates the idea of imposing the establishment of an electoral threshold for

European elections in big national constituencies. However, the requirements are loosened and, although Member States would remain free to establish an electoral threshold of no more than 5 % of the valid votes cast, they would be obliged to establish a threshold – of no less than 3.5 % and no more than 5 %, for national constituencies comprising more than 60 seats. In practice, the rule concerning compulsory electoral thresholds for national constituencies comprising more than 60 seats would only affect Germany. Only three Member States are currently allocated more than 60 seats in Parliament, in line with the [2018 European Council Decision](#) on the composition of Parliament: Germany (96), France (71) and Italy (76). Italy has five constituencies and none of them [elected](#) more than 60 seats in the 2019 European elections. Germany and France have a single constituency for the European elections, but France already imposes an electoral threshold of 5 % (Article 3 [Loi n° 77-729](#) of 7 July 1977 on the election of representatives to the European Parliament). The German legislature has twice tried to impose an electoral threshold for the European elections but the German Constitutional Court declared it [unconstitutional](#) in 2011 and 2014.

Case law in selected Member States

In the last decade, a number of judgments of the highest courts in Member States have dealt with the issue of the compatibility of electoral thresholds with national constitutions.

The **German Constitutional Court** has issued two landmark decisions. In 2011, it [ruled](#) on the lawfulness of the 2009 European elections in Germany. The Court considered that the 5 % electoral threshold established by the German European Elections Act (Article 2(7)) was in breach of the constitutional principles of equal suffrage and equal opportunities for the political parties, and declared the threshold void. The principle of equal suffrage, according to the Court, requires that each vote has the same influence on the composition of the legislative body; this does not happen when thresholds prevent votes for parties not reaching the electoral threshold from being considered. The Court recognised that electoral thresholds were in principle a legitimate instrument if they were conducive to a stable government and reliable majority formation, but it pointed to a number of differences between a national parliament and the European Parliament, including the fact that the European Parliament does not generate a government.

In 2013, a modification of the European Elections Act was adopted in Germany to comply with the Court's ruling and the threshold was lowered from 5 % to 3 %. In February 2014, the Court [declared](#) that the new threshold (though lowered) was unconstitutional. The Court considered that where the threshold was set as low as 3 % it violated the same standards of the 2011 judgment, in particular the principle of electoral equality ([Article 3](#) of the German Constitution) which safeguards the equality of citizens, the foundation of the principle of democracy. This principle also awards the same importance to each electoral vote, which should also have the same legal chance of success. In democratic systems this means that each vote should have the possibility to influence the composition of the institution that it is supposed to elect. The 3 % threshold was also found to violate the principle of equal opportunities of political parties ([Article 21](#) German Constitution).

The Court did not however consider the two principles to be uncompromising, as differentiations in electoral rules could be possible provided there were legitimate reasons, one of which should be the aim to preserve the functionality of the parliament to be elected. In this vein, the political situation and configuration of the European Parliament being the same as in 2009, the 3 % threshold could not be justified in terms of interference with the principle of equality of voters. The Court left open the possibility that, if the opposition and government raised their profiles at EU level and become more antagonistic, justification for the threshold could come into play. However, the German Constitutional Court also acknowledged that this was not yet the case.

The issue of the constitutionality of electoral thresholds for European elections might [not be over](#) in Germany, as the German Parliament is discussing the approval of Council Decision 2018/994 and its new Article 3, which provides for the introduction of a threshold for constituencies with more than 35 seats.

By contrast, the **Czech Constitutional Court** [ruled](#) in 2015 that the provision for a 5 % threshold established by the Czech law on elections to the European Parliament was not unconstitutional. The petitioner was the Supreme Administrative Court which argued, inter alia, that the 'European Parliament plays a qualitatively different role in the functioning of the European Union than do the national parliaments in the functioning of the Member States'. The Constitutional Court recognised that 'a mechanical comparison' of the functions of the European Parliament with the position of national parliaments was 'not appropriate', though it rejected the argument that the European Parliament was not a legitimate 'legislative assembly'.

