



UNIVERSITY OF AMSTERDAM



Amsterdam  
Law Clinics

Amsterdam Fair Work and Equality Law Clinic  
Coordinator: Dr. Marlies Vegter  
Nieuwe Achtergracht 166  
P.O. Box 15544  
1001 NA Amsterdam  
Telephone: +31(0)20 525 2958  
E-mail: [amsterdamlawclinics@uva.nl](mailto:amsterdamlawclinics@uva.nl)  
<https://student.uva.nl/en/topics/amsterdam-law-clinics>

## MEMORANDUM

### MATERNITY LEAVE FOR MEMBERS OF EUROPEAN PARLIAMENT

To: Jonge Socialisten, Leeghwaterplein 45, 2521 DB Den Haag  
Authors: Kamya Chawla, Maebh Hughes, Salvatore Tammaro, Kiki Kuiphuis

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## Executive Summary

The lack of formal maternity leave provisions for Members of European Parliament (MEPs) is problematic for individual representation and the European's parliament gender equality goals. Strategic litigation to secure maternity leave for MEPs is theoretically possible but legally and procedurally limited.

### Main legal obstacles to strategic litigation

- The Parliament's internal rules, especially Rule 193 (requiring in-person voting), are largely protected from judicial review.
- Exceptions exist only where there is a clear and serious violation of fundamental rights

### Standing requirements

- Under Article 263 TFEU (action for annulment) and Article 265 TFEU (failure to act), only individuals with direct and individual concern may bring legal action.
- Civil society organisations (e.g. youth or gender equality groups) lack standing.
- Even for MEPs, it is uncertain whether internal rules qualify as legally challengeable acts

### Other legal avenues (limited prospects)

- Article 340 TFEU (damages claims), the evidentiary burden is high, and temporary disenfranchisement may not qualify as legally compensable harm.
- Article 267 TFEU (preliminary rulings), not applicable due to institutional immunity of the European Parliament from national court review.
- Infringement proceedings do not apply to the internal organisation and rules of the European Parliament

### Alternative paths to reform

- Internal political advocacy is the most viable and realistic route for change.
- Reform requires amendments to the Parliament's own Rules of Procedure.
- The European Ombudsman may increase visibility of the issue but lacks enforcement power.
- A cultural shift is essential to normalize maternity leave and update expectations of what it means to be an MEP

### Main-takeaway

While strategic litigation may support public awareness and political pressure, it is unlikely to secure direct legal remedies. Lasting change will rely on internal political will, institutional reform, and a cultural redefinition of professional norms within the European Parliament

## 1. Introduction

Founded on the principles of freedom, democracy, equality, and the rule of law, the European Parliament has made substantial strides in gender representation.<sup>1</sup> From women representing just 15.9% of Members of the European Parliament (MEPs) in the first directly elected Parliament, to reaching 38.5% by the 2024 European elections, progress has been steady.<sup>2</sup> The election and re-election of Roberta Metsola as President of the European Parliament further signal a shift toward a more inclusive political institution.<sup>3</sup>

Yet, despite outward advances, an institutional contradiction remains: the absence of a comprehensive maternity or paternity leave policy for MEPs. The absence of maternity leave provisions can be traced back to the Parliament's original framework. When the first directly elected European Parliament convened in 1979, it did so without employment-style protections for its members. MEPs were not, and are still not, classified as employees of the EU, meaning that employment rights such as parental leave were not built into the institution's design. While the European Parliament has championed paternal rights at EU level, introducing key directives such as the Pregnant Workers Directive and the Work-Life Balance Directive, it has failed to reflect these values internally.<sup>4</sup> This contradiction is not merely symbolic; it results in the structural exclusion of MEPs who require time away from parliamentary duties due to pregnancy, childbirth or early parenthood.

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<sup>1</sup> European Parliament, 'The European Parliament: Historical Background' (European Parliament, 30 March 1962) <https://www.europarl.europa.eu/factsheets/en/sheet/11/the-european-parliament-historical-background> accessed 4 May 2025.

<sup>2</sup> European Parliament, 'Women in the European Parliament (infographics)' (European Parliament, 26 February 2019) <https://www.europarl.europa.eu/topics/en/article/20190226STO28804/women-in-the-european-parliament-infographics> European Institute for Gender Equality, *Gender Equality Index 2024* (Publications Office of the European Union 2024) 11 <https://eige.europa.eu/sites/default/files/documents/gender-equality-index-2024-sustaining-momentum-on-a-fragile-path.pdf> accessed 4 May 2025.

<sup>3</sup> Jorge Liboreiro and Mared Gwyn Jones, 'Roberta Metsola is re-elected President of the European Parliament' *Euronews* (16 July 2024) <https://www.euronews.com/my-europe/2024/07/16/roberta-metsola-is-re-elected-president-of-the-european-parliament> accessed 23 June 2025.

<sup>4</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [1992] OJ L348/1, Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79.

## 1.1. The Legal Framework: Voting Rights and Maternity Leave

### 1.1.1. Voting Rights as Personal and Non-Transferable

The European Parliament functions under a combination of the Election Act and its own Rules of Procedure, adopted on the basis of Article 232 TFEU. Thus, these instruments must align with the values enshrined in Article 2 TEU, including democracy and equality.

However, neither the Election Act nor the European Parliament Rules of Procedure address maternity or parental leave. More significantly, these rules prohibit any form of delegation or substitution.<sup>5</sup> The right to vote is explicitly treated as a personal, individual right, and must be exercised in person.<sup>6</sup> The Rules of Procedure further state that any breach of this principle, such as voting by another Member, is considered a serious case of disorder, subject to legal consequences.<sup>7</sup> As a result, MEPs who are unable to attend sessions due to pregnancy or childbirth are entirely excluded from participating in votes, with no mechanisms for remote or proxy participation. The 2020 European Parliament Resolution recommending provisions for leave related to maternity, paternity, or illness failed to result in any structural change.<sup>8</sup>

### 1.1.2. Excused Absence, Not Maternity Leave

Under the current framework, the only accommodation for pregnancy is excused absence, governed by Article 148 of the Rules of Procedure and implemented through the Decision of the Bureau of the European Parliament (19 May & 9 July 2008). The Bureau, which is responsible for matters related to the budget, administration, organisation, and staff of the European Parliament, provides further detail in Article 31(4) of the above-mentioned Decision. The article specifies:

"4. A Member expecting a child shall be excused attendance at official meetings of Parliament for a period of three months preceding the birth of the child. The Member

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<sup>5</sup> Directorate-General for Internal Policies, *Openness, Transparency and the Right of Access to Documents in the EU: In-Depth Analysis for the PETI Committee* (European Parliament 2016).

<sup>6</sup> European Parliament, *Rules of Procedure of the European Parliament* (July 2024) rule 193; Election Act, art 6. Rules of Procedure, art 177.

<sup>7</sup> European Parliament, *The European Parliament: Electoral Procedures* (European Parliament 2024) Fact Sheet 21.

<sup>8</sup> Directorate-General for Internal Policies, *Openness, Transparency and the Right of Access to Documents in the EU: In-Depth Analysis for the PETI Committee* (European Parliament 2016).



must submit a medical certificate indicating the probable date of confinement. After confinement, the Member shall be excused attendance at official meetings for a period of six months. The Member must submit a copy of the child's birth certificate."

This does not equate to maternity leave, as it provides no right to substitute or maintain the MEP's legislative or voting role during this period. Instead, the MEP is simply absent, effectively silenced.

### 1.1.3. No Role for Member States

The Election Act prohibits Member States from appointing substitute MEPs during temporary absences. They may only intervene when an MEP resigns, passes away, or is otherwise disqualified. Thus, no national workaround is possible: maternity leave cannot be granted through national measures, reinforcing the need for reform at the EU level.<sup>9</sup>

## 1.2. The Covid-19 Precedent: Remote Voting in Exceptional Circumstances

### 1.2.1. Emergency Measures Introduced in March 2020

The outbreak of Covid-10 necessitated operational flexibility within the European Parliament. On 20 March 2020, the Bureau adopted temporary rules allowing remote electronic participation.<sup>10</sup> This emergency system, though not part of the original Rules of Procedure, enabled MEPs to:

- Participate in plenary debates via Webex
- Receive ballot papers through official email accounts
- Sign, scan or photograph and return ballots electronically within a defined timeframe

Remote voting was not real-time and was strictly regulated to ensure vote integrity through dual authentication (signature and official email account).<sup>11</sup> Though temporary, these

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<sup>9</sup> Directorate-General for Internal Policies, *Openness, Transparency and the Right of Access to Documents in the EU: In-Depth Analysis for the PETI Committee* (European Parliament 2016).

<sup>10</sup> European Parliament Bureau, *Minutes of the Extraordinary Meeting of 20 March 2020*; Díaz Crego M and Mañko R, *Parliaments in Emergency Mode: Lessons Learnt After Two Years of Pandemic* (EPRS, European Parliamentary Research Service, PE 698.879, January 2022).

<sup>11</sup> Richard-Molard G, *The European Parliament in the Time of Coronavirus: The European Parliament in the COVID-19 Crisis. A Remote Parliament* (Robert Schuman Foundation, 2020); Nathalie Brack, Olivier Costa, Awenig Marié. The European Parliament and Covid-19. Organisational adaptations and their implications on parliamentary activity. *Zeitschrift für Parlamentsfragen* (ZParl),

innovations showed that technological solutions to physical absence were both feasible and secure.

### 1.2.2. Formalisation in Rule 237a and Related Provisions

In December 2020, the Parliament amended its Rules of Procedure to incorporate these mechanisms under Title XIIIa, introducing:

- Rule 237a: Enables remote procedures during “unforeseeable and exceptional circumstances” (e.g., pandemics),
- Rule 237b: Allows compensatory measures when a significant number of MEPs (e.g., from one political group or region) are unable to participate,
- Rule 237c: Lays out technical requirements for remote participation,
- Rule 237d: Permits the use of multiple meeting rooms for physical distancing.

These rules, while comprehensive for emergency situations, remain inapplicable to personal circumstances such as maternity leave. Remote participation rights under these rules are tied to institutional, not individual, disruption.

### 1.2.3. Governance and Oversight

Decisions to activate extraordinary measures under Rule 237a are initiated by the Parliament President and must be approved by the Conference of Presidents. In urgent cases, the President may act unilaterally, subject to post hoc approval. The measures must be:

- Justified by the nature of the emergency,
- Time-limited and renewable,
- Published publicly, and
- Revoked once conditions normalise.

This governance model ensures democratic legitimacy but also shows how institutional agility is possible when politically prioritised.

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2021, 4, pp.848-863.; OECD Observatory of Public Sector Innovation, *Remote Voting in the European Parliament* (OECD 2020); Braghiroli, S. (2021). The European Parliament put to the test by COVID-19: voting dynamics and coalition patterns of the EP's first response to the global pandemic. *Journal of Contemporary European Studies*, 30(4), 682–705.



### 1.3. Democratic Consequences and Structural Inequalities

The European Union is founded on the principle of representative democracy, whereby MEPs derive their democratic legitimacy from free and fair elections.<sup>12</sup> Through this mandate, MEPs act on behalf of EU citizens,<sup>13</sup> transforming electoral platforms into binding legislative outcomes.<sup>14</sup> Central to this representative function is the act of voting, which constitutes not merely a procedural responsibility, but a democratic imperative, the essential mechanism by which elected representatives exercise the will of the electorate and uphold the legitimacy of the EU's legislative process.<sup>15</sup>

The European Parliament's refusal to provide formal maternity or parental leave, paired with its strict prohibition of proxy voting, therefore undermines the principle of equal political participation and threatens the integrity of the democratic mandate. Unlike a public health emergency, which prompted rapid institutional reform and the introduction of remote voting, pregnancy and parenthood are treated as private, individual matters unworthy of systemic accommodation. This creates a paradox: the institution adapts to protect its functions during

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<sup>12</sup> Treaty on European Union, art 10; Del Monte M, Díaz Crego M, Kotanidis S, and Mildebrath H, *Electoral Thresholds in European Parliament Elections* (EPRS, 7 June 2023); European Parliament, *Rules of Procedure* (European Parliament, July 2024).

<sup>13</sup> Baranik K, *Termination of the Mandate of a Member of the European Parliament* (EPRS, European Parliamentary Research Service, 2021); European Union, 'European Parliament – Roles and Powers' (European Union, 2024) [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-parliament\\_en](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-parliament_en) accessed 9 May 2025; European Parliament, 'Members' (European Parliament, 2024) <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/members> accessed 9 May 2025; European Data Journalism Network, 'The Risks and Opportunities of 'Remote Democracy'' (12 January 2021) [https://www.europeandatajournalism.eu/cp\\_data\\_news/the-risks-and-opportunities-of-remote-democracy/](https://www.europeandatajournalism.eu/cp_data_news/the-risks-and-opportunities-of-remote-democracy/) accessed 9 April 2025; Lupiáñez-Villanueva F and Devaux A (eds), *Study on the Benefits and Drawbacks of Remote Voting* (European Commission 2018).

<sup>14</sup> Saward M, 'Authorisation and Authenticity: Representation and the Unelected' (2009) 17 *The Journal of Political Philosophy* 1; Blockmans S and Russack S (eds), *Deliberative Democracy in the EU: Countering Populism with Participation and Debate* (Palgrave Macmillan 2020, pg 21-22; B. de Witte, 'Sovereignty and European Integration: The Weight of Legal Tradition', *Maastricht Journal of European and Comparative Law*, Vol. 2(2), 1995, pp. 147-149; Guinaudeau B and Guinaudeau I, 'When Do Electoral Mandates Set the Agenda? Government Capacity and Mandate Responsiveness in Germany' (2023) 62 *European Journal of Political Research* 1212; Council of Europe, *Legal, Operational and Technical Standards for E-Voting* (Recommendation Rec(2004)11, 30 September 2004) and explanatory memorandum.

<sup>15</sup> B. de Witte, 'Sovereignty and European Integration: The Weight of Legal Tradition', *Maastricht Journal of European and Comparative Law*, Vol. 2(2), 1995, pp. 147-149; Guinaudeau B and Guinaudeau I, 'When Do Electoral Mandates Set the Agenda? Government Capacity and Mandate Responsiveness in Germany' (2023) 62 *European Journal of Political Research* 1212.

collective crises but fails to adapt to protect the participation rights of individual MEPs, particularly those affected by gender-based constraints.

This gap is especially troubling given the EU's legislative framework. Directives 92/85/EEC and 2019/1158 grant minimum standards for maternity and paternity leave and explicitly protect employment-related rights during periods of parental responsibility.<sup>16</sup> For MEPs, those rights must include the right to vote and represent their constituents. Denying elected representatives the ability to participate during maternity leave violates the spirit, if not the letter, of these protections and signals a disconnection between institutional practice and EU legal standards.

Yet, despite the clear need for reform, proxy voting cannot serve as a legitimate solution. The European Parliament's Rules of Procedure emphasise that voting must be personal and non-transferable, reflecting the inviolable nature of the individual mandate. Any delegation of this responsibility would undermine the autonomy and direct accountability that underpin EU representative democracy.<sup>17</sup> Instead, the solution lies in remote voting,<sup>18</sup> which preserves the personal nature of the mandate while enabling participation under circumstances, such as maternity, illness, or caregiving that would otherwise exclude elected officials from the legislative process.

Recent research and evolving national practices further underscore the viability of such reforms. Studies from the European Commission and the Council of Europe have shown that

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<sup>16</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [1992] OJ L348/1 and Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79.

<sup>17</sup> European Parliamentary Research Service, *Parliaments in Emergency Mode: the European Parliament's Remote Participation Framework* (EPRS Briefing, January 2022) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698879/EPRS\\_BRI\(2022\)698879\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698879/EPRS_BRI(2022)698879_EN.pdf) accessed 20 April 2025.

<sup>18</sup> Lorna Hutchinson, 'Parliament to Hold COVID-19 Crisis Plenary with Remote Voting' *The Parliament Magazine* (19 March 2020) <https://www.theparliamentmagazine.eu/news/article/parliament-to-hold-covid19-crisis-plenary-with-remote-voting> accessed 20 April 2025; Council of Europe, *Promoting Inclusive Participation in Parliamentary Life* (Draft Report, 2022), noting remote voting and proxy systems in multiple national parliaments <https://assembly.coe.int/LifeRay/EGA/Pdf/DocsAndDecs/2022/AS-EGA-INF-2022-09-BIL.pdf> accessed 20 April 2025.

remote and electronic voting, when designed with robust security, reliability, and transparency standards, can successfully expand access to democratic participation. Indeed, many EU Member States have already adopted e-voting systems to facilitate participation for citizens facing structural or personal barriers.<sup>19</sup> The Council of Europe's Recommendation Rec (2004) 11, as well as its guidance under Article 3 of Protocol 1 to the European Convention on Human Rights, affirm that e-enabled participation is consistent with democratic norms when properly regulated.<sup>20</sup>

Importantly, the European Parliament itself activated remote voting procedures during the COVID-19 pandemic, demonstrating that the necessary infrastructure already exists. Reintroducing and formalising this system, particularly for maternity and parental leave, would not only be technically feasible but would reinforce the Parliament's role as a model of democratic inclusion and gender equality. In failing to do so, the Parliament risks undermining the very values it purports to uphold, and perpetuates a structural inequality that is both ethically indefensible and legally precarious under the EU's binding commitments to gender equality, non-discrimination, and fundamental rights.<sup>21</sup>

#### 1.4. Advocacy, Inertia, and the Path Forward

In 2023, MEPs submitted a formal petition to President Metsola, calling for a clear maternity and paternity leave framework, including voting arrangements during such leave.<sup>22</sup> While Metsola acknowledged the issue, no reforms have followed.

In May 2025, currently pregnant MEPs Delara Burkhardt, Sigrid Friis and Maria Ohisalo

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<sup>19</sup> Council of Europe, *Promoting Inclusive Participation in Parliamentary Life* (Draft Report, 2022), noting remote voting and proxy systems in multiple national parliaments <https://assembly.coe.int/LifeRay/EGA/Pdf/DocsAndDecs/2022/AS-EGA-INF-2022-09-BIL.pdf> accessed 20 April 2025; Consolidated Version of the Treaty on European Union [2016] OJ C202/17, articles 2 and 3(3); Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, art 23.

<sup>20</sup> Council of Europe, *Legal, Operational and Technical Standards for E-Voting* (Recommendation Rec(2004)11, 30 September 2004) and explanatory memorandum

<sup>21</sup> Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Article 23; Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Article 21; Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Article 31.

<sup>22</sup> EMEPsWax, 'Sexist and Undemocratic': Pregnant MEPs Demand Ability to Vote on Maternity Leave' (Politico, 16 June 2023) <https://www.politicMEPs/article/sexist-and-undemocratic-pregnant-meps-demand-maternity-leave-and-remote-voting> accessed 5 May 2025.

renewed the call for reform,<sup>23</sup> highlighting how the current framework discourages women, particularly young women, from running for office.<sup>24</sup> The status quo forces women to choose between family and democratic participation, fundamentally distorting political equality.