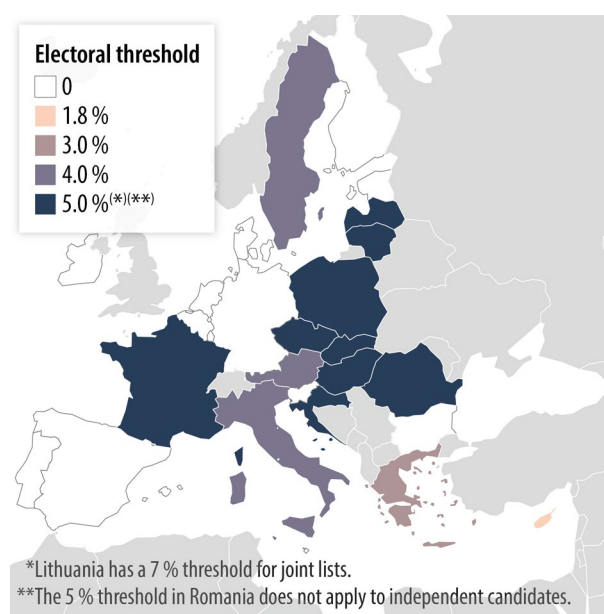
Along similar lines, in 2018 the **Italian Constitutional Court** [ruled](#) that the 4 % threshold of the Italian law applicable to the European elections was not unconstitutional. The question referred by the *Consiglio di Stato* (the highest administrative court in Italy) questioned the imposition of a qualifying threshold of 4 %, arguing a violation of the 'principles of representative voting and equality in voting' in the absence of any compelling general interest that could justify it. The Italian Constitutional Court held that qualifying thresholds in electoral law serve two main purposes, ensuring: the stability of the government and the proper functioning of the parliamentary assembly. It added that qualifying thresholds are 'typical manifestations of the discretion of a legislator that wishes to avoid fragmented political representation, and to promote governability'.

In **France, the Constitutional Council** (*Conseil constitutionnel*) by [Decision](#) n° 2019-811 of 25 October 2019 declared that the electoral threshold of 5 % was in conformity with the French Constitution. It first acknowledged the constitutional role of the principle of electoral equality ([Article 3](#) of the French Constitution and [Article 6](#) of the Declaration of Rights of Man and of the Citizen of 1789) and the principle of pluralism of political ideas; it then argued that restrictions of those principles should be subject to the principle of proportionality. The Constitutional Council observed that, with the introduction of a threshold, French legislation pursued two objectives. On the one hand, it sought to bolster the representation in the European Parliament of political opinions expressed in France and in this way strengthen their representation in that institution. On the other, it aimed to consolidate the presence of political groups of a significant size, trying to avoid the fragmentation of votes. The Constitutional Council acknowledged that, although this pursuit cannot be achieved with the action of an individual Member State, the French legislator was nevertheless justified in trying to achieve this goal. The judgment, not exempt from criticism, follows the line of previous case law.

National provisions

Should the current provisions on electoral thresholds remain in place for the 2024 European elections: out of 27 Member States, 13 will not apply electoral thresholds; 9 Member States (Czechia, France, Croatia, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia) will apply a 5 % threshold, 3 Member States (Italy, Austria and Sweden) will apply a 4 % threshold, Greece will apply a 3 % threshold, and Cyprus, 1.8 %.

Figure 1 – Electoral thresholds for the 2024 European elections



Graphic by Samy Chahri, EPRS, 2023.

The table below presents the electoral thresholds and respective legal bases in 14 EU Member States. It was compiled by the authors on the basis of information provided by the European Centre for Parliamentary Research and Documentation ([ECPRD](#)). ECPRD's main activity is sharing information among parliaments in order to compare legislative activities and practices across countries.

Table 1 – Domestic provisions on electoral thresholds applicable to the European elections

Country	Thresholds	Source
Czechia	5 %	§ 47(2), Act No 62/2003 Coll., Act on Elections to the European Parliament and on Amendments to Certain Acts, as amended
Greece	3 %	Article 6 para. 5, Law on European Elections, No 4255/14
France	5 %	Article 3 of Law No 77-729 of 7 July 1977 on the election of the members of the European Parliament
Croatia	5 %	Article 25, The Republic of Croatia European Parliamentary Elections Act
Italy	4 %	Article 21(1-bis) and (2), Law of 24 January 1979, No 18
Cyprus	1.8 %	§ 23(2), Law on the election of Members of the European Parliament
Latvia	5 %	Section 44 (1), Election to the European Parliament Law
Lithuania	5 % 7 % for joint lists	Article 168(3)(2), of the Electoral Code
Hungary	5 %	Section 8(2), Act CXIII of 2003 on the election of Members of the European Parliament
Austria	4 %	§ 77(2), European Electoral Law
Poland	5 %	Article 335, Electoral Code
Romania	5 %	Article 51(1), Law 33/2017 , with the exception of independent candidates
Slovakia	5 %	§ 93(2), Act No 180/2014 Coll.
Sweden	4 %	Chapter 14, Section 6, third paragraph, Elections Act (Act (2019:923)).

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ENDNOTE

ⁱ J. Toplak in *Routledge Handbook of Election Law*, D. Schultz and J. Toplak, Taylor & Francis Group, 2022, p. 214.

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