### 1.5. Conclusion: Institutional Reform as a Democratic Imperative

The European Parliament must urgently reform its procedural framework to include:

- Formal maternity and parental leave entitlements for MEPs;
- Remote or proxy voting options during such leave;
- Equality safeguards that harmonize with the Parliament's obligations under EU law.

The COVID-19 crisis demonstrated that rapid, institutional innovation is possible. The exclusion of maternity leave from this same adaptability reflects institutional inertia rather than legal impossibility.

As the EU continues to promote gender equality externally, the European Parliament must lead by example. Ensuring that every MEP, regardless of gender or parental status, can participate equally in the democratic process is not a matter of convenience. It is a matter of constitutional integrity.

### 1.6. Methodology and Structure

This paper addresses the absence of maternity leave provisions for Members of the European Parliament, focusing on the potential of strategic litigation as a means to introduce accommodations that would enable MEPs to exercise their voting rights in alignment with the institution's foundational principles of democracy and general inequality. The core research question guiding this study is:

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<sup>23</sup> Sigrid Friis, Instagram, 'It's 2025. And the European Parliament still does not have proper maternity leave.' (17 May 2025) [https://www.instagram.com/sigridfriis\\_/reel/DIONSjptCTV/](https://www.instagram.com/sigridfriis_/reel/DIONSjptCTV/) accessed 17 June 2025. The results of the petition remain to be seen.

<sup>24</sup> European Parliament, 'Women in the European Parliament (infographics)' (European Parliament, 26 February 2019) <https://www.europarl.europa.eu/topics/en/article/20190226STO28804/women-in-the-european-parliament-infographics> accessed 4 May 2025.

*To what extent strategic litigation could be used to introduce maternity leave accommodations that enable Members of the European Parliament (MEPs) to exercise their voting rights, in alignment with the institution's foundational principles of democracy and gender equality?*

To address this question, this memorandum adopts a doctrinal research approach supported by empirical elements, to examine the issue of maternity leave provisions within the European Parliament.

In Chapter 2, the paper investigates the current regulatory and procedural framework applicable to MEPs absent for pregnancy-related reasons. Special attention is paid to the Parliament's Rules of Procedure and the legal basis for its continued reluctance to implement alternative voting mechanisms, despite the temporary remote voting procedures adopted during the Covid-19 pandemic.

Chapter 3 provides a detailed analysis of the legal frameworks on equality and non-discrimination under both European Union and international law. This section evaluates the legal obligations imposed on Member States, particularly those requiring transposition into national law, and assesses their potential to inform internal parliamentary reform.

To contextualise the European Parliament's stance, Chapter 4 incorporates a comparative study of maternity leave provisions for elected officials in Spain, the Netherlands, Ireland, and Italy. This chapter explores whether maternity leave is legally guaranteed for national-level politicians in these countries and whether mechanisms such as proxy voting or temporary delegation allow for continued political participation during periods of parental leave, assessing whether these national practices could serve as examples and inspiration for EU-level reform.

The memorandum also includes an empirical component in the form of a research interview with a Dutch MEP, aimed at understanding the political climate within the Parliament and the institutional barriers to reform.

Drawing on the findings from both the doctrinal and empirical analysis, the final chapter evaluates the feasibility and implications of potential legal solutions, with the objective of identifying realistic pathways for reform that align with the principles of gender equality and democratic representation.



## 2. International and European Union Legal Frameworks

### 2.1. Introduction

This chapter examines the international and European legal frameworks relevant to the matter of maternity leave for MEPs, with particular focus on the institutional practice that compels MEPs to forfeit their voting rights during such leave. This policy creates substantial issues with gender equality, non-discrimination, and the right to comprehensive political participation. To evaluate its compatibility with broader legal standards, this chapter presents a structured overview of the applicable legislation in the form of two comparative tables: one dedicated to international instruments and the other to European Union legal acts. These tables encapsulate the principal legal sources, delineate their pertinent provisions, and evaluate their relevance to the context of maternity-related voting exclusion.

The analysis begins with international human rights instruments, including the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the *ILO Discrimination (Employment and Occupation) Convention* No. 111, the *ILO Maternity Protection Convention* No. 183, the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the *UN Women's Beijing Platform for Action*. These texts lay down fundamental principles of gender equality, substantive non-discrimination, maternity protection, and inclusive political participation.

The second part of the chapter turns to the European legal framework, analysing binding and non-binding instruments such as the *Charter of Fundamental Rights of the European Union* (CFR), *Directive 2006/54/EC* on gender equality in employment, *Directive 92/85/EEC* on the protection of pregnant workers, *Directive 2000/78/EC* on equal treatment in employment, *Directive 2003/88/EC* on working time, and *Regulation (EU) No 1141/2014* on the statute and financing of European political parties and foundations. In addition, the *Rules of Procedure of the European Parliament* are critically examined, as they constitute the most immediate source of the exclusionary voting rules in question.

While the tables in this chapter provide a comparative overview of each instrument's relevance to the issue at hand, a more detailed legal breakdown including the specific articles, clauses, and normative interpretations underpinning the analysis is provided in appendix III of this research.

## 2.2. International Legislation and Conventions

This section will examine international legislation that supports women's rights in political positions, specifically addressing maternity leave and its influence on political engagement. We will examine international legal frameworks that encompass essential instruments protecting gender equality, non-discrimination, and the freedom to engage in public life. These frameworks, established by international entities like the United Nations and the International Labour Organisation (ILO), offer critical criteria for assessing policies that impact MEPs during maternity leave.

**Table 1: Public International Law Instruments**

Legislation / Instrument	Key Provisions	Rights / Principles Invoked	Relevance to MEP Voting During Maternity Leave
<b>International Covenant on Civil and Political Rights (ICCPR)</b>	Articles 3, 25, 26	Gender equality; right to political participation; non-discrimination	Preventing women from voting due to maternity leave may violate their right to participate equally in public life.
<b>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</b>	Articles 1, 5, 7, 11	Elimination of discrimination; political rights; maternity protection	Rules requiring relinquishment of voting rights during maternity leave may be discriminatory and perpetuate gender stereotypes.
<b>ILO Convention No. 111</b>	Articles 1–2	Equality in employment and occupation	Denying voting rights constitutes indirect discrimination affecting women in political employment.





<b>ILO Convention No. 183</b>	Articles 4, 10	Protection during maternity; job continuity; non-penalisation	Political participation must not be curtailed due to protected maternity leave.
<b>Beijing Platform for Action</b>	Section G	Full and equal participation in political decision-making	Current voting restrictions undermine commitments to dismantling structural barriers for women.
<b>Universal Declaration of Human Rights (UDHR)</b>	Articles 2, 21, 23	Non-discrimination; political participation; equal work conditions	Supports the argument that all individuals, including mothers, must be allowed to fulfil representative functions.
<b>International Covenant on Economic, Social and Cultural Rights (ICESCR)</b>	Articles 3, 7, 10, 12	Gender equality; right to health; balance between work and family	Emphasises the need for supportive conditions during maternity without professional exclusion.
<p><i>Please note: This table is intended solely to provide a summarised overview of the potential relevance of the analysed legal instruments to the issue of voting rights during maternity leave for MEPs.</i></p> <p><i>The descriptions included do not imply that the rights in question are automatically granted or enforceable in this specific context. They serve as interpretative indications and should not be understood as definitive legal entitlements.</i></p>			

International legal instruments offer a normative foundation for contesting maternity leave policies that require MEPs to relinquish their voting rights during their absence. Chief among these is the *International Covenant on Civil and Political Rights* (ICCPR), whose Article 25 enshrines every citizen's right to participate in public affairs, including the right to vote and to be elected.<sup>25</sup> When maternity leave policies effectively suspend this right for elected female representatives, they risk violating not only Article 25 but also Article 3, requiring equal enjoyment of civil and political rights by men and women,<sup>26</sup> and Article 26, which mandates equal protection before the law and prohibits discrimination based on sex.<sup>27</sup> Similarly, the

<sup>25</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 25.

<sup>26</sup> Ibid., art 3.

<sup>27</sup> Ibid., art 26.



*Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* offers a comprehensive legal framework addressing discrimination in both political and employment contexts. Article 1 of CEDAW defines discrimination to include any restriction based on sex that impairs women's enjoyment of rights in public life,<sup>28</sup> while Article 7 obliges states to ensure women's equal participation in political and public decision-making.<sup>29</sup> Article 11 further emphasises the need to eliminate discrimination against women in the field of employment,<sup>30</sup> including in relation to maternity leave, while Article 5 calls for the transformation of societal attitudes that perpetuate traditional gender roles.<sup>31</sup> A policy that excludes women from voting during maternity leave, even if facially neutral, may constitute indirect discrimination by disproportionately affecting women due to their biological and caregiving roles, and may thus contravene these provisions.

Additional support is found in the *ILO Discrimination (Employment and Occupation) Convention No. 111* and the *Maternity Protection Convention No. 183*. Convention No. 111 prohibits any distinction based on sex that impairs equality of opportunity or treatment in employment, a standard arguably applicable to the exclusion of MEPs on maternity leave from key legislative functions.<sup>32</sup> Convention No. 183 reinforces this protection by affirming that maternity leave should not result in professional disadvantage or exclusion from political duties.<sup>33</sup> However, while these conventions articulate important rights, their application to elected officials, who are not employees in the traditional sense, remains legally complex and largely interpretative. Similar limitations apply to the *Universal Declaration of Human Rights (UDHR)*, which in Article 21 affirms the right of everyone to take part in government and in Article 2 prohibits discrimination.<sup>34</sup> The *International Covenant on Economic, Social and Cultural Rights (ICESCR)* also highlights gender equality (Article 3), fair working conditions

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<sup>28</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 1.

<sup>29</sup> Ibid., art 7.

<sup>30</sup> Ibid., art 11.

<sup>31</sup> Ibid., art 5.

<sup>32</sup> International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention No 111 (adopted 25 June 1958, entered into force 15 June 1960), ILO No. 111, art 1.

<sup>33</sup> International Labour Organization (ILO) Maternity Protection Convention No 183 (adopted 15 June 2000, entered into force 7 February 2002), ILO, No. 183, art 10.

<sup>34</sup> UN General Assembly, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 21(1).

(Article 7), and the protection of family life (Article 10), yet it, too, lacks enforceability in the context of specific institutional rules like those of the European Parliament.<sup>35</sup> Finally, the *Beijing Platform for Action* offers a strong political commitment to dismantling structural barriers to women's full political participation, yet as a non-binding instrument, it serves primarily as a normative reference point rather than a source of binding legal obligations.<sup>36</sup>

In sum, international legal standards collectively affirm that policies requiring women to forego their parliamentary voting rights during maternity leave are incompatible with the principles of substantive gender equality, non-discrimination, and full political participation. However, these instruments, while persuasive, tend to operate primarily at the level of soft law or broad interpretative guidance, with limited mechanisms for direct enforcement in the institutional context of the European Parliament. Consequently, the next subchapter will turn to the European Union legal framework, which includes binding legal provisions and internal procedural rules that are more directly applicable to the situation of MEPs and may offer more concrete avenues for legal and policy reform.

### 2.3. EU Legal Framework

Subsequent to analysing pertinent international human rights frameworks, we will now shift our focus to the legislative environment at the European level, emphasising essential EU legal instruments that pertain to gender equality, maternity protection, and non-discrimination in political participation and employment. Collectively, these EU laws provide a thorough framework for comprehending the legal safeguards for women in political positions and the workforce, and they will inform our examination of the existing policies on maternity leave and voting rights inside the European Parliament.

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<sup>35</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, articles 3, 7 and 10.

<sup>36</sup> UN Women, Beijing Platform for Action (Fourth World Conference on Women, 1995) <https://www.un.org/womenwatch/daw/beijing/platform/> accessed 22 April 2025.

**Table 2: Public International Law Instruments**

Legislation / Instrument	Relevant Provisions	Rights / Principles Invoked	Relevance to MEP Voting During Maternity Leave
<b>Treaty on the Functioning of the European Union (TFEU)</b>	Article 19	Non-discrimination on grounds of sex	Prohibits policies that disproportionately affect women, such as exclusion from voting during maternity leave.
<b>Charter of Fundamental Rights (CFR)</b>	Articles 21, 23, 33	Non-discrimination; gender equality; family and professional life	Supports accommodations during maternity leave to enable full political participation.
<b>Directive 2006/54/EC</b>	Articles 2, 5, 14	Equal treatment; protection from disadvantage during maternity	Suggests that maternity leave must not hinder access to core work functions, including voting.
<b>Directive 92/85/EEC</b>	General Provisions	Health and safety; right to maternity leave without professional harm	Exclusion from voting could be seen as a violation of protected leave conditions.
<b>Directive 2000/78/EC</b>	Articles 2, 5, 6	Equality; reasonable accommodation	Grounds for adapting voting procedures to ensure inclusive participation during maternity.
<b>Regulation (EU) No 1141/2014</b>	Articles 3, 10	Gender equality; inclusiveness; representation	Supports the idea that representative functions should not be suspended during maternity.
<b>Directive 2003/88/EC</b>	Articles 2, 3, 5, 7	Rest and recuperation; work-life balance	Reinforces that leave (including maternity) should not entail the loss of core duties like voting.
<b>Rules of Procedure of the European Parliament</b>	Rules 10(3), 193, 243, 245	Voting must be in person; no remote or proxy voting	These internal rules cause de facto exclusion of MEPs on maternity leave from the legislative process.
<i>Please note: This table is intended solely to provide a summarised overview of the potential relevance of the analysed legal instruments to the issue of voting rights during maternity leave for MEPs.</i>			



*The descriptions included do not imply that the rights in question are automatically granted or enforceable in this specific context. They serve as interpretative indications and should not be understood as definitive legal entitlements.*

The European Union legal framework offers a more immediate and potentially enforceable foundation for challenging the exclusion of MEPs from voting during maternity leave. At its core, the *Charter of Fundamental Rights of the European Union* (CFR), binding on all EU institutions, enshrines several key rights. Article 21 prohibits discrimination on the basis of sex, while Article 23 requires gender equality in all areas, including employment and political representation. Article 33, in turn, affirms the right to reconcile family and professional life and recognises maternity leave as a fundamental entitlement.<sup>37</sup> Read together, these provisions suggest that institutional practices within the European Parliament that preclude women on maternity leave from participating in the legislative process may violate fundamental rights by imposing disproportionate burdens based on gendered biological functions. A voting procedure that conditions participation on physical presence, without accommodating maternity-related absences, risks entrenching structural inequality.

EU secondary legislation further reinforces these principles. *Directive 2006/54/EC* on gender equality in employment stipulates that pregnancy and maternity leave must not result in professional disadvantage,<sup>38</sup> while *Directive 92/85/EEC* sets minimum standards for the protection of pregnant workers and guarantees the right to maternity leave without penalisation.<sup>39</sup> Although these Directives are primarily tailored to conventional employment contexts, their underlying rationale that women should not be professionally disadvantaged for exercising their right to maternity resonates in the political sphere, especially as elected office is increasingly understood to involve work-related responsibilities subject to equality principles. *Directive 2000/78/EC*, while focusing on non-discrimination on grounds such as religion, disability, and age, introduces the concept of “reasonable accommodation,” which, though developed in the context of disability rights, can be analogously applied to advocate

<sup>37</sup> Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, articles 21, 23 and 33.

<sup>38</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the equality of men and women in employment [2006] OJ L 204/23, articles 2, 5 and 14.

<sup>39</sup> Directive 92/85/EEC of the European Parliament and of the Council of 19 October 1992 on the health and safety of pregnant workers [1992] OJ L 348/1, art 8.

procedural flexibility for MEPs who cannot be physically present due to maternity.<sup>40</sup> Likewise, *Directive 2003/88/EC* on working time, although not expressly addressing maternity, reinforces the right to rest and recuperation, a principle that aligns with the objectives of maternity leave as a protected period of recovery and care.<sup>41</sup>

Despite the relative strength of these instruments compared to their international counterparts, significant shortcomings remain. One key limitation is that most of these Directives are designed for employment relationships, and MEPs, being elected representatives, do not fall neatly within the category of employees. Furthermore, pursuant to Article 288 TFEU, Directives are addressed to Member States, upon the Member States to whom they are addressed, and do not have direct effect on individual MEPs. Consequently, it is not always clear whether these provisions can be directly invoked to protect MEPs in their institutional roles. The lack of a specific legislative framework addressing the working conditions of elected officials creates a legal vacuum in which broad equality guarantees must be transposed into a context for which they were not specifically designed.

Additionally, while the CFR provides a binding and elevated source of rights, it is limited in its practical impact without accompanying procedural enforcement mechanisms tailored to the unique realities of parliamentary work. The Charter prohibits discrimination and guarantees maternity protection, but it does not provide explicit remedies or institutional obligations that would compel the European Parliament to adopt alternative voting procedures for members on maternity leave. The constraints of the CFR reside not only in its broad formulation but also in the lack of institutional tools to interpret and implement its provisions in circumstances that diverge from the conventional employment paradigm.

Furthermore, although *Regulation (EU) No 1141/2014* promotes gender balance and inclusive participation in European political parties,<sup>42</sup> it does not regulate the internal voting procedures of the Parliament. It offers normative support for gender-sensitive reforms but lacks operational teeth in addressing procedural barriers such as the inability to vote remotely or by

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<sup>40</sup> Directive 2000/78/EC of the European Parliament and of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16, articles 2, 5 and 6.

<sup>41</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299/9, articles 2, 3 and 5.

<sup>42</sup> Regulation (EU) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the regulations governing political parties and political foundations at the European level [2014] OJ L 317/1, art 3.

proxy. The same applies to *Directive 2000/78/EC* and the broader principle of reasonable accommodation: while conceptually useful, there is no clear obligation or mechanism requiring the European Parliament to adapt its rules to accommodate maternity-related absences. These instruments thus often function more persuasively as tools for advocacy than as binding legal bases for litigation.

The most immediate legal obstacle, however, lies in the *Rules of Procedure of the European Parliament*, particularly Rule 193, which requires that votes be cast in person and prohibits proxy voting.<sup>43</sup> Rule 10(3) further classifies breaches of this requirement as serious violations, and no exemptions are currently made for maternity leave.<sup>44</sup> The rigidity of this system reflects a narrow conception of parliamentary presence and accountability, one that does not account for temporary, legitimate absences rooted in biological and caregiving responsibilities. While Rule 245 outlines circumstances under which voting procedures could be modified and Rule 243 provides for internal amendments,<sup>45</sup> the lack of political will to adapt these provisions perpetuates a situation in which women are effectively disenfranchised during maternity leave. This was clearly underscored in our interview with a Dutch MEP, who stated that there is no sense of urgency regarding the need for reform to ensure voting rights are protected during maternity leave. Notably, during the COVID-19 pandemic, the European Parliament did temporarily permit remote voting, thereby demonstrating that technological and procedural solutions are both feasible and legitimate. The refusal to extend such accommodations to maternity leave reveals an inconsistency that may undermine the Parliament's commitment to gender equality in practice.

The institutional limitations created by the European Parliament's internal voting rules, particularly the requirement of physical presence under Rule 193, raise important questions about the avenues available for challenging such procedural constraints. While the Rules of Procedure are not, in principle, subject to the same forms of judicial review as binding legislative acts, there may still be legal and strategic routes to contesting their discriminatory effects, particularly when they conflict with higher-ranking norms such as the Charter of Fundamental Rights. These include the possibility of invoking equality in the context of the

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<sup>43</sup> European Parliament, *Rules of Procedure of the European Parliament* (July 2024) rule 193.

<sup>44</sup> *Ibid.*, rule 10.

<sup>45</sup> *Ibid.*, rules 243 and 245.

European Union's general principles of law. A more detailed examination of these possible strategies, particularly through the lens of strategic litigation, will be undertaken in Chapter 4, addressing the legal feasibility and procedural pathways for challenging the European Parliament's internal rules in light of their impact on gender equality and political participation.

The omission of maternity from enforceable political rights highlights a persistent structural bias in institutional design: democratic systems and their legal frameworks have traditionally been established around a male norm of continuous physical presence and complete availability for public service. The European Parliament's internal regulations and EU law, by failing to incorporate maternity leave without detriment to political participation, perpetuate this heritage. Even in the presence of equality norms, they frequently rely on a notion of formal equality that neglects fundamental differences and structural disadvantages.

In conclusion, while the European legal framework is markedly stronger than its international counterpart in articulating binding norms on gender equality and maternity protection, it remains deficient in addressing the specific institutional barriers faced by elected female representatives. The lack of tailored legal mechanisms for political office holders, the limited adaptability of employment law frameworks, and the rigidity of parliamentary procedural rules collectively produce a legal and institutional architecture that still falls short of ensuring full and equal participation. Overcoming these shortcomings will require not only legal interpretation and advocacy but also a structural commitment to reforming parliamentary procedures in a way that reflects the realities of gender, care, and democratic representation.

## **2.4. Conclusion**

This chapter has illustrated that both international and European legal frameworks offer an ambiguous normative basis for contesting the existing European Parliament practice that requires MEPs to relinquish their voting rights during parental leave. International instruments, such as the ICCPR, CEDAW, and ILO Conventions, delineate fundamental principles of gender equality, non-discrimination, and the entitlement to engage in political life without detriment arising from caregiving obligations. Notwithstanding their normative robustness, these tools frequently lack enforceability within the specific institutional



framework of the European Parliament and are predominantly implemented via soft law or interpretative impact.

In contrast, the European legal framework, particularly the Charter of Fundamental Rights of the EU and a range of relevant Directives, offers slightly stronger protections. These instruments more directly impose obligations on EU institutions and articulate standards regarding maternity protection, gender equality, and workplace inclusion. However, considerable deficiencies remain. The legal tools under EU law primarily focus on conventional employment relationships and fail to sufficiently represent the status or working circumstances of elected officials. Furthermore, the European Parliament's internal Rules of Procedure, which strictly mandate in-person voting and disallow remote or proxy participation, constitute a significant impediment. They formalise exclusion by neglecting to offer adequate accommodations for temporary maternity-related absences, despite having shown flexibility during the COVID-19 pandemic.

Although the EU framework is relatively more implementable, it is nevertheless normatively and structurally deficient. Rectifying these deficiencies necessitates legal reform and the political resolve to amend institutional practices that presently hinder genuine gender equality and democratic participation. Chapter 4 will examine alternative legal options for contesting these procedural obstacles, focussing specifically on strategic litigation and institutional transformation,



### 3. Comparative Overview of National Frameworks

This chapter presents a comparative analysis of the legal and procedural frameworks regulating maternity leave and voting rights for national parliamentarians in four European Union Member States: the Netherlands, Spain, Ireland, and Italy. Although all four countries uphold the fundamental tenets of democratic representation and non-discrimination, their specific methodologies for facilitating temporary leave for elected officials and ensuring legislative engagement during these intervals vary markedly. This section provides an overview of the existing frameworks and evaluates the extent to which each system facilitates broad political involvement. Comprehensive descriptions of the national provisions examined are provided in Appendix IV.

The Netherlands' constitutional and regulatory framework for the temporary substitution of elected officials during instances of pregnancy, childbirth, or illness. Article 57a of the Constitution, in conjunction with Articles X10 to X12 of the Electoral Act, delineates the provisions for Members of Parliament to take leave and for substitutes to be appointed from the same electoral list. A 2023 advisory study from the College on Political Office-Holders advocated harmonising leave benefits for political representatives with the Work and Care Act, promoting increased flexibility in leave extensions and contemplating restricted vote delegation under stringent conditions.<sup>46</sup> The Dutch government consented to investigate the flexibilization of leave arrangements but dismissed vote delegation on constitutional and political grounds, citing issues related to democratic legitimacy, representational accountability, and procedural viability.<sup>47</sup>

Spain has adopted a distinctly different strategy by formalising remote voting protocols. According to the Standing Orders of the Congress of Deputies and the Senate, members may request remote voting in instances of pregnancy, parental leave, or official representation

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<sup>46</sup> Adviescollege Toetsing Regeldruk, *Advies verlof en vervangingsregelingen* (March 2023) <https://adviescollege-rpa.nl/wp-content/uploads/2023/03/Advies-verlof-en-vervangingsregelingen.pdf>

<sup>47</sup> Dutch Ministry of Interior and Kingdom Affairs, 'Kabinetsstandpunt verlof- en vervangingsregeling volksvertegenwoordigers en dagelijks bestuurders.' (March 2024) <https://open.overheid.nl/documenten/185f7748-57e5-41fe-819a-dd0e7019544a/file>

overseas.<sup>48</sup> These provisions, codified through reforms introduced between 2013 and 2022, reflect a commitment to preserving participation during temporary absence without resorting to full replacement or vote delegation.<sup>49</sup> Telematic voting, authenticated via secure technology and rigorously overseen by parliamentary bureaus, facilitates the continuity of the legislative mission while addressing individual circumstances. Spain exemplifies a functional model of procedural adaptability that preserves the integrity of the vote while providing flexibility to all members, irrespective of the reason for their absence.

In contrast, Ireland has only recently established maternity leave rights for Oireachtas members with the Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024. Before this development, elected officials depended on informal, discretionary arrangements, frequently leading to the temporary reassignment of portfolios without statutory assurances.<sup>50</sup> The Act currently allows for a maximum of twenty-six weeks of maternity leave under designated conditions.<sup>51</sup> Nevertheless, Ireland's constitutional mandate that all votes must be cast by members physically present in the chamber has obstructed initiatives to implement remote participation.<sup>52</sup> Notwithstanding a private member's bill advocating for a constitutional change to provide remote voting under specific conditions, the proposal failed to progress.<sup>53</sup> The existing system represents a limited answer, providing statutory leave rights without any procedural procedures for ongoing legislative engagement throughout these absences.

Italy is the least advanced of the four governments regarding legal protections for legislators on maternity leave. No arrangements are in place for temporary substitution, vote delegation,

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<sup>48</sup> Spanish Parliament, *Standing Orders of the Congress of Deputies* (Madrid, 2004) [https://www.aelpa.org/documentos/reglamentos\\_parlamentarios/reg\\_congreso\\_eng.pdf](https://www.aelpa.org/documentos/reglamentos_parlamentarios/reg_congreso_eng.pdf) accessed 9 May 2025; Spanish Senate, *Standing Orders of the Senate* (Madrid, 1994) <https://www.senado.es/web/conocersenado/normas/reglamentootrasnormassenado/detallesreglamentosenado/index.html?lang=en> accessed 9 May 2025.

<sup>49</sup> Senado de España, *Boletín Oficial de las Cortes Generales. Senado*, n.º 269, 10 de noviembre de 2023, 8-11 and 113-114.

<sup>50</sup> Christina Finn, 'Lack of maternity leave arrangement for TDs 'truly incredible', says Holly Cairns' *The Journal* (Ireland, 18 June 2024) <<https://www.thejournal.ie/hilly-cairns-maternity-leave-politicians-6411919-Jun2024/>> Accessed 04 April 2025.

<sup>51</sup> Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006.

<sup>52</sup> Bunreacht na hÉireann (Constitution of Ireland) 1937, Article 15.11.1°.

<sup>53</sup> 39th Amendment of the Constitution (Remote Parliamentary Voting) Bill 2020.

or remote participation, and parliamentary attendance is exclusively determined by physical presence as stipulated in Article 64(3) of the Constitution. While informal changes may occasionally transpire at the party or committee level, they lack legal acknowledgement and are dependent on internal agreements. Proposals for telematic participation during the COVID-19 pandemic were proposed but did not result in enduring reforms.<sup>54</sup> Progress has been made due to the 2022 procedural amendment allowing members to bring infants into parliamentary chambers and utilise designated childcare areas.<sup>55</sup> Furthermore, several city councils, particularly in Venice and Rome, have implemented remote access for councillors on parental leave.<sup>56</sup> These advances indicate that institutional flexibility can be achieved within the current constitutional framework, notwithstanding the political and legal limitations on national-level reform.

Collectively, these country frameworks illustrate the differing extents to which democratic institutions address the requirements of elected officials during maternity or parental leave. Although the Netherlands and Spain offer legal processes for temporary absence, only Spain guarantees voting participation during these intervals. Thus, Spain constitutes a potential source of inspiration for the European Parliament in terms of maternity leave and remote voting. Ireland has recently implemented maternity leave entitlements but has not yet amended its voting regulations. Italy persists in adhering to conventional notions of physical presence and has not yet developed a legally clear framework to assist legislators during their absence. These disparities further emphasise the necessity for additional comparative analysis regarding institutional design, equitable access, and the effective implementation of political mandates in inclusive environments. *Please see the following table below for a comparative overview of the key features of each national framework.*

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<sup>54</sup> Stefano Ceccanti et al., Proposta di modifica del Regolamento della Camera dei deputati, Doc. II, n. 15 (2020).

<sup>55</sup> Chamber of Deputies, 'Amendments to the Rules of Procedure' (30 November 2022).

<sup>56</sup> Comune di Venezia, 'Regolamento per l'eventuale partecipazione in videoconferenza alle sedute del Consiglio comunale' (Delibera del Consiglio comunale n. 2 del 30 gennaio 2023), Comune di Roma, 'Regolamento per lo svolgimento in modalità telematica del Consiglio Comunale' (Delibera del Consiglio Comunale n. 136 del 23 giugno 2020).

**Table 3: Comparative Overview**

Country	Legal Basis for Leave	Duration of Leave	Temporary Replacement	Voting Rights During Leave	Recent Reforms or Proposals	Obstacles or Challenges
Netherlands	Dutch Constitution (Art. 57a, 129(3)), Kieswet (X10-X12)	Initial 16 weeks; extendable up to 48 weeks	Yes, via same electoral list (X10-X12 Kieswet)	No remote or proxy voting allowed	Government considering flexibilisation of leave extensions	Rigid timing and procedural constraints; no vote delegation
Spain	Spanish Constitution (Section 72, 79), Standing Orders of the Congress (Section 82)	Not formally defined; telematic voting allowed during leave	No formal replacement, but telematic voting allowed	Telematic voting allowed during maternity leave and other justified absences	Amendments in 2022 codified remote voting for special cases	Constitution forbids vote delegation, but Standing Orders permit remote voting
Ireland	Maternity Protection Act 1994, Maternity Protection Act 2024, Irish Constitution (Art. 40.1, 15.11.1°)	26 weeks under the 2024 Act	No replacement; duties reassigned informally	No remote voting allowed due to constitutional limits	2024 Act introduced statutory maternity leave; 2020 bill for remote voting failed	Constitution requires physical presence; remote voting requires amendment
Italy	No formal legal provision; relies on internal chamber rules and informal arrangements	No fixed leave; informal adjustments only	No formal replacement; informal internal delegation	No remote or proxy voting; attendance required under Art. 64(3) Constitution	2022 rule allows infants in chambers; municipal councils permit remote participation	Literal reading of Constitution blocks remote voting; institutional inertia

## 4. Legal Solutions

### 4.1. Strategic litigation

#### 4.1.1. Overview

Strategic litigation refers to the deliberate use of legal action to achieve broader societal, political, or economic ends through carefully selected court cases. Unlike conventional litigation, which typically resolves individual disputes, strategic litigation is designed to produce outcomes that extend beyond the immediate interests of the parties involved, often setting legal precedents, influencing policy, or prompting institutional reform.

As a form of legal mobilisation, strategic litigation recognises the law as a tool to challenge rules, policies, or practices considered unjust or discriminatory. Litigants often align these legal efforts with broader political or advocacy goals, complementing them with tools such as public campaigns, media outreach, and lobbying.<sup>57</sup> This coordinated approach enhances the impact of litigation and aims to influence policy and political processes for systemic change.

As outlined by academic commentary, strategic litigation is marked by four defining characteristics: it aims to achieve a long-term impact that benefits wider society; it functions as a method of advocacy that can be adapted for diverse causes; it aims to generate outcomes beyond the courtroom, such as media attention or policy reform; and it embraces a broad understanding of litigation, encompassing domestic, regional, and international courts.<sup>58</sup>

Historically, the roots of strategic litigation can be traced to the late eighteenth-century England where judicial proceedings were used in efforts to abolish slavery.<sup>59</sup> Since then, it has evolved into a global tool employed by civil society organisations, legal practitioners, and advocacy groups to combat systemic inequalities and protect fundamental rights.

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<sup>57</sup> Pola Cebulak, Marta Morvillo, Stefan Salomon, 'Strategic Litigation in EU Law: Who does it Empower?' (2024) Special Issue: Strategic Litigation in EU Law, *German Law Journal* 25, 800.

<sup>58</sup> Michael Ramsden and Kris Gledhill, 'Defining Strategic Litigation' (2019) 4 *Civil Justice Quarterly* 407.

<sup>59</sup> Carol Harlow and Richard Rawlings, *Pressure Through Law* (1st edn, Routledge 1992) 11–16, as cited in Pola Cebulak, Marta Morvillo, Stefan Salomon, 'Strategic Litigation in EU Law: Who does it Empower?' (2024) Special Issue: Strategic Litigation in EU Law, *German Law Journal* 25, 800.

Within the European Union, strategic litigation has gained increasing prominence. Although civil society actors and interest groups in the EU historically relied on lobbying and activism to influence policy, the last two decades have seen a shift toward judicial strategies. The CJEU has adjudicated a growing number of politically salient and socially divisive issues, particularly concerning environmental protection, digital rights, and the rights of migrants and asylum seekers. Many of these cases have been initiated by activist lawyers, academic scholars, non-governmental organisations, and legal advocacy groups, reflecting the advancement of strategic litigation as a tool within the EU legal order.

The remainder of this chapter will explore both judicial and non-judicial avenues through which strategic litigation might be pursued to address the disenfranchisement of MEPs on maternity leave. Section 6.1.3 analyses the limitations posed by the internal character of the European Parliament's Rules of Procedure and introduces the European Ombudsman as a non-judicial mechanism for addressing potential maladministration. Section 6.2 provides an in-depth assessment of the legal bases available before the Court of Justice of the European Union, including the action for annulment (Article 263 TFEU), the failure to act procedure (Article 265 TFEU), the action for damages (Articles 268 and 340 TFEU), the preliminary ruling procedure (Article 267 TFEU), and infringement proceedings (Articles 258 and 259 TFEU). Section 6.3 then evaluates the standing of individual MEPs in light of key case law. The analysis includes *Rivière and Others v Parliament* (C-767/21 P), which illustrates the Court's reluctance to review internal organisational acts; *Weber v Parliament* (C-314/91), where standing was granted due to the legal and financial effects of the measure; and *Repasi v Commission* (T-628/22), which highlights the difficulty of establishing individual concern when procedural rights are implicated. These cases are critical for assessing whether MEPs challenging voting restrictions during maternity leave could meet the admissibility criteria before the Court.

#### **4.1.2. Legal Foundation**

The absence of maternity leave for MEPs stands in tension with the EU's legal foundations, related to gender equality, which could serve as the basis for strategic litigation. Article 2 TEU defines equality between women and men as a fundamental value of the Union, and Article 3(3) TEU sets out the promotion of gender equality as a core objective. In theory, these

provisions provide strong normative support for arguing that the current system, whereby MEPs lose voting rights if they are unable to attend in person due to pregnancy, undermines both the principle and the practical realisation of gender equality.

However, while these Treaty articles give out broad and ambitious commitments, they may not be directly enforceable in court against specific institutional practices. Their legal weight depends heavily on how they are interpreted in combination with more specific provisions. Article 157(4) TFEU, for instance, allows for positive action to guarantee substantive equality in the workplace, and could be invoked to argue that maternity leave is not just permissible but necessary in the parliamentary context. Yet here too, the challenge lies in whether the European Parliament qualifies as an "employer" under EU law, and whether its members are in a comparable legal position to ordinary workers, something EU courts have been conservative about in the past.<sup>60</sup>

The Charter of Fundamental Rights of the European Union (CFR) adds further legal tools, especially Article 21 (prohibition of sex discrimination) and Article 23 (gender equality in all areas, including employment). These articles could help frame the lack of maternity leave as indirect discrimination, particularly given the loss of voting rights that results. Still, invoking the Charter would require showing that the matter falls within the scope of EU law, something that might be contested, especially given the Parliament's broad autonomy over its internal procedures.

In this light, while the combined legal provisions provide an interesting angle for litigation, it remains uncertain whether a court would be willing to impose institutional changes on the European Parliament through litigation alone. Strategic litigation could be useful in raising visibility, prompting public and political pressure, or even securing a symbolic ruling that recognises the problem. But given the institutional and procedural complexities involved, particularly around parliamentary self-regulation and the limits of judicial review, litigation

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<sup>60</sup> See *Case C-270/03 Commission v Parliament and Council* [2006] ECR I-7141 (ETI case), where the Court emphasized institutional autonomy of the European Parliament; *Case C-50/96 Deutsche Telekom AG v Schröder* [2000] ECR I-743, affirming the legitimacy of positive action under strict proportionality; and *Case C-144/04 Mangold v Helm* [2005] ECR I-9981, recognising the direct effect of general principles such as non-discrimination, but also highlighting enforcement limitations. These cases illustrate that while the EU's equality framework is strong in principle, judicial intervention in parliamentary procedures remains procedurally and substantively limited.



might best be seen as one component of a broader strategy complemented by lobbying, coalition-building, and political negotiation.

#### 4.1.3. Internal Rules

Strategic political action arising from a willingness to amend the European Parliament's Rules of Procedure can be intricate and demanding. This intricacy principally stems from the intrinsic nature of the Rules of Procedure and the procedural impediments associated with standing. The Rules of Procedure regulate the functioning of the European Parliament and, although they provide an essential framework for parliamentary activities, they are internal documents generally exempt from external judicial review unless there is a violation of fundamental rights or explicit breaches of European law linked to them.

As emphasised earlier, a notable issue exists in Rule 193 of the Rules of Procedure, which asserts that "the right to vote is a personal right."<sup>61</sup> Members must therefore vote individually and in person. Any violation of this regulation is a significant transgression of Rule 10(3).<sup>62</sup> This clause, while internally oriented, imposes a substantial obstacle for MEPs on maternity leave, as it necessitates a forfeiture of their voting rights during their absence, consequently precluding their full participation in legislative activities. This restriction disproportionately affects pregnant MEPs and young mothers, placing them at a structural disadvantage compared to their colleagues who are not subject to the physical and legal constraints of pregnancy and maternity. The regulation has faced mounting criticism for perpetuating gender disparity in political participation, as it presupposes that Members of the European Parliament must be physically present to fulfil their fundamental rights as elected representatives.

The emphasis in strategic political action through suggesting amendments for internal rules should be on Rule 243 of the Rules of Procedure, which delineates the process for amending the Rules.<sup>63</sup> This regulation allows strategic entities, including political factions, civil society organisations, or individual Members of the European Parliament, to mobilise and instigate modifications to the Parliament's procedural rules. The inability to alter voting rights for MEPs

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<sup>61</sup> European Parliament, *Rules of Procedure of the European Parliament* (July 2024) rule 193.

<sup>62</sup> *Ibid.*, rule 10.

<sup>63</sup> *Ibid.*, rule 243.



on maternity leave may be contested both legally and politically. The legal contention asserts that the existing structure of Rule 193 contravenes essential tenets of gender equality and the right to political participation as stipulated by EU law. Strategic litigation may entail legal action designed to advocate for reforms in the internal procedures of the European Parliament. This might be achieved by promoting a new rule that clearly permits proxy voting or digital voting for MEPs on maternity leave, thus enabling them to discharge their legislative responsibilities without physical presence.

To accomplish this, the Rules of Procedure must be revised to incorporate a provision allowing proxy voting, enabling another MEP to cast a vote on behalf of the MEP on maternity leave, or digital voting, permitting the MEP on maternity leave to vote remotely via secure online platforms. This amendment would be based on the assertion that the current system discriminates against women by regarding maternity leave as a hindrance to political participation. The implementation of these options seeks to guarantee equitable involvement in the legislative process, irrespective of parental status.

Strategic political action may initially seek to contest the European Parliament's inability to amend its internal regulations. The legal basis for this challenge would be grounded in the principles of gender equality and non-discrimination articulated in TFEU, namely Articles 19 and 157 TFEU, which forbid discrimination based on sex.<sup>64</sup> The European Charter of Fundamental Rights, particularly Articles 21 and 23, which guarantee the right to equality and the freedom to engage in public life, would be essential in arguing that the existing procedural rule unfairly impacts women.<sup>65</sup>

In this context, strategic litigation may involve persuading Parliament to change Rule 193 or initiating a judicial challenge on the grounds that the existing regulations contravene EU legislation safeguarding gender equality and political rights. Through public interest litigation, stakeholders might exert pressure on EU institutions to harmonise their internal procedures

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<sup>64</sup> Treaty on the Functioning of the European Union (TFEU) (consolidated version) [2012] OJ C326/47, articles 19 and 157.

<sup>65</sup> Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, articles 21 and 23.

with the principles of inclusion and gender equality, thereby allowing MEPs on maternity leave to participate in the voting process without facing penalties.

Another non-judicial option to explore is appealing to the European Ombudsman, who has the authority to investigate cases of maladministration inside EU institutions, bodies, offices, and agencies.<sup>66</sup> The Ombudsman lacks the authority to revoke internal regulations or mandate legislative changes; nonetheless, it can commence investigations and provide recommendations where administrative procedures contravene principles of good governance, equity, or fundamental rights. In the present context, the continued application of Rule 193 of the European Parliament's Rules of Procedure, requiring in-person voting and thereby excluding MEPs on maternity leave from participating in parliamentary votes, could be framed as maladministration. A complaint may be lodged by an MEP, an NGO, or a political youth movement, contingent upon prior engagement with the institution to request action.<sup>67</sup> Should the Parliament neglect to reply or decline to reevaluate its practices, the Ombudsman may initiate an investigation and provide a proposal encouraging the Parliament to evaluate the discriminatory impacts of its regulations and propose solutions such as remote or proxy voting. While not legally enforceable, such a proposal could bolster political pressure and enhance comprehensive reform initiatives, perhaps acting as a significant adjunct to judicial techniques employed under Articles 263 or 265 TFEU.

So while political action remains a viable and important route to instigate reform of the European Parliament's internal procedures, judicial avenues are considerably more constrained. The Rules of Procedure are internal organisational instruments rather than legislative acts and, as such, do not produce external legal effects. Thus, according to the established jurisprudence of the CJEU, such measures cannot, in principle, be challenged in front of the Court. The Court has generally maintained that only actions resulting in binding legal effects concerning third persons are eligible for judicial review. The Rules of Procedure largely regulate the internal functioning of the European Parliament and do not, by themselves,

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<sup>66</sup> Fact Sheets on the European Union, 'The European Ombudsman' (European Parliament, March 2025) <https://www.europarl.europa.eu/factsheets/en/sheet/18/the-european-ombudsman> accessed 4 June 2025.

<sup>67</sup> European Ombudsman, 'Strategic inquiries' (European Ombudsman website) <https://www.ombudsman.europa.eu/en/strategic-issues/strategic-inquiries> accessed 4 June 2025.

impact anyone external to the institution; hence, they are excluded from the category of reviewable actions.

However, the potential for judicial examination is not completely eliminated. Should the enforcement of a rule, such as Rule 193, lead to a violation of fundamental rights protected by EU primary law, specifically those articulated in Articles 2 and 10 TEU and Articles 21 and 23 of the Charter of Fundamental Rights of the European Union, the Court may consider reviewing the implications of such enforcement.<sup>68</sup> The principles of representative democracy, the right to engage in political life, and the dedication to gender equality are fundamental components of the EU constitutional framework. In instances when internal parliamentary regulations function to obstruct these principles there may be an opportunity to contest the enforcement of these regulations.

The issue of who is permitted to begin such a challenge is similarly intricate. Direct actions are often restricted to privileged applicants. Individuals or NGOs must have direct and personal interest to initiate a challenge, which is challenging when addressing internal parliamentary procedures.

As will be examined in later sections, although they generally cannot act as the direct object of a judicial challenge, the Rules of Procedure may serve as pertinent contextual evidence in comprehensive legal strategies designed to illustrate violations of EU constitutional principles. The following subchapters will analyse the legal bases enabling individuals and organisations to challenge an act in front of the Court, along with the role of the Rules of Procedures in these scenarios.

#### **4.2. Pathways to the Court of Justice of the European Union**

Strategic litigation within the European Union is significantly shaped by the procedural framework of the EU legal system. The availability of judicial remedies is governed by a

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<sup>68</sup> Consolidated Version of the Treaty on European Union [2016] OJ C202/17, arts 2 and 10; Charter of Fundamental Rights of the European Union [2012] OJ C326/391, arts 21 and 23; see also Rafał Mańko, 'Action for Annulment of an EU Act' (EPRS Briefing, November 2019) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642282/EPRS\\_BRI\(2019\)642282\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642282/EPRS_BRI(2019)642282_EN.pdf) accessed 4 June 2025.

rigorous and often restrictive set of legal provisions, significantly impacting individuals seeking litigation for political and regulatory reform. This chapter provides a thorough analysis of the principal legal avenues for strategic litigation before the CJEU, concentrating on standing requirements, procedural challenges, and institutional inequalities.

The EU Treaties create unique legal instruments available for individuals, civil society organisations, Member States, and EU institutions. These include the action for annulment (Article 263 TFEU), the failure to act procedure (Article 265 TFEU), the action for damages (Articles 268 and 340 TFEU), the preliminary ruling mechanism (Article 267 TFEU), and the infringement proceedings (Articles 258 and 259 TFEU).

#### **4.2.1. Action for Annulment (Article 263 TFEU)**

Article 263 TFEU confers upon the CJEU the jurisdiction to assess the legality of acts undertaken by EU institutions, bodies, offices, or agencies that aim to generate legal consequences. Applicants may request the annulment of these actions on several grounds, including lack of jurisdiction, violation of essential procedural standards, breach of the Treaties, infringement of relevant legal provisions, or misuse of authority. Any action under Article 263 TFEU must be commenced within two months of the publication or notification of the contested act. Any action under Article 263 TFEU must be commenced within two months of the publication or notification of the contested act. Therefore, any applicant intending to initiate an action for annulment must be mindful of this strict procedural time frame to avoid inadmissibility.

Article 263 TFEU categorises applicants into three distinct groups: privileged, semi-privileged, and non-privileged applicants. Privileged applicants, including the European Parliament, Council, Commission, and Member States, can commence legal proceedings without demonstrating any direct interest or standing. Semi-privileged applicants, like the Court of Auditors, European Central Bank, and Committee of the Regions, possess the ability to contest actions to safeguard their prerogatives. Non-privileged applicants, including individuals, corporations, and NGOs, must satisfy rigorous standing criteria to contest EU actions. Under Article 263(4) TFEU, these applicants may only bring an action if the act is addressed to them, the act is of direct and individual concern to them, or the act is a regulatory

act that does not require implementing measures and is of direct concern to them.<sup>69</sup>

The Regulatory Act condition has undergone much interpretation, especially regarding public interest litigation. The Plaumann formula, developed in the seminal case *Plaumann v Commission*, established a stringent criterion for individual interest, asserting that an applicant is deemed individually concerned only if the contested act impacts them due to certain features or circumstances that differentiate them from others.<sup>70</sup> This interpretation has rendered it especially challenging for individuals or NGOs to contest acts of universal application, even when they are substantially impacted by them. The outcome is the effective exclusion of public interest litigants from direct annulment procedures, unless they can establish a highly particular and exceptional link to the contested act.

The Lisbon Treaty introduced an additional clause to Article 263(4), which allows natural or legal persons to challenge regulatory acts (non-legislative acts of general application) that do not require implementing measures, provided that they are directly affected. This amendment sought to expand access to the judiciary for those seeking to challenge general regulatory measures, including Commission regulations or delegated acts. The definition of a regulatory act has been interpreted restrictively, frequently omitting legislative actions produced under the ordinary legislative system. Moreover, the requirement that a regulatory act must not necessitate implementing measures introduces additional complexity,<sup>71</sup> acts that demand national implementation usually require a challenge to the national implementing act in domestic courts, potentially invoking a preliminary ruling under Article 267 TFEU.

As stated earlier, the Rules of Procedure are internal regulations that govern the operations of the European Parliament and do not have legal implications outside the organisation. Consequently, they cannot be immediately contested under Article 263 TFEU, which pertains solely to regulatory acts with broad applicability that do not necessitate further national measures for implementation. Consequently, a challenge to the non-amendment of Rule 193, which presently bars MEPs on maternity leave from voting, cannot be directly pursued under

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<sup>69</sup> Robert Schütze, *European Constitutional Law* (3rd edn, Cambridge University Press 2021) 367.

<sup>70</sup> Case 25/62 *Plaumann & Co v Commission* [1963] ECR 95 para 107.

<sup>71</sup> Alberto Alemanno, 'Beyond EU Law Heroes: Unleashing Strategic Litigation as a Form of Participation in the Union's Democratic Life' (2024) 25 *German Law Journal* 826.

Article 263 TFEU.

The probability of standing for a political youth party, such as the Young Socialists in the PvdA, initiating a strategic lawsuit under Article 263 TFEU would be minimal. While the issue at hand is significant in terms of gender equality and political participation, political youth groups would struggle to meet the narrow criteria of direct and individual concern under the Plaumann formula. These constraints are further complicated by the nature of Rules of Procedure: as a legal act without legal effects vis-à-vis third parties, the Court is precluded from reviewing its legality pursuant to Article 263 TFEU. In sum, these organisations would likely be precluded from taking direct legal action, as they are unable to demonstrate a specific and direct effect on their legal rights resulting from the failure to alter the Rules of Procedure.

If an individual MEP were to initiate legal proceedings against the European Parliament, either for its failure to amend Rule 193 or for rejecting a concrete request for maternity leave accompanied by remote or proxy voting, the MEP would have to demonstrate that the contested act or inaction directly and individually affects them, in that it obstructs the full exercise of their parliamentary duties during maternity leave. The possibility of an individual MEP challenging an internal rule will be further explained in Chapter 4.3, where case law will also be provided as an example. The MEP's primary concern is evident; nonetheless, the challenge cannot rely solely on Rule 193, as the European Parliament's Rules of Procedure are not classified as regulatory acts under Article 263 TFEU.

Thus, a Member of the European Parliament aiming to pursue legal action will have more prospects of effectively contesting a policy that enforces or depends on the Rules of Procedure, rather than the Rules themselves. To directly challenge the Rules of Procedure, the MEP must first establish that these internal regulations generate legal consequences that substantially affect their rights; specifically, that maternity leave leads to the forfeiture of voting rights, thereby hindering their capacity to execute their parliamentary duties. However, it remains uncertain whether such a refusal or omission by the Parliament qualifies as a reviewable act under Article 263 TFEU. As the Rules of Procedure are internal measures, they are generally excluded from judicial review unless they produce external legal effects. The applicant would therefore need to frame the challenge around a concrete decision, such as a

refusal to grant maternity leave or the inability to vote remotely, as opposed to the internal rule itself. Establishing these legal effects is crucial to satisfy the standing standard. Only after surmounting this procedural obstacle can the MEP meaningfully contend that the rule violates fundamental principles of EU law, such as gender equality, non-discrimination, and the right to political participation. It is important to note, however, that even if the MEP succeeds in annulling the relevant refusal or act, Article 263 TFEU does not empower the Court to order the European Parliament to adopt specific new rules. Annulment would not, in itself, lead to the introduction of maternity leave or voting alternatives. Instead, it may place political and legal pressure on the institution to rectify the identified breach of EU law.

Although Article 263 TFEU cannot be directly employed to contest Rule 193 of the European Parliament's Rules of Procedure, strategic litigation may still prove effective via alternative EU regulatory instruments and international treaties that advocate for gender equality and non-discrimination in political participation. Non-privileged applicants, such as a political youth party, would likely be precluded from a direct challenge under Article 263 TFEU due to the Plaumann criteria. An MEP may be able to fulfil the standing criteria outlined in Article 263(4), but only if they challenge a specific act or omission that produces legal effects, such as a formal refusal of maternity leave or voting arrangements, not the internal rules themselves. Moreover, such a challenge must be brought within two months of the contested decision or from the point at which the institution's failure to act becomes legally actionable.

#### **4.2.2. Action for Failure to Act (Article 265 TFEU)**

According to Article 265 TFEU, applicants may contest the inaction of EU institutions, bodies, offices, or agencies when there exists a legal duty to act. This article provides a remedy for situations where an institution fails to fulfil its responsibilities, and is especially pertinent for cases involving institutional omissions rather than illegal actions, as outlined in Article 263 TFEU. Unlike Article 263, which focuses on acts that affect an applicant's rights, Article 265 allows applicants to seek judicial intervention when an institution fails to adopt an act, as required by law. In such cases, if the institution fails to act within two months of being formally called upon to do so, the applicant has a further two months to bring the matter before the Court. Nonetheless, similar to Article 263 TFEU, the standing criteria for non-privileged applicants under Article 265 are stringent.



Privileged applicants, such as Member States or EU institutions, can initiate a failure to act without proving specific interest, whereas non-privileged applicants, including individuals and organisations, must establish that the failure to act has directly impacted their legal standing.<sup>72</sup> This is a significant standard, especially when contesting a failure to revise internal procedural regulations such as Rule 193 of the European Parliament's Rules of Procedure. The Rules of Procedure are internal documents and do not constitute regulatory acts, so they cannot be immediately challenged under Article 265 TFEU like broader regulatory measures or legislative acts with external legal implications.

The prospects for success under Article 265 TFEU for a political youth organisation like the Young Socialists in the PvdA would be constrained. The non-privileged applicant must establish that the lack of amendment to Rule 193 directly affects its legal standing. Nonetheless, the Rules of Procedure are internal documents pertinent to MEPs, and the party would presumably encounter considerable difficulties in demonstrating particular concern. The party's absence of direct engagement with the European Parliament's internal regulations and their universal applicability to all MEPs would complicate the establishment of standing for this type of action. Consequently, although the party may advocate for reform, it lacks a robust legal foundation to contest the non-amendment of Rule 193 under Article 265 TFEU.

An individual MEP would have greater standing for initiating an action for failure to act under Article 265 TFEU, as they are immediately and individually impacted by the European Parliament's denial of voting rights during maternity leave. Nonetheless, this approach necessitates rigorous compliance with preliminary procedures. Prior to invoking the Court, the MEP must firstly file a formal request to the institution to take action, such as a letter of formal notice or a comparable communication. An illustrative instance is the correspondence dispatched by MEPs Sigrid Friis and Delara Burkhardt to President Metsola, soliciting the opportunity to cast votes during their respective maternity leaves. Upon receiving a formal request, the institution has two months to respond, either by stating its viewpoint or implementing the proposed measure. If the institution does not respond or take a stance within

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<sup>72</sup> Robert Schütze, *European Constitutional Law* (3rd edn, Cambridge University Press 2021) 389.



that timeframe, the applicant is granted a further two months to initiate proceedings before the General Court pursuant to Article 265 TFEU.

Article 265 TFEU is applicable solely in instances of institutional silence or inaction. If the institution openly declines to act or formally adopts a stance denying the applicant's request, this no longer constitutes a failure to act as defined by Article 265. In such instances, the refusal may represent a legally contestable action under Article 263 TFEU, contingent upon the generation of binding legal effects that negatively impact the applicant's interests. The MEP may subsequently commence an annulment action within two months of the notification or publication of the denial decision.

Article 265 TFEU provides a procedural mechanism to contest the Parliament's inactivity, contingent upon the MEP's direct legal interest and adherence to procedural requirements. The MEP must not only reference comprehensive legal frameworks, including gender equality under EU legislation, the Charter of Fundamental Rights, and international commitments such as CEDAW and the ICCPR, but also confirm that the institution has unequivocally failed to respond. In cases of refusal, a distinct challenge under Article 263 may be the suitable alternative.

The failure to amend Rule 193 of the European Parliament's Rules of Procedure, which prevents MEPs on maternity leave from voting, cannot be directly challenged under Article 265 TFEU as the Rules of Procedure are internal documents and not legislative acts. Non-privileged applicants, such political youth parties or NGOs, would encounter considerable difficulties in demonstrating standing, as they would find it challenging to prove that the failure to change Rule 193 directly affects their legal status. For these petitioners, political lobbying and advocacy might be more efficacious than legal recourse.

On the other hand, an MEP has a stronger case for standing under Article 265 TFEU, as they are directly affected by the European Parliament's failure to provide voting arrangements during maternity leave. The strength of such a challenge depends on whether the failure to act can be framed as a breach of broader EU legal obligations, particularly those concerning gender equality and the right to political participation. Rather than focusing on the internal rule in isolation, the claim must demonstrate that the Parliament's inertia undermines legally

protected rights under both EU law and international instruments. While procedural constraints may limit the availability of this route, especially if the Parliament formally rejects the request, the avenue remains meaningful where institutional silence persists. In such cases, Article 265 can function as a mechanism to contest the structural exclusion of pregnant MEPs from parliamentary participation and to advance institutional accountability through litigation grounded in fundamental rights.

#### **4.2.3. Action for Damages (Articles 268 and 340 TFEU)**

Articles 268 and 340 TFEU delineate the legal framework governing the non-contractual liabilities of the European Union. They provide individuals as well as legal entities with the opportunity to pursue compensation for harm resulting from the illegal conduct or omissions of EU institutions or their representatives. In contrast to actions for annulment or failure to act, the principal objective of these provisions is not to invalidate EU acts, but to offer financial restitution for rights infringement.<sup>73</sup>

Article 268 TFEU confers jurisdiction upon CJEU for claims for damages pursuant to Article 340 TFEU. Per Article 340(2) TFEU, the EU is accountable for damages arising from the actions or omissions of its institutions or officials while performing their tasks, in alignment with the broad principles shared among the laws of the Member States. This clause creates the legal foundation for claims for non-contractual damages resulting from improper acts by EU entities.

The CJEU has developed a three-part test to determine non-contractual liability under Article 340 TFEU: (1) there must be a rule of law that is intended to confer rights on individuals, (2) the breach must be sufficiently serious, and (3) there must be a direct causal link between the breach and the damage suffered.<sup>74</sup> These factors pose significant evidential and legal obstacles, rendering damage claims more intricate and less frequently undertaken than alternative legal options.

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<sup>73</sup> Ibid., 379.

<sup>74</sup> Ibid., 381.

Due to these heightened standards, Articles 268 and 340 TFEU are infrequently employed in strategic litigation, especially where plaintiffs seek to contest systemic or procedural deficiencies. In contrast to cases for annulment or failure to act, which focus on the legality of EU conduct, a damages action requires the demonstration of actual harm and the occurrence of a significant, rights-based violation. The procedural and evidential burden involved is therefore considerable. The necessity to establish a sufficiently grave violation of a legal norm designed to bestow rights upon individuals is challenging to fulfil, particularly when the institution's actions are predicated on discretionary authority or pertain to internal organisational issues like parliamentary procedure. The CJEU has repeatedly emphasised that liability will only arise where the institution has "manifestly and gravely disregarded the limits on its discretion".

For MEPs on maternity leave, while Article 265 TFEU may provide a more suitable avenue to contest the Parliament's neglect to modify its internal regulations, Articles 268 and 340 TFEU could, in principle, be utilised if such neglect results in discernible harm. Nonetheless, this necessitates that the MEP demonstrate that the disenfranchisement during maternity leave represents a sufficiently grave infringement of a legal norm safeguarding individual rights, such as Article 23 of the Charter or principles of gender equality under EU law, as well as that the harm incurred is both concrete and directly attributable to that violation. This is where the potential for success diminishes. Although it can be contended that the inability to vote during maternity leave undermines the MEP's political function, demonstrating that this represents measurable harm rather than merely a political or symbolic constraint is challenging. No precedent currently exists to affirm that the loss of parliamentary voting rights constitutes compensable harm under Article 340 TFEU. The CJEU has historically construed the damage criterion restrictively, typically necessitating economic loss or harm that is concrete and demonstrable.

Consequently, a damages action pursuant to Articles 268 and 340 TFEU is theoretically feasible but realistically improbable to prevail under the existing legal framework. The difficulty resides not in the validity of the MEP's grievance but in meeting all three cumulative criteria for culpability, especially the stipulations of a substantial violation and a direct causal connection to specific, quantifiable harm. This legal alternative, while not completely

excluded, is more accurately characterised as a supplementary option rather than a primary approach in the pursuit of voting rights for MEPs on maternity leave.

#### 4.2.4. Preliminary Ruling Procedure (Article 267 TFEU)

The preliminary ruling procedure pursuant to Article 267 TFEU provides an indirect means for individuals and organisations to seek judicial review by the CJEU. In contrast to direct actions that required applicants to fulfil rigorous standing requirements, the preliminary ruling procedure depends on national courts to pose enquiries to the CJEU concerning the interpretation or constitutionality of EU law. This framework represents a system of judicial cooperation between national courts and the CJEU, improving the consistent implementation and interpretation of EU legislation among Member States.

According to Article 267 TFEU, when a national court has a query regarding the interpretation of the Treaties or the legitimacy of EU legislation, it is permitted to refer the matter to the CJEU. If the national court serves as the court of last resort, it must refer the dispute to the CJEU, unless the subject is already deemed *acte clair* (clear) or *acte éclairé* (well-established law).<sup>75</sup> This enables individuals or civil society organisations to indirectly affect the legal interpretation of EU law by persuading a national court to submit a matter to the CJEU.

One of the primary benefits of Article 267 is its capacity to circumvent the rigorous admission criteria for direct actions, which may impede people or NGOs from directly challenging EU regulations. By persuading a national court to refer the case to the CJEU, non-privileged applicants, such as youth organisations or individual MEPs, can theoretically circumvent the rigorous standing requirements of direct actions and initiate a legal examination of EU law that may ultimately affect EU-wide legislation or interpretation.<sup>76</sup>

In the context of voting rights for MEPs on maternity leave, the preliminary ruling procedure under Article 267 TFEU imposes significant legal and procedural constraints. This mechanism enables national courts to submit enquiries to the CJEU on the interpretation or validity of EU law, contingent upon the presence of a legitimate legal dispute before a

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<sup>75</sup> Ibid., 391-407.

<sup>76</sup> Case 66/80 International Chemical Corporation v Amministrazione delle finanze dello Stato [1981] ECR 1191, para 13.

domestic court where EU law is relevant and decisive. In this context, it is assumed that an individual, such as a Member of the European Parliament or a civil society organisation, could initiate legal proceedings in a national court, contending that the European Parliament's neglect to recognise maternity-related voting rights violates EU law regarding gender equality or political participation. This course of action is not procedurally feasible.

The rationale resides in the jurisdictional immunity possessed by the European Union and its institutions, notably the European Parliament. According to Protocol No. 7 regarding the Privileges and Immunities of the European Union, EU institutions possess immunity from legal actions in the domestic courts of Member States when performing their official duties. Article 1 of the Protocol unequivocally stipulates that the Union must possess immunity from jurisdiction in national courts, a principle that has been regularly affirmed in CJEU jurisprudence. This immunity prohibits individuals from initiating legal actions against the European Parliament within domestic legal frameworks, including in cases of alleged breaches of EU law. Consequently, a domestic court is procedurally precluded from adjudicating such a claim and, therefore, from making a preliminary reference to the CJEU in that regard.

Furthermore, even if a national court were theoretically inclined to consider such a claim, it would probably be deemed inadmissible on jurisdictional grounds prior to the consideration of an Article 267 reference. The institution's immunity effectively eliminates the requisite procedural basis for commencing the preliminary ruling mechanism. Consequently, the preliminary reference procedure is inapplicable for contesting internal parliamentary actions, omissions, or regulations, including Rule 193 of the Rules of Procedure, which mandates physical presence for voting and does not account for maternity-related absences.

In summary, whereas Article 267 TFEU serves as a robust mechanism for judicial discussion and the uniform interpretation of EU law, it is not a feasible route for direct strategic litigation concerning the internal actions or omissions of the European Parliament. Protocol No. 7 grants immunity to EU institutions, consequently obstructing any efforts to contest these institutions in national courts and, subsequently, hindering access to the CJEU via the preliminary reference procedure in such cases. Consequently, in instances involving the disenfranchisement of MEPs on maternity leave, other measures, including direct actions

under Articles 263 or 265 TFEU, should be undertaken within the purview of the General Court.

#### **4.2.5. Infringement Procedure (258 and 259 TFEU)**

Articles 258 and 259 TFEU delineate the legal basis for infringement procedures against EU Member States that do not adhere to their EU responsibilities. These regulations are intended to guarantee that Member States adhere to their obligations under EU law. According to these provisions, individuals and organisations are prohibited from directly commencing infringement procedures against EU institutions; rather, the initiation of such proceedings is the prerogative of the European Commission or a Member State.<sup>77</sup>

Article 258 TFEU authorises the European Commission to initiate infringement procedures before the CJEU when a Member State is determined to be violating its EU obligations. The Commission initially offers a reasoned opinion following the assessment of the complaint, and if the Member State does not comply, the Commission may subsequently refer the case to the CJEU.

Article 259 TFEU establishes a comparable process, permitting Member States to initiate proceedings against another Member State for non-compliance with EU legislation, rather than involving the Commission. The CJEU may render a judgment, and the Member State determined to be in violation may be obligated to implement remedial actions.

These articles, however, are not applicable in the case of institutional inaction by EU institutions such as the European Parliament. The clauses are explicitly intended to tackle breaches of EU law by Member States, rather than internal issues concerning the functioning of EU institutions. Consequently, Article 258 and Article 259 cannot be invoked to contest the European Parliament's inaction over the amendment of its own procedural regulations. Only Member States or the Commission may invoke these rules to initiate legal proceedings against a Member State for noncompliance with EU law.

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<sup>77</sup> Robert Schütze, *European Constitutional Law* (3rd edn, Cambridge University Press 2021) 384.

Consequently, although infringement proceedings under Articles 258 and 259 TFEU offer a means to hold Member States accountable, they do not serve as a feasible legal recourse for resolving institutional matters within EU entities such as the European Parliament.

#### **4.2.6. Conclusion**

Political youth organisations are unlikely to succeed in this context, as they almost invariably fail to meet the criteria established under the Plaumann formula. They are unable to establish that an internal regulation of the European Parliament directly and individually impacts their legal status, hence lacking standing under Articles 263 and 265 TFEU. Conversely, individual MEPs, despite being non-privileged applicants, are more favourably situated to meet the standing criteria. They may convincingly assert that the incapacity to vote during maternity leave directly impedes their capacity to fulfil parliamentary responsibilities, thereby satisfying the Plaumann test of individual concern.

Even if the standing issue is surmountable, MEPs encounter an additional obstacle: the legal character of the Rules of Procedure. These are internal, non-legislative instruments and are generally not subject to review, unless the applicant may prove that the application or denial of modification of the rules results in external legal consequences. This assessment is pivotal: the critical inquiry is not whether the regulation is unjust or discriminatory, but whether it has legal implications adequate to initiate judicial review.

The paramount threshold is determining the feasibility of a judicial procedure. Only upon the fulfilment of this threshold, specifically the existence of a reviewable act or omission under Articles 263 or 265 TFEU, may the applicant invoke the pertinent substantive provisions of EU law, including the guarantees of gender equality and non-discrimination enshrined in the Charter of Fundamental Rights and secondary legislation such as Directives 2006/54/EC and 92/85/EEC. In this context, Articles 263 and 265 TFEU seem to provide the sole legitimate grounds for legal action, contingent upon the European Parliament's response to a formal notice letter. If the Parliament issues a refusal decision, this could be challenged under Article 263. Should it fail to assume a position within the stipulated timeframe, Article 265 would apply.



Conversely, a claim for damages pursuant to Articles 268 and 340 TFEU is considerably less certain to succeed. The requirements to prove a sufficiently serious breach, direct causal link, and tangible harm present formidable evidential burdens, especially in cases involving internal parliamentary procedures. Similarly, preliminary rulings under Article 267 TFEU and infringement procedures under Articles 258 and 259 TFEU are not viable pathways. Owing to the jurisdictional immunity of EU institutions as stipulated in Protocol No. 7, individuals are precluded from initiating actions against the European Parliament in national courts, hence preventing the initiation of preliminary references. Infringement actions pursuant to Articles 258 and 259 TFEU are wholly beyond the influence of individual petitioners and would necessitate Member States to contest the Parliament, which is institutionally and politically unlikely.

In conclusion, although strategic litigation in this domain is procedurally intricate and legally ambiguous, it is not completely precluded. Success depends on surmounting existing standards and articulating the challenge in a manner that illustrates that the Parliament's actions or omissions have legally recognisable outcomes. Upon fulfilment of those initial prerequisites, gender equality legislation can function as a robust foundation to promote the rights of MEPs on maternity leave and contest their exclusion from comprehensive political engagement.

#### **4.3. MEPs and the European Parliament**

Upon analysing the diverse legal options theoretically accessible to contest the existing framework, it becomes evident that individual Members of the European Parliament possess a relatively superior standing as applicants compared to youth political associations in meeting the standing criteria before the Court of Justice. Although youth political parties do not possess institutional powers within the Union's legal framework, Members of the European Parliament may leverage their mandate and individual legal standing under the Treaties to assert that specific measures impact them directly and individually.

Nonetheless, standing is not automatically conferred upon MEPs. This section analyses the current case law involving individual MEPs who have initiated legal challenges against decisions made by the European Parliament or other EU institutions. These cases show the

potential opportunities and enduring challenges that MEPs may face if they engage in strategic litigation to rectify deficiencies in the existing regulatory framework.

#### **4.3.1. Case Studies: Legal Actions by Individual MEPs Against the European Parliament**

The inquiry of whether a MEP can effectively initiate legal action against the Parliament necessitates a thorough examination of existing case law. The analysis is especially relevant considering the challenges encountered by MEPs seeking to dispute matters such as voting rights during parental leave. Despite the EU legal system theoretically permitting judicial review and alternative procedural avenues, many practical obstacles, particularly over standing, reviewability, and legal ramifications, persist. This case law analysis exemplifies the opportunities and significant constraints encountered by individual MEPs as applicants.

The latest pertinent case is *Rivière and Others v European Parliament* (C-767/21 P), when a cohort of thirteen MEPs contested a verbal directive from the President of the Parliament that forbade the exhibition of national flags on their desks. The applicants contended that this limitation obstructed their freedom of expression and influenced the circumstances under which they fulfilled their legislative duties. The General Court deemed the case inadmissible, determining that the contested measure was an internal organisational act that essentially reiterated an existing regulation (Rule 10(3) of the Parliament's Rules of Procedure). The Court of Justice upheld this determination on appeal, underscoring that only actions yielding binding legal effects are subject to scrutiny under Article 263 TFEU.<sup>78</sup> As the measure neither created new obligations nor altered the legal position of the MEPs, it did not satisfy the threshold of reviewability. This decision highlights a significant limitation: regardless of whether MEPs invoke fundamental rights, such as freedom of expression, internal organisational measures governing parliamentary conduct may be exempt from judicial review unless they produce tangible legal effects that modify the MEPs' legal standing.

Conversely, the prior ruling in *Weber v Parliament* (C-314/91) was a unique case in which an individual MEP effectively contested the Parliament. The disagreement pertained to regulations regarding the end-of-service allowance for MEPs, directly impacting their financial entitlements. The Court determined that this approach had legal ramifications

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<sup>78</sup> Case C-767/21 P *Rivière and Others v European Parliament* EU:C:2023:564.

extending beyond internal organisation, as it influenced the MEP's financial status, therefore modifying his legal standing in a binding manner.<sup>79</sup> This ruling illustrates that when Parliament's decisions impact substantive rights or entitlements, such as compensation, pensions, or allowances, MEPs may acquire standing due to being individually and directly affected.

Another illustrative example is *Repasi v Commission* (T-628/22), although the defendant institution was the Commission rather than the Parliament. MEP René Repasi contested a delegated act that he believed bypassed the standard legislative procedure, therefore undermining his rights to participate as a legislator. The General Court deemed the lawsuit inadmissible, determining that Repasi was not individually affected, as the enactment of the delegated act neither distinguished him nor altered his legal status compared to other MEPs or citizens.<sup>80</sup> The ruling demonstrates the Court's reluctance to broaden standing based on the institutional or functional interests of MEPs in their legislative capacity. This case pertains to the Commission and has direct ramifications for situations in which individual MEPs may contest the Parliament's procedural decisions, such as the refusal to modify voting procedures during maternity leave. Standing is unlikely to be given unless it can be demonstrated that such procedural judgements infringe upon an MEP's individual legal rights.

A comparably stringent rationale emerged in *Ashley Mote v Parliament* (T-345/05), wherein the applicant challenged the Parliament's resolution to relinquish his immunity. The General Court determined that the renunciation of immunity did not generate legal effects independently, as it only permitted national authorities to initiate prosecution. The Court reiterated that preparatory or procedural steps that do not directly impact the applicant's legal status are not subject to review under Article 263 TFEU.<sup>81</sup>

Collectively, these cases demonstrate that the principal impediment for individual MEPs attempting to contest the Parliament resides in fulfilling the dual requirements of direct and individual concern. Organisational or procedural measures, such as those related to the Rules

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<sup>79</sup> Case C-314/91 *Weber v European Parliament* EU:C:1993:164.

<sup>80</sup> Case T-628/22 *Repasi v European Commission* EU:T:2023:12.

<sup>81</sup> Case T-345/05 *Mote v European Parliament* EU:T:2008:33.

of Procedure on voting rights during maternity leave, are often regarded as internal institutional affairs. Unless a Member of the European Parliament can substantiate that such regulations unequivocally infringe upon a personal right, such as the right to vote, and that the Parliament possesses no discretion to rectify the matter, these regulations will typically not satisfy the criteria for judicial review.

In the context of voting rights during maternity leave, the most compelling legal argument necessitates demonstrating that the lack of remote or proxy voting options for MEPs on maternity leave leads to a deprivation of their parliamentary mandate, a right that may fall under the purview of primary EU law (Article 14 TEU, democratic principles; Article 10 TEU, representative democracy). The *Rivière* and *Repasi* cases indicate that courts will likely examine whether the internal characteristics of the procedural rule effectively strip the applicant of legal rights, resulting in binding legal consequences, or if political discretion persists at the institutional level.

In summary, although individual MEPs possess formal access to judicial review under EU law, prevailing case law demonstrates a persistent judicial hesitance to permit challenges against internal procedural decisions of the European Parliament, unless these measures directly and individually impact legally protected rights or personal legal circumstances. This substantially limits the scope for effective strategic litigation about voting rights during maternity leave.

#### **4.3.2. Conclusion**

The examination of current case law indicates that, although individual MEPs are generally more positioned than youth political parties to commence legal actions against the European Parliament, their ability to prevail in such cases is significantly limited by the stringent interpretation of standing requirements under EU law. The Court of Justice has regularly asserted that only actions generating binding legal consequences and modifying the applicant's legal status are eligible for examination.

In other cases, including *Rivière*, *Repasi*, and *Mote*, individual MEPs have encountered inadmissibility due to the contested actions being classified as either internal organisational



acts or preparatory decisions lacking independent legal ramifications. In contrast, when actions directly impacted pecuniary entitlements, such as in Weber, standing has been acknowledged due to the evident legal implications for the MEP's specific circumstances.

These precedents suggest that any prospective action by an individual MEP regarding voting rights during maternity leave must persuasively establish that the lack of procedural accommodations is not merely an internal organisational issue, but a tangible infringement of a fundamental right associated with the execution of the parliamentary mandate. The courts would likely determine that the applicant is directly and individually affected under such conditions, thus permitting the lawsuit to advance on its merits.

## 5. Conclusion

This paper set out to explore the extent to which strategic litigation could be used to introduce maternity leave accommodations that would allow MEPs to exercise their voting rights, an issue that touches on the foundational principles of democracy, gender equality and institutional legitimacy within the EU.

Through legal analysis and the interview with a Dutch MEP, it has become clear that the absence of formal maternity leave extends beyond a personal or gendered inconvenience.<sup>82</sup> The MEP explained, it affects the very functioning and inclusivity of the European Parliament. MEPs are elected on a personal mandate, meaning their roles cannot be delegated, and no formal substitute can act in their place during periods of absence. This legal limitation not only discourages MEPs, especially younger and female members, from taking leave but also deters them from engaging with long-term legislative initiatives. This hesitation is compounded by cultural norms within the Parliament that stigmatise leave-taking and reinforce a perception that elected officials must always be present, despite irregular hours, intense workloads, and constant travel demands.

Technical and procedural barriers further reinforce exclusion. Remote or proxy voting, though conceivable, raises concerns around transparency and the integrity of the voting process. Informal, in-person decision-making (common within the Parliament) adds another layer of disadvantage for those unable to be physically present. Altogether, these issues reveal deeper structural shortcomings and call for systemic institutional reform.

Legally, while the theoretical framework for strategic litigation exists, its practical utility is limited. The European Parliament's internal Rules of Procedure, especially Rule 193, mandating in-person voting, fall largely outside scope of judicial review. For political youth organisations and similar actors, the path to litigation is effectively closed due to the rigid standing requirements under Article 263 and Article 265 TFEU. The likelihood of success for individual MEPs pursuing direct legal action remains ambiguous. Procedural obstacles, such as the need to challenge specific acts that produce legal effects rather than the internal rules

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<sup>82</sup> Interview with Member of the European Parliament (Brussels, Belgium, 29th April 2025).

themselves, make these routes legally possible but practically difficult to pursue. The necessity to adhere to stringent procedural deadlines and to persuasively establish that the refusal to modify voting procedures violates superior EU law further constricts the potential for litigation. Other legal avenues, such as actions for damages under Article 340 TFEU or preliminary rulings via Article 267 TFEU, offer little promise due to the high evidentiary burdens and institutional immunities of the EU. Even the European Ombudsman, though capable of drawing attention to the issue, lacks binding authority to compel change.

In summary, whereas strategic litigation might enhance the overarching discourse and potentially apply pressure on the institution, the probability of obtaining effective legal remedies through existing court avenues is constrained. Institutional reform will mostly rely on the internal dynamics of the European Parliament and the degree to which the subject is emphasised in its political agenda, rather than on litigation. And therefore overall, a cultural legal paradigm shift is needed to create substantial change and reprogram towards a more flexible perception on the profession of a Member of European Parliament, especially in times when Women's rights are under pressure. As rightly summarised in the MEP Letter: "We are proud of the progress the European Parliament has made in defending the rights of working parents across the Union. But these values must be reflected within our own house, the very heart of European democracy."





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## 7. Appendices

### Appendix I

#### 7.1 Interview with Member of European Parliament

##### 7.1.1. Guiding questions

###### *Gender Equality and Institutional Culture*

- From your perspective, how does the absence of formal maternity leave affect gender equality in the European Parliament?
- What message do you think the current system sends to young women considering a career in politics?
- Do you think there is sufficient political will among MEPs to introduce a maternity leave policy, or is resistance expected?

###### *Democratic Representation and Legal Dimensions*

- From your perspective, how does the absence of formal maternity leave in the European Parliament affect the democratic mandate of Members of the European Parliament?
- What legal arguments do you think would be most effective in compelling the European Parliament to introduce a formal maternity leave policy?

###### *Practical Mechanisms and Policy Reform*

- During the COVID-19 pandemic, remote voting was temporarily allowed in the European Parliament, and some national parliaments permitted proxy voting for members on maternity leave. Do you believe similar systems could be feasible solutions for MEPs on maternity leave?
- According to you, what other measures should complement a maternity leave provision to create a more inclusive and family-friendly environment within the European Parliament?
- If you could propose one concrete policy change to better support MEPs who become mothers, what would it be?



### 7.1.2. Observations of MEP (context) beginning of interview

- Since the European electorate is organised at the national level, it makes aligning rules and practices across member states more complicated in practice.
- MEPs hold a personal mandate, which is legally considered a right rather than something that can be delegated to someone else, and that limits options for things like maternity or paternity leave.
- Language and interpretation present practical challenges. It's not always easy to adapt systems or discussions when translation is needed, especially in real-time.
- Maintaining anonymity in voting becomes difficult when using proxy or remote voting systems, which raises concerns about privacy and trust in the process.
- A lot of the real negotiation work happens outside the formal setting of the Parliament, which can make it even harder to participate if you're not physically present.
- Striking a work-life balance is tough in this environment, especially with unpredictable schedules, late-night sessions, and monthly travel to Strasbourg.
- These aren't just short-term problems, many of them reflect deeper, long-standing structural issues that need thoughtful, long-term solutions.

### 7.1.3. Summary recorded interview

**Interviewer:** One of the problems we also saw in parliamentary documents or discussions, for example, the Dutch law wanted to be revisited, and then the Ministry of Interior said the democratic nature of the profession allows us that we should be very much present in the room. I think that also builds up your idea that the outside world of the man and the whole politician image we have in our minds is built around this public and outside life. So perhaps what complementary measures could you see how we could change not only this not culture but also this perception of course of broader perception on the European Parliament member and more inclusive?

**Participant:** I think it starts with how people raise their children and how you raise your sons and that you make it normal in the household that men and little boys contribute to the household and to caring, right? And I think it's frustrating to say, well, you know, that's what you need to be looking at because it's so broad. But I think that if we don't teach young boys that it's good to care for others, whereas I think for women we're very much conditioned to



care, right? It doesn't give a choice. It's kind of just forced on you. It's forced on you. It's forced on you. I think it's a sort of empathy that's expected. I think it's also very natural in many cases, but I also think that for boys it's probably natural to care and to empathize. But then if life is always giving you different signals, I mean, my own two boys are very much into playing with sticks and killing each other. I mean, I don't know where they get it because they don't get it from me, but if the signals out there in the world are that, you know, for men strength and violence is appreciated and for women empathy and softness and care, then already we're starting on the foot, right? So I think it's a massively big picture, but it needs to start in places like that and in school and with legislation of course to help it all, but there's no simple solution to changing the nature of politics like that. And of course, it's very important that men give the right example. So people like Jesse Klaver who actively shows what it's like to be a father and what that means and takes proper paternity leave and that sort of thing.

**Interviewer:** From your perspective, how does the absence of formal maternity affect gender equality in the European Parliament? Is it something you've noticed, that you can see maybe in terms of the age of the women in Parliament and the kind of, not saying that there's a right or wrong way, but is it predominantly many people who have raised their children or people who haven't had children?

**Participant:** Yes, if that's what they wanted to do. I think the European Parliament has become a lot younger. You probably know more about the average age, but I think that over the last two elections it went down. We were around 50. We were in the low 50s. Yeah. A bit of a bubble. There are loads of young parents in the Parliament. Are they in the majority? No. And does a lack of maternity leave or paternity leave affect gender equality? Yes, it does, because it's a lack of representation, as we said. But I think it also has that wider effect of women perhaps hesitating to take certain things on. If you know that in the Parliament things take a long time often, right? I mean, when you start a file, when you're working on something, then it's not going to be done a few months later. And so, I think there's a deterrent effect possibly to those who know that at some point they'll be out, to take on big things. Certainly, for myself, I've said no to things. I've hesitated about trying for positions because I thought I can't juggle those things. I'm sure I'm not the only one. So yeah, I think there's a negative effect, both for the person themselves, who then ends up putting more pressure on themselves, potentially, or rushing back, or feeling just uncomfortable in taking that leave, but

also in terms of representation. And then, yeah, a deterrent for trying for things because it's difficult to combine.

**Interviewer:** Thank you. Do you think there is sufficient political will among MEPs to introduce maternity policy, or is resistance expected? Now, you did already mention a bit of this. Yeah. But is there, do you think, have you ever come up against such resistance, or has it just been more, it may happen, kind of more passive?

**Participant:** It's more passive. It's more, and it's difficult to put your finger on what exactly that resistance is because I've spoken to the President about this several times. Certainly, she's willing to make changes but I think there's a lack of political will and that there's no sense of urgency and even if I know plenty of young Members of Parliament who think that this is ridiculous, the majority of Members of Parliament as we just saw, will be older. That phase will be behind them. Perhaps that phase never really impacted on their work anyway, and therefore there's not a big push to drive this forward. And then, of course, it's easier for those in the institutions that have practical objections, technical ones, practical ones, who say, ah, but this is complex because... Then that means that they get more space, right? All those things can be overcome if there's a crisis, if there's real momentum, but so far it's not been enough. Oh, the average age of MEPs is 50 years precisely. The youngest, 23. Oldest, 76. Ah, okay. Oh, so that's not that old now. 76. I mean, if you make a... That was older. Since Berlusconi left, the average age dropped.

**Interviewer:** We touched upon the hesitance that women might have to enter politics due to the current system. So, my other question was, also we discussed how the EU is a representative democracy. And we were wondering what legal arguments do you think can stem from democracy? Like the basic one, that the legitimacy of decision-making comes from the people, and if they cannot, if the women cannot represent the people, then this whole issue comes into play. So, our question is, do you have any ideas about how democracy can play a central role in introducing maternity leave policy for women?

**Participant:** No, I think that is just the argument to make, that there's a democratic impact on this. That if you elect people, they ought to be represented, and they ought to be represented fully and properly. And women also ought to be able to take maternity leave, and so one and one is two. I think that means that there needs to be a solution for how those voters are

represented in the meantime. And I think that there's different ways in which that can be done. I think we've already mentioned three of them. I think, you know, probably there's ways of creative thinking, and within the member states there will probably be inspiration for what it can look like, but there needs to be something there. And now, just having nothing, I think there's a little "asterisk" you can put next to your name, you know, with "I'm on leave", that's not enough. You know, that's what we were also looking into because in the rules of procedure it says the right to vote is individual and personal. And that's where the whole issue stems from, because then that impacts all the three ways that we just discussed, like remote voting, how do you introduce that, or like delegating your vote. So that's kind of where our confusion lies right now, and we're trying to also, like mainly with this disconnect between the EU and member state levels, kind of just hint that this needs to be changed, and we're looking into that. Yeah. I think it's a little bit like freedom. Freedom is a right that is granted to all of us, but, you know, my freedom goes as far as where your freedom starts, that kind of thing. It's wonderful that your mandate is individual and personal, but how individual and personal is it if it is my wish to be represented by someone else because I'm having a baby? That's also a personal way of fulfilling your mandate, right? If then you feel as an elected representative that you don't accept that lack of representation, then where does that leave you? So, I think it's yes, there's that right, but there's also the right to maternity leave, and so something's got to give.

**Interviewer:** All right. I think we've covered most of it. Lastly, do you have any concrete policy changes that could be supplemented perhaps by a pregnancy leave to make it more inclusive or any suggestions for us for legal pathways we should explore more into.

**Participant:** Anything else you mean that we need to be done? I mean, for all of this, we speak about women, but obviously in an ideal world, all of this is also applicable to young men and fathers. And, you know, there are those who would also very much want to take leave and, you know, have their rights granted but who aren't able to do so. I don't want to speak sort of for all of them when I say that, you know, in the Parliament there is still that male culture, there are young fathers here who also wish it were different, but so that just as a side note. And other things that would need to be, I mean clearly, politics is not a very family-friendly environment in terms of time, right? Like, it's not regular working days and that's very normal because if a nuclear reactor somewhere explodes, then, you know, you don't want politicians to go, "Oh yeah, but I'm just having dinner with my wife and children, so, you know, can that



wait?" Sure. But I think that the fact, of course, that parliaments have a habit of working late into the night, you know, we very often have open-ended negotiations or debates in the evening. The fact that we have to travel to Strasbourg one time a month, I mean, that's really tough on families, and not only on those of elected members. I mean, I can, if I want to stay home, I could say, "Okay, well this time I'm going to stay home." It's frowned upon, of course, and I don't do it too often, but I could. But if you work for the Parliament like that, for instance, and you're just expected to go one week a month, that's one week a month where you're away from your family. I really think this is a system that comes from the time where, you know, men were swarming around doing very important things and, you know, fluffing around with lots of papers and this worked for them and it was great. But in these times, I also think that that really is an issue. And in my case, I take my youngest with me every time. But again, there, you know, if you have debates that go on until late in the evening, it's still a problem even there. So what they do in Parliament, and that's very important, in Strasbourg there is a crèche, so they do have childcare, so that's provided for, it's subsidized as well, so that helps. But moving to Strasbourg, that's a problem, and evenings, and those working times, that too.

**Interviewer:** Do you think the Parliament is slowly changing its ways too? Maybe not today but in a couple of years or do you think it will never get there if we don't fight more for it?

**Participant:** I think we need to fight and I think it's not going to happen on its own. I also think that there's also people who say that you shouldn't complain, right, if you're a Member of Parliament, you get paid a handsome salary, you can have help at home, you know, boohoo that this is difficult, because of course there are plenty of people out there in the world who work really really really hard, you know, who clean office buildings from 5 in the morning until 7 in the evening and who have children. So I think that there's always arguments, you know, out there and this I think is a very valid one, so I'm not saying that that's not valid, absolutely, this is just a particular set of difficulties, but there's loads of very real other difficulties. But because there's so many differing opinions, you know, of those who say yeah but if you've got the freedom then what's the problem or, you know, it's a personal mandate, of course you can't transfer, that means that you can only really break through that by pushing, otherwise there will just be this landscape of lots of opinions and no movement. But one of the problematic things in Europe now, of course, is that generally women's rights are coming





under pressure. And I haven't noticed it on things like this yet in the Parliament, but we do know that, I mean, on our own rights, but we do know that for many of the people who were elected here, it's time now to crack down on some of those achievements. And, you know, the pride in Budapest soon being an example of how we're, you know, how we're backtracking. And, you know, I've been in discussions here on, gosh, what was it, abortion? Or where I, yeah, I thought we were, you know, we were back in the 1970s. It's that if that now translates to and so also internally, you know, let's not prioritize this, then we really have a problem.

**Interviewer:** I once asked Frans Timmermans a question at an event, and he expressed a lot of skepticism about the possibility of implementing meaningful maternity leave across the EU. He said that there just isn't the political will to vote for it. That kind of mindset shift, he explained, would really need to come both from within the institutions and through external pressure. He was specifically referring to the European Parliament. I had been telling him about some research being done on the topic, which he found interesting, but he remained doubtful about its chances of leading to real change.

**Participant:** And then there's also the European electoral law to consider, right? Because, as I understand it, under that law, which is managed by the member states, your mandate is considered personal and non-transferable, or something along those lines. So, I think that would also need to be changed. There are basically two pathways: one involves the rules of procedure here in the Parliament, and the other involves the electoral law. But I believe both would need to be revised to enable broader changes. With just the rules of procedure, we might be able to implement things like remote voting, but not more substantial measures, like taking leave and having someone temporarily replace you. Alright, I'll leave it there. Thank you so much for your time and for participating.

## Appendix II

### 7.2. Letter to President European Parliament by MEPs, Sigrid Friis & Delara Burkhardt

As two Members of the European Parliament - and soon-to-be mothers - we are writing to you not only as elected representatives, but also as women who are living through a moment that fills us with both joy and frustration. Becoming a parent while serving in the European Parliament is a profound and personal experience. But as we prepare to welcome our children, we are also confronting the harsh reality that this institution - so proud of the rights it has helped secure for parents across Europe - has yet to offer those same protections and flexibility to its own members.

For us, it may already be too late. The reforms we are calling for - maternity and parental leave, the right to temporary substitution and remote voting - may not arrive in time to support us. Nevertheless, this fight is not just about our own pregnancies. It is about future MEPs - mothers, fathers, parents - who should never have to choose between fulfilling their democratic mandate and being present for the first days, weeks and months of their child's life.

We are proud of the progress the European Parliament has made in defending the rights of working parents across the Union. But these values must be reflected within our own house, the very heart of European democracy.

As you are aware, there is currently no formal recognition of maternity or parental leave for MEPs. We have no right to remote voting. There is no system in place to temporarily assign our votes or responsibilities to a colleague. In practice, this means that pregnancy and early parenthood leads to a loss of representation - not just for us, but also for the people who elected us. This is not only sexist and discriminatory, it is fundamentally undemocratic.

This is not a new issue. A manifesto calling for these reforms was presented in June 2023, with broad support across party lines. We are grateful for your engagement at that time and for the efforts you have made to explore solutions. However, more than nine months later, tangible change has yet to be delivered.

Can we agree that it is not a possibility to let another term pass without action? The absence of clear rules combatting this discriminatory practice sends a troubling message - not only to us,



but to every young person considering public service. With the average age of MEPs at 53, and only a handful under the age of 30, the lack of support for balancing family life with political responsibility is a barrier to participation, especially for women.

The European Parliament showed during the COVID-19 crisis that it could be agile. Remote voting was possible then-and it can be again. We are simply asking for the same flexibility when it comes to parenthood. We therefore urge you, once again, to champion the following reforms:

- Official Recognition of Parental Leave
- Amend the Rules of Procedure to allow maternity, paternity, and parental leave for Members of Parliament  
Temporary Substitution
- Create a mechanism to allow MEPs to appoint a trusted colleague to act on their behalf during a defined leave period
- Remote Voting During Leave acting as an intermediate solution for the inexistence of other opportunities

It is time for the European Parliament to lead by example. Let us ensure that becoming a parent does not mean stepping back from public life, and that our institution truly lives up to the values of equality, fairness, and representation that it so strongly defends. To show not only in words but also in action that women - seeing as we handle most of the parental leave - can also be politicians.

Thank you for your continued leadership and for your attention to this - for us - deeply personal and - for all Europeans - structural and important issue.

With kind regards,

Sigrid Friis, Member of the European Parliament

Delara Burkhardt, Member of the European Parliament

## Appendix III

### 7.3 Relevant International Instruments

#### 7.3.1. International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is highly relevant in examining maternity leave policies that require MEPs to waive their right to vote during maternity leave. Numerous clauses in the ICCPR are relevant for examining the nexus of gender equality, political involvement, and maternity leave.

Article 25 of the ICCPR guarantees every citizen's freedom to engage in public affairs, either personally or by freely selected representatives. This article protects the right to vote and to be elected, which constitutes the essence of democratic participation. The stipulation that MEPs relinquish their voting rights during maternity leave may constitute a breach of this Article, as it substantially restricts their capacity to engage in the legislative process, a fundamental element of public life. This restriction may be construed as an impediment to political engagement, compromising women's freedom to engage in public affairs on equal footing with their male counterparts. If insufficiently justified, such a policy may violate Article 25 of the ICCPR by depriving women who are pregnant or have recently given birth, consequently inhibiting their right to participate fully in the democratic process.<sup>83</sup>

Article 3 of the ICCPR requires States parties to guarantee the equal enjoyment of all civil and political rights for both men and women. This clause mandates governments to implement measures ensuring women possess equal rights to men, encompassing the right to political participation. The stipulation that female MEPs must forfeit their voting rights during maternity leave may be perceived as discriminatory, as it imposes a burden on women that does not impact men. Although the policy seems impartial, it imposes an unequal burden on women due to their biological roles, particularly pregnancy and childbirth, and may thus be

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<sup>83</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 25.

regarded as an instance of indirect discrimination. This approach may be contended to contravene the equal protection clauses of Article 3, which stipulates that men and women must be afforded equal treatment in the exercise of civil and political rights.<sup>84</sup>

Article 26 reinforces the principles of non-discrimination and equal legal protection, asserting that all individuals are entitled to equal protection under the law, irrespective of factors such as sex. The maternity leave provision, which imposes an extra burden on female MEPs by necessitating the relinquishment of their voting rights, may be construed as indirect sex discrimination. Men are not subjected to the same limitations, and this disparate treatment may be perceived as a failure to guarantee equal legal protection. Article 26 of the ICCPR mandates that any kind of discrimination must be justified and reasonable; thus, the policy in question would likely need to satisfy these rigorous requirements to align with international human rights norms. In the absence of a sufficient rationale, such a policy may be considered a contravention of Article 26, as it establishes a disparity between male and female MEPs.<sup>85</sup>

The ICCPR establishes a robust legal basis for contesting practices that obstruct women's political rights. Articles 25, 3, and 26 collectively provide a basis for asserting that maternity leave regulations mandating female MEPs to relinquish their voting rights during maternity leave contravene the values of gender equality, non-discrimination, and equitable participation in public affairs. The lack of equal treatment for female MEPs during maternity leave may constitute a breach of international human rights obligations as stipulated by the ICCPR.

### **7.3.2. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by the United Nations in 1979, is an essential international treaty aimed at advancing gender equality and eradicating discrimination against women across all spheres of life, including political engagement and employment. The stipulations of CEDAW are particularly pertinent for evaluating maternity leave regulations, notably concerning the obligation for MEPs to relinquish their voting rights during maternity leave. Multiple

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<sup>84</sup> Ibid., art 3.

<sup>85</sup> Ibid., art. 26.

provisions of CEDAW can be utilised to evaluate if this policy infringes against women's rights to equality and non-discrimination.

Article 1 of CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, regardless of their marital status, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This expansive definition of discrimination is crucial for comprehending the effects of laws that impose extra burdens on women, especially in political contexts.<sup>86</sup>

Article 11 of CEDAW specifically addresses women in employment, and it requires states to take measures to eliminate discrimination against women in the workforce, including the areas of maternity protection. This article stipulates that women must have the right to equitable workplace circumstances, encompassing adequate maternity leave, safeguards against termination during maternity, and the entitlement to resume employment following maternity leave. The standard mandating that female MEPs relinquish their voting rights during maternity leave may be regarded as a discriminatory practice within the political domain, akin to job discrimination experienced during maternity leave. This approach, by neglecting to address women's demands during maternity leave, undermines the idea of equal treatment and access to political participation for women. This strategy may imply that women are undervalued as political representatives because of their biological role as mothers, reinforcing gender inequities in political involvement.<sup>87</sup>

Article 5 of CEDAW mandates alterations in social and cultural behaviours that sustain discrimination against women. It urges states to implement efforts to alter the social and cultural norms that frequently harm women across multiple domains, including politics. The maternity leave policy in the European Parliament, by necessitating that women relinquish their voting rights during maternity leave if they cannot be physically present during the vote, may be perceived as reinforcing conventional gender roles that regard women as primary carers, thereby undermining their capacity for full engagement in political decision-making.

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<sup>86</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW) art 1.

<sup>87</sup> *Ibid.*, art 11.

Such measures may perpetuate the notion that women's maternal responsibilities hinder their effectiveness in public life. If unaddressed, this cultural and social bias would contradict the objectives of Article 5, which seeks to dismantle gender stereotypes and foster equal participation across all domains of life.<sup>88</sup>

Article 7 of CEDAW explicitly pertains to the political involvement of women, mandating that States parties implement all necessary steps to guarantee that women possess equal rights with men in political and public spheres, encompassing the rights to vote, run for election, and occupy public office. The arrangement that compels female MEPs to give up their voting rights during maternity leave diminishes women's equal involvement in political affairs. It serves as an impediment to the complete realisation of political rights for women, especially those in leadership positions like MEPs. This standard hinders women's ability to fulfil their responsibilities as elected representatives by mandating the relinquishment of a basic right during maternity leave. This contradicts Article 7, which seeks to remove barriers to women's complete political involvement and guarantee their equal ability to partake in public affairs.<sup>89</sup>

CEDAW's focus on eradicating all forms of discrimination against women and promoting equitable participation across all domains of life corresponds with the necessity to tackle maternity leave policies in political institutions that impose further obstacles for women. CEDAW stipulates that maternity leave ought to serve as a period of protection and assistance for women, rather than one that disadvantages them in political positions. CEDAW mandates that governments prevent discrimination against women based on their biological functions, including pregnancy and delivery, and foster an environment that enables women's full participation in public and political life.

In conclusion, CEDAW's provisions establish a legal foundation to contest maternity leave policies that restrict women's political engagement. Articles 1, 5, 7, and 11 explicitly emphasise the duty to eradicate prejudice against women and guarantee their equal involvement in political and public spheres. The policy mandating that female MEPs

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<sup>88</sup> Ibid., art 5.

<sup>89</sup> Ibid., art 7.



relinquish their voting rights during maternity leave contradicts these principles and may constitute a breach of international human rights commitments under CEDAW. Amendments to these policies are essential to guarantee gender equality and the complete involvement of women in the political arena.

### **7.3.3. The International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, No. 111 and the ILO Maternity Protection Convention, No. 183**

The International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, No. 111 and the ILO Maternity Protection Convention, No. 183 both provide essential frameworks for analysing gender-based discrimination, particularly in the context of employment and political participation. These conventions address the need to protect women from discrimination and ensure that maternity leave policies are supportive rather than punitive. In evaluating policies such as the stipulation for MEPs to forfeit their voting rights during maternity leave, these ILO instruments provide significant international benchmarks to assess the alignment of such policies with overarching labour rights protections.

The ILO Discrimination (Employment and Occupation) Convention, No. 111, established in 1958, seeks to eradicate discrimination in employment based on many criteria, including gender. It requires states to implement policies and measures to avert discrimination based on many characteristics, including gender, in employment and occupations. The treaty encompasses all workers, including individuals in political positions, and establishes a framework for combating gender-based discrimination in all forms of employment, including political office.

Article 1 of Convention No. 111 stipulates that "discrimination" encompasses any distinction, exclusion, or preference based on sex that undermines or diminishes equality of opportunity or treatment in employment or vocation.<sup>90</sup> Article 2 of the Convention mandates that states foster equality of opportunity and treatment in employment and occupation. This encompasses the obligation to eliminate any discriminatory practices or policies. Maternity leave norms that disfavour women by necessitating the relinquishment of their voting rights in case of their

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<sup>90</sup> International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention No 111 (adopted 25 June 1958, entered into force 15 June 1960), ILO No. 111, art 1.

absence are a blatant violation of this principle. This policy exacerbates gender inequality by complicating political engagement for women, potentially deterring them from pursuing or sustaining positions in political office. This may be regarded as a failure to adhere to the ILO's mandate to eradicate discriminatory practices that obstruct women's full participation in political life, thereby constituting a breach of the principles outlined in Convention No. 111.<sup>91</sup>

The ILO Maternity Protection Convention, No. 183, enacted in 2000, expressly safeguards women during maternity, guaranteeing their entitlement to maternity leave, job stability, and equitable treatment in the workplace. It sets forth minimum criteria for maternity protection, encompassing regulations for maternity leave, the entitlement to reintegration into the workforce post-leave, and safeguards against dismissal during pregnancy and childbirth. Article 4 of Convention No. 183 stipulates that women are entitled to a minimum duration of compensated maternity leave, aimed at ensuring sufficient protection for both the mother and the child.<sup>92</sup> The ILO envisions maternity leave as a provision that allows mothers to recuperate from childbirth and attend to their new-borns without incurring professional penalties. The norm mandating that MEPs renounce their voting rights undermines the notion of maternity leave as a period for health recuperation and bonding, instead imposing a professional disadvantage on women during this crucial time.

Article 10 of Convention No. 183 mandates that women on maternity leave shall not encounter discrimination regarding their employment status, career advancement, or political engagement.<sup>93</sup> Both the ILO Discrimination (Employment and Occupation) Convention, No. 111, and the ILO Maternity Protection Convention, No. 183, provide important protections for women in the workplace, including in political roles. The requirement for MEPs to surrender their voting rights during maternity leave highlights that these conventions provide a strong international basis to contend that such a policy is discriminatory and at odds with international labour norms.

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<sup>91</sup> Ibid., art 2.

<sup>92</sup> International Labour Organization (ILO) Maternity Protection Convention No 183 (adopted 15 June 2000, entered into force 7 February 2002), ILO, No. 183, art 4.

<sup>93</sup> Ibid., art 10.

Convention No. 111 mandates that governments eradicate discrimination in employment, encompassing political positions. Convention No. 183 reinforces this assertion by highlighting that maternity leave must not lead to a forfeiture of rights or professional status. Mandating that female MEPs lose their voting rights during maternity leave undermines the objective of maternity protection, which is to ensure women's involvement in both personal and professional spheres without repercussions.

These standards underscore the essential significance of maternity leave as both a right and a safeguard. The policy discourages women's political engagement by conditioning it on the relinquishment of voting rights during maternity leave, hence perpetuating gender inequity. This contradicts the fundamental objectives of both conventions: eradicating discrimination against women in the workforce and public sphere, and guaranteeing that maternity does not preclude women from their proper role in political decision-making. These agreements establish a robust legal and academic basis for promoting modifications to the maternity leave policy in the European Parliament, ensuring compliance with international labour standards and safeguarding women's health and political rights.

#### **7.3.4. UN Women's Beijing Platform for Action**

The UN Women's Beijing Platform for Action, established in 1995, is a thorough international framework aimed at promoting gender equality. It aims to combat diverse forms of prejudice against women and enhance their involvement in all facets of society, including politics. The Beijing Platform underscores the necessity for women's comprehensive involvement in political decision-making and public affairs. A primary purpose is to enhance the representation of women in positions of authority and decision-making, which entails establishing conditions that enable women to participate fully in political roles without being hindered by familial obligations, such as maternity. Mandating that female MEPs cede their voting rights during maternity leave undermines this goal, obstructing their capacity to fulfil their responsibilities as elected representatives.

The Platform emphasises the necessity of gender equality between women and men in political and public spheres. It urges states and political institutions to establish conditions that enable women to engage equally without encountering gender-related hurdles. The Beijing Platform explicitly seeks to eradicate gender-based barriers, and the lack of equitable political

participation chances during maternity leave contravenes the Platform's tenets of female equality in political affairs. The Platform emphasises the necessity of confronting systemic obstacles that impede women's progress across all domains, including politics. These obstacles encompass both direct and indirect discrimination, shown by maternity leave rules that penalise women in political positions. The Beijing Platform recognises the influence of traditional gender norms on women's involvement in the workforce and political sphere. It acknowledges that familial obligations, including childcare and maternity, are disproportionately assigned to women, thus constraining their prospects in public life. The Beijing Platform for Action also delineates a definitive framework for advancing gender equality in political participation and decision-making. The Platform explicitly advocates for political institutions that enable women's participation without penalising them for their familial responsibilities, including motherhood. The Platform's emphasis on tackling structural impediments and conventional gender roles offers a critical perspective for assessing maternity leave policy. The Platform's focus on removing gendered barriers to political engagement underscores the necessity for policies that facilitate women's comprehensive involvement in public life, rather than imposing further obligations due to their biological function as mothers.<sup>94</sup>

### 7.3.5. Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR), ratified by the United Nations in 1948, delineates essential human rights that are universally acknowledged and assured for all individuals, irrespective of nationality, ethnicity, or gender. The UDHR, while not legally enforceable, has significantly impacted the evolution of international human rights legislation. Article 21(1) of the UDHR states that "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." This Article guarantees the right of all citizens, irrespective of gender, to participate in political life, encompassing the right to vote and to run for office.<sup>95</sup>

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<sup>94</sup> UN Women, **Beijing Platform for Action** (Fourth World Conference on Women, 1995) <https://www.un.org/womenwatch/daw/beijing/platform/> accessed 22 April 2025.

<sup>95</sup> UN General Assembly, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 21(1).

The UDHR also codifies the principle of non-discrimination within its rules. Article 2 declares that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, or any other status."<sup>96</sup>

This clause ensures that all individuals, irrespective of sex or gender, possess equal rights and freedoms, including the right to engage in public affairs and political decision-making.

Article 21(3) of the UDHR further reinforces the importance of equality in political life by stating that "The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage."<sup>97</sup> This provision underscores the essential significance of equal suffrage and engagement in political affairs. Eliminating women's capacity to fully participate in the legislative process during maternity leave affects equitable involvement in elections and governance. The disparity in the exercise of political rights results in women being less capable of properly representing their constituency, contradicting the UDHR's assertion of universal and equal involvement in governance.

Furthermore, Article 23 of the UDHR ensures the right to employment and engagement in economic, social, and political domains without discrimination. This encompasses the entitlement to equitable and advantageous working circumstances, which must safeguard individuals from discriminatory practices based on gender, especially during maternity leave.<sup>98</sup> The UDHR presents substantial legal and policy ramifications for contesting maternity leave practices that disfavour women in political positions. It also offers a foundational human rights framework that can be employed to contest discriminatory actions within political institutions.

#### **7.3.6. International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the United Nations in 1966, is a significant international treaty that acknowledges an extensive array of rights pertaining to economic, social, and cultural domains. It is essential for protecting the welfare of individuals, particularly those in political positions.

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<sup>96</sup> Ibid., art 2.

<sup>97</sup> Ibid., art 21(3).

<sup>98</sup> Ibid., art 23.

Article 3 of the ICESCR affirms that “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” This clause mandates that states guarantee equal rights for men and women in all domains, encompassing their involvement in public life and the exercise of their rights in the workplace.<sup>99</sup>

Moreover, Article 7 of the ICESCR guarantees the right to equitable and favourable working circumstances, encompassing provisions that enable workers to balance their professional and familial obligations. It explicitly states the entitlement of mothers to obtain paid maternity leave or equivalent benefits.<sup>100</sup>

Article 10 of the ICESCR emphasises the necessity of safeguarding the family by guaranteeing that both parents have the protection and support required to rear their children. It advocates for the formulation of policies that enhance family welfare and ensure the active involvement of both parents in family life.<sup>101</sup>

Furthermore, the ICESCR acknowledges the right to health in Article 12, encompassing access to maternity care and provisions to safeguard the welfare of women and children.

Upholding the right to health under the ICESCR necessitates measures that empower women to retain their political rights during maternity leave, rather than penalising them for their maternal responsibilities. In summary, the ICESCR establishes a framework for tackling inequities impacting women in the workplace and public life.

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<sup>99</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 3.

<sup>100</sup> Ibid., art 7.

<sup>101</sup> Ibid., art 10.

## **7.4. Relevant European Union Instruments**

### **7.4.1 General Principles**

Alongside specific EU legislation, certain basic principles of EU law may be pertinent to the issue of maternity leave for MEPs and the stipulation that they relinquish their voting rights during maternity leave if they are absent during the voting procedure. The principle of non-discrimination, articulated in Article 19 of the Treaty on the Functioning of the European Union (TFEU)<sup>102</sup>, is among the most significant principles. This concept forbids any discrimination based on sex, guaranteeing that both men and women possess equal access to all rights, including political participation. The stipulation that MEPs must surrender their voting rights during maternity leave, if absent from the vote, may be perceived as a contravention of this principle. The principle of effective remedy necessitates that individuals have access to legal recourse when their rights are violated, which could serve as a foundation for contesting maternity leave policies that limit political participation. Finally, the principle of proportionality in EU law mandates that any measure limiting basic rights must be both essential and reasonable to the intended objective. The restriction for female MEPs to forfeit their voting rights during maternity leave must be substantiated by a genuine objective and demonstrated to be a reasonable measure in relation to that objective. The overarching EU principles jointly underscore the necessity for a maternity leave policy that enables women in political positions to fully enjoy their rights, thus promoting equality and non-discrimination within the political arena.

### **7.4.2. Charter of Fundamental Rights of the European Union (CFR)**

The Charter of Fundamental Rights of the European Union (CFR), which was formally adopted in 2000 and became legally binding under the Treaty of Lisbon in 2009, provides a strong legal framework for protecting individual rights within the EU. Articles 21, 23, and 33 of the CFR explicitly pertain to equality, non-discrimination, and the harmonisation of work and family life, all of which are essential for evaluating the compliance of such policies with fundamental rights.

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<sup>102</sup> Treaty on the Functioning of the European Union (TFEU) (consolidated version) [2012] OJ C326/47, art 19.



Article 21 of the CFR, which forbids discrimination, is pertinent to the current issue. It states: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation is prohibited."<sup>103</sup> This article establishes a comprehensive anti-discrimination framework that includes gender as a protected feature.

Article 23 of the CFR ensures equality between women and men, specifically stating: "Equality between women and men must be ensured in all areas, including employment, work and pay."<sup>104</sup> This provision requires the maintenance of gender equality in all areas, including political representation.

Article 33 of the CFR, which pertains to the reconciliation of professional and familial responsibilities, is particularly relevant. It states: "Everyone has the right to protection of their family and professional life. The Union recognizes and respects the entitlement to social security and social assistance and to maternity and paternity leave." This clause is pertinent to maternity leave, as it ensures both familial and professional rights and acknowledges maternity leave as a fundamental entitlement. Article 33 advocates for a balance between professional and familial responsibilities, asserting that women should not be compelled to choose between their career obligations and family duties.<sup>105</sup>

From a legal standpoint, Articles 21, 23, and 33 of the CFR furnish a strong foundation for contesting the maternity leave standard that compels female MEPs to relinquish their voting rights. These articles together enforce gender equality, ban discrimination based on gender, and safeguard the right to balance familial and professional responsibilities. The policy in question may be contended to infringe upon these fundamental rights by putting an inequitable burden on women. Article 21 mandates that every gender-based differentiation must be substantiated by a valid objective and must be proportionate; if a policy fails to justify the imposition of a larger burden on women, it may be considered unlawful. Articles 23 and 33

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<sup>103</sup> Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, art 21.

<sup>104</sup> Ibid., art 23.

<sup>105</sup> Ibid., art 33.

bolster the case by emphasising the imperative of gender equality in political spheres and the requirement for policies that facilitate the reconciliation of familial and professional responsibilities.

Nonetheless, the CFR possesses certain limits in this situation. Although it provides a robust framework for tackling equality and non-discrimination, it primarily emphasises the safeguarding of individual rights and does not specifically consider the specific matter of political representation or the distinct requirements of elected officials during maternity leave. Although women's rights to political participation and equitable treatment in employment are safeguarded, the CFR lacks comprehensive regulations expressly addressing the working conditions of elected officials during maternity leave. This absence may restrict the legal mechanisms available to contest the specific mandate for MEPs to relinquish their voting rights. The CFR fails to provide a thorough resolution for balancing the obligations of political office with familial responsibilities regarding maternity leave, necessitating more sophisticated legislation at the EU level.

A significant drawback of the CFR is its broad breadth, which allows for interpretation and sometimes fails to offer clear, precise guidance about the intersection of political activity and maternity leave. For instance, although it ensures the freedom to engage in public affairs and political life, it does not expressly delineate the management of maternity leave for elected officials. This may complicate the direct application of these principles to contest maternity leave policies that insufficiently encourage women's political engagement. Moreover, while the CFR forbids discrimination, it may not comprehensively tackle structural impediments inside democratic institutions that disproportionately impact women, exemplified by the voting regulations of the European Parliament.

#### **7.4.2. General Principles**

Directive 2006/54/EC concerning gender equality in employment is a significant European Union statute designed to advance workplace gender equality. It encompasses all facets of employment, including equitable remuneration, career advancement, and access to job opportunities, with a specific focus on mitigating discrimination based on gender. Directive 2006/54/EC seeks to guarantee equitable treatment of women and men in the workplace,

emphasising the eradication of both direct and indirect sex-based discrimination. It delineates multiple strategies to promote gender equality in employment, encompassing stipulations on occupational social security systems, career advancement, and job accessibility. The Directive emphasises the necessity of safeguarding women from disadvantages in employment conditions related to pregnancy and childbirth, including their capacity to perform professional duties, when evaluating maternity leave programs.

Article 2 of the Directive is a pivotal element that delineates discrimination based on sex as any differentiation, exclusion, or limitation that impacts an individual's access to employment or their working conditions.<sup>106</sup> The Directive underscores the significance of equitable treatment in career advancement in Article 14, guaranteeing that women are not disadvantaged for taking maternity leave or for fulfilling caregiving obligations.<sup>107</sup> The Directive addresses social security and family duties, establishing a framework that safeguards workers encountering life events such as pregnancy, childbirth, or caring. Article 5 of the Directive mandates that Member States guarantee women's access to maternity leave and prohibit discrimination based on maternity-related absences.<sup>108</sup>

Although Directive 2006/54/EC establishes a robust legal framework for promoting gender equality in the workplace, its rules have limitations when applied directly to the context of maternity leave in political office. The Directive largely concentrates on employment and does not explicitly consider the nuances of political office, including the necessity for elected individuals to perform legislative duties. Consequently, there exists a deficiency in addressing how maternity leave laws ought to meet the political responsibilities of MEPs while simultaneously maintaining gender equity in career advancement and participation. The Directive does not clearly address maternity leave for elected representatives, complicating the direct application of equal treatment norms inside the political domain.

Furthermore, although the Directive underscores equal treatment, it does not stipulate the precise procedures or accommodations necessary to guarantee that women in political

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<sup>106</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the equality of men and women in employment [2006] OJ L 204/23, art 2.

<sup>107</sup> Ibid., art 14.

<sup>108</sup> Ibid., art 5.

positions can properly fulfil their responsibilities during maternity leave. The lack of specific provisions for elected officials indicates that, although the Directive establishes a significant basis for gender equality, there may remain deficiencies in the protection it affords to women in political positions, particularly regarding the interplay between familial obligations and political responsibilities.

#### **7.4.3. Directive 92/85/EEC**

Directive 92/85/EEC, pertaining to the health and safety of pregnant workers, is a crucial European Union policy designed to safeguard workers throughout pregnancy, motherhood, and the postpartum phase. The Directive aims to protect the health and safety of pregnant women and those who have just given birth, specifying the conditions for granting maternity leave and the treatment of women in the workplace during this time.

The principal objective of Directive 92/85/EEC is to safeguard pregnant workers against hazards that may jeopardise their health or that of their child. It mandates businesses to implement suitable steps to prevent pregnant employees from being subjected to dangerous environments, and it ensures maternity leave accompanied by sufficient health safeguards during this time. The Directive's clauses emphasise the obligation of political institutions to support women during maternity leave, rather than implementing measures that exacerbate their burdens. The stipulation for female MEPs to be present to exercise their voting rights during maternity leave may be perceived as an inadequacy in offering suitable support for women in political positions, as it fails to acknowledge the necessity for both health protection and the capacity to perform their professional duties during this time.

A principal stipulation of the Directive mandates a minimum maternity leave of 14 weeks, with remuneration when relevant.<sup>109</sup> The standard mandating MEPs to relinquish their voting rights during maternity leave may be perceived as contravening this principle by establishing a scenario in which women are professionally penalised for availing themselves of maternity leave. The Directive stipulates that women are entitled to maternity leave without incurring professional disadvantages, and their reintegration into the workplace should be facilitated without adverse effects on their career status.

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<sup>109</sup> Directive 92/85/EEC of the European Parliament and of the Council of 19 October 1992 on the health and safety of pregnant workers [1992] OJ L 348/1, art 8.

Moreover, the Directive stipulates that women must not be subjected to hazardous working conditions during pregnancy and childbirth. Although primarily pertinent to physical workplaces, the fundamental notion of safeguarding against detrimental conditions remains applicable in the realm of political endeavours. Maternity leave policies should guarantee the welfare of women and protect their capacity to resume full engagement in their responsibilities after completing their absence. The stipulation to forgo voting rights by categorising maternity leave as a duration of political exclusion may be perceived as incongruent with the notion of health and well-being.

#### **7.4.4. Directive 2000/78/EC**

Directive 2000/78/EC establishes a comprehensive framework for equal treatment in employment and occupation, serving as a fundamental piece of European legislation designed to eradicate workplace discrimination based on religion, belief, disability, age, or sexual orientation. The regulation primarily addresses discrimination in employment, although its provisions also offer significant insights into the overarching ideal of equality within professional settings, including political institutions. Article 2 of the Directive forbids discrimination based on religion, belief, disability, age, or sexual orientation, while also creating a comprehensive legal framework to guarantee equal treatment in all facets of employment, encompassing the capacity to fulfil responsibilities and engage fully in professional life.<sup>110</sup> For MEPs, elected representatives inside a political institution, their capacity to engage comprehensively in decision-making is a fundamental feature of their function. Maternity leave necessitates a temporary withdrawal from employment; however, the regulations surrounding this leave should not result in the exclusion of women from their political duties to the same degree as their male counterparts, who do not encounter analogous biological limitations.

The rules of Directive 2000/78/EC regarding equal treatment indicate that such exclusions may contravene fundamental principles of equality, especially when women's absence from voting stems from biological functions and familial obligations, as previously analysed.

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<sup>110</sup> Directive 2000/78/EC of the European Parliament and of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16, art 2.

The Directive also pertains to reasonable accommodation, specifically for employees with disabilities, guaranteeing that they receive the requisite modifications to enable equitable participation in the workplace. Although the laws do not explicitly address maternity leave, the fundamental principle of reasonable accommodation may be applicable in this scenario. For MEPs on maternity leave, appropriate accommodations could be established to enable their participation in parliamentary votes, despite their physical absence. In alternative legislative situations, appropriate accommodations for maternity leave may encompass remote voting, proxy voting, or other provisions that facilitate women's ongoing fulfilment of their responsibilities. The absence of such measures in the European Parliament's existing regulations results in female MEPs being deprived of a crucial component of their duties during maternity leave, which may be perceived as an inadequate accommodation of their familial obligations.

Article 5 of the Directive mandates the implementation of measures to accommodate workers with disabilities, indicating that workplace practices must be modified to provide equal access and participation in employment, regardless of individual circumstances.<sup>111</sup> This rule, while centred on disability, underscores a broader principle that may be applicable to maternity leave. The prohibition against voting during maternity leave, owing to physical absence, may be perceived as a failure to address the particular requirements of women during this time, hence not completely adhering to the overarching principle of equality advocated by the Directive. This may be exacerbated by the reality that women, owing to biological factors, frequently assume the principal responsibility for childcare and caregiving during maternity leave, while additional obstacles, such as the inability to vote remotely, could disproportionately hinder their engagement in political affairs.

Moreover, Article 6 of Directive 2000/78/EC, which allows for the enactment of targeted measures to promote equal treatment, creates opportunities for the establishment of accommodations and modifications to enhance the involvement of individuals in employment activities.<sup>112</sup> This article does not explicitly discuss maternity leave; however, its overarching mandate could support the argument that permitting female MEPs to engage in voting during

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<sup>111</sup> Ibid., art 5.

<sup>112</sup> Ibid., art 6.

maternity leave aligns with the Directive's objective of fostering equal access to professional life and participation. The absence of women from the voting process during maternity leave may be regarded as an institutional impediment to equality, and the implementation of suitable modifications would be consistent with the objectives outlined in the Directive.

From a legal standpoint, the implementation of Directive 2000/78/EC concerning maternity leave inside the European Parliament prompts significant enquiries regarding the equality of participation in political decision-making. The existing structure mandates the physical presence of MEPs for voting, so disadvantaging women on maternity leave by inhibiting their ability to exercise their voting rights while attending to familial obligations. The Directive's stipulations regarding reasonable accommodation and equal participation indicate that measures facilitating more adaptable voting methods, such as remote or proxy voting, would more effectively conform to the ideals of equal treatment and inclusion that are fundamental to the Directive.

#### **7.4.5. Regulation (EU) No 1141/2014**

Regulation (EU) No 1141/2014, which pertains to the regulation of political parties and political foundations at the European level, is a crucial legislative instrument that regulates the operations of political entities within the EU. The primary emphasis is on the financing, structure, and transparency of European political parties, while also addressing the participation and representation of elected officials in the European Parliament, including issues of gender equality and the overall inclusiveness of the political process.

A primary purpose of Regulation 1141/2014 is to guarantee that political parties at the European level are inclusive, transparent, and reflective of the European Union's diversity. The rule advocates for political entities to implement policies that foster gender equality in their operations and frameworks. The regulation does not explicitly address maternity leave for elected representatives; however, its focus on inclusivity and equal participation can serve as a basis for advocating policies that facilitate women's equal involvement in the political arena, especially during temporary absences like maternity leave. Considering the regulation's overarching objective of promoting inclusivity in European politics, it can be posited that permitting female MEPs to engage in voting processes during maternity leave, via proxy voting, digital voting, or alternative flexible methods, would align with the regulation's fundamental aims.



Concerning gender equality, Article 3 of Regulation 1141/2014 mandates that political parties comply with the principles of gender balance in their organisational frameworks, guaranteeing equal representation of women and men in decision-making positions.<sup>113</sup> The rule consequently endorses programs that promote a more inclusive political landscape, including those aimed at mitigating obstacles that disproportionately impact women, such as the disenfranchisement during maternity leave. The stipulation that female MEPs must be physically present to vote may be perceived as an implicit obstacle to women's participation, disproportionately impacting those who are temporarily absent from Parliament owing to motherhood. This may compromise the Regulation's objective of attaining gender balance and equality in political representation. The regulation's intent of gender inclusion is not completely achieved by excluding women on maternity leave from voting participation. The legislation ensures the operational autonomy of political parties and foundations regarding their internal structure and functions. Nonetheless, while safeguarding this autonomy, the law must also conform to the overarching EU values of non-discrimination and equitable participation. This gives female MEPs the chance to assert that their complete involvement in legislative processes should not depend on their physical presence but rather be supported by systems enabling them to accomplish their duties remotely during maternity leave. This would guarantee that women are not marginalised from critical choices during their absence, fostering a more inclusive and gender-equitable political landscape at the European level.

Moreover, Article 10 of Regulation 1141/2014 emphasises the necessity for political parties to maintain transparency and accountability in their operations. Political engagement should encompass not just those physically present in the legislative process but also address the different demands of Members of the European Parliament, including those on maternity leave. The barring of women from voting during maternity leave may jeopardise the democratic accountability and representative role of the European Parliament. The current structure's inability to accommodate MEPs' familial obligations may unwittingly compromise the legitimacy of the democratic process by diminishing the diversity of perspectives in critical decision-making instances, especially in the absence of female representatives.

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<sup>113</sup> Regulation (EU) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the regulations governing political parties and political foundations at the European level [2014] OJ L 317/1, art 3.

Regarding operational efficiency, Regulation 1141/2014's focus on the representation of European citizens may substantiate the claim that women, irrespective of maternity leave, should maintain the capacity to vote on behalf of their constituency. The temporary exclusion of women from full participation owing to maternity leave may undermine the representative function of the European Parliament, particularly when a substantial segment of the population is unrepresented during critical legislative proceedings. Consequently, to guarantee equitable representation for all citizens, it is essential to explore procedures that enable MEPs to fulfil their responsibilities, even during maternity leave.

From a legislative and policy standpoint, Regulation 1141/2014 advocates for more inclusive practices that enable MEPs to maintain their voting participation during maternity leave. By promoting the establishment of more inclusive and adaptable voting methods, the rule indirectly coincides with the EU's overarching gender equality goals. Nevertheless, the Regulation does not explicitly pertain to maternity leave or voting participation, indicating that its significance in this context primarily lies in establishing a basis for inclusion and the equitable treatment of female representatives. The essence of the rule can be utilised to promote more progressive and flexible policies within the European Parliament, guaranteeing that female MEPs are not marginalised in the legislative process solely due to their caregiving obligations.

#### **7.4.6. Directive 2003/88/EC**

Directive 2003/88/EC, which governs working time within the European Union, is a crucial legislative instrument that pertains to workers' rights concerning working hours, rest intervals, yearly leave, and various other facets of their working circumstances.

Directive 2003/88/EC fundamentally outlines the right of workers to rest and recuperation, guaranteeing sufficient time away from work to preserve their health and well-being. Article 7 of the Directive ensures that workers are entitled to paid yearly leave, a fundamental component of maintaining work-life balance. Likewise, articles 3 and 5 of the Directive ensure daily and weekly rest periods, which are essential for safeguarding workers' health and welfare.<sup>114</sup> The fundamental idea of these provisions is the acknowledgement that sufficient

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<sup>114</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2003] OJ L 299/9, art 3 and 5.

rest and recuperation time is crucial for workers to execute their responsibilities efficiently and securely.

Directive 2003/88/EC is pertinent to maternity leave for MEPs as it acknowledges the essential need for unwinding and recuperation from work, which should equally apply during maternity leave. The Directive, while not explicitly mentioning maternity leave, encompasses principles of sufficient rest and the entitlement to time off work for the protection of well-being, which might be applied to female MEPs on maternity leave that are still forced to be present in order to cast their vote.

The Directive's focus on rest and recuperation can be construed as endorsing the principle that maternity leave should not adversely affect women's professional standing or hinder their capacity to engage fully in their responsibilities as elected officials. Maternity leave is a period during which a woman should be permitted to recuperate from childbirth, attend to her child, and handle familial obligations without incurring professional repercussions. The European Parliament's current practice contradicts the rights conferred by the Directive by prohibiting female MEPs from voting through proxy voting or digital voting during this period. Similar to workers' rights to yearly leave and rest breaks, MEPs should not be precluded from fulfilling their legislative responsibilities only due to maternity leave.

Besides rest and recovery, Article 2 of Directive 2003/88/EC delineates the overarching mandate for working time regulations that safeguard workers against excessive hours and facilitate a balance between professional and personal life.<sup>115</sup> This section underscores the significance of acknowledging the particular requirements of employees, particularly those necessitating time off for health-related issues, such as maternity leave. The pattern requiring female MEPs to forfeit their voting rights during maternity leave is an overly restrictive measure that disregards the balance between professional duties and home responsibilities. The existing regulation effectively disenfranchises women during a crucial phase when their complete engagement is vital, rather than providing flexibility or accommodations to facilitate their political activity during maternity leave.

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<sup>115</sup> Ibid., art 2.

From a legislative standpoint, Directive 2003/88/EC establishes a framework to assert that maternity leave policies in the European Parliament shall not lead to the exclusion of female MEPs from political activities. Applying the Directive's principles on rest and recuperation and working time regulations to maternity leave suggests that the European Parliament ought to offer reasonable accommodations enabling female MEPs to fulfil their political responsibilities during maternity leave without facing professional repercussions. This may entail procedures such as permitting remote voting, proxy voting, or alternative participation methods that ensure the continuity of legislative processes while acknowledging the necessity for rehabilitation and family care.

#### **7.4.7. Rules of Procedure of the European Parliament**

The European Parliament's Rules of Procedure regulate its internal operations and are crucial for defining its functionality, particularly concerning procedural issues like voting rights. These regulations are significant as they influence the daily operations of Parliament; nevertheless, unlike EU regulatory acts or legislative measures, they are not classified as regulatory acts and, consequently, are exempt from the same judicial review procedures. Nonetheless, although they are internal, they are essential regarding MEPs' rights, especially in relation to their capacity to engage comprehensively in Parliamentary operations.

Rule 193, a fundamental article of the Rules of Procedure, regulates the voting rights inside the European Parliament. The rule stipulates that voting is an individual right that must be exercised personally and in person. This poses a substantial obstacle for MEPs on maternity leave, who cannot engage in voting throughout their absence. The rule mandates that MEPs must be physically present to vote, indicating that any absence from a plenary session, including maternity leave, precludes an MEP from executing this essential component of their legislative responsibilities. Moreover, any infringement of this regulation, including voting on behalf of another MEP or absence while voting, constitutes a significant violation of Rule 10(3) of the Rules of Procedure, underscoring the stringent nature of these voting stipulations.

The implications of these voting prerequisites are exacerbated by Rule 245, which stipulates that MEPs absent from plenary sessions are ineligible to vote unless particular conditions are met. Although specific procedural exclusions are present, the existing Rules of Procedure do



not permit proxy or digital voting, thereby excluding MEPs on maternity leave from the voting process entirely. This absence restriction perpetuates the exclusion of MEPs on maternity leave, as it fails to offer them the choice to engage remotely or via a substitute during their absence.

Amendment of Rule 243 is necessary to update the Rules of Procedure to accommodate MEPs on maternity leave. This regulation dictates the processes for amending the internal regulations of the European Parliament. Modifying Rule 193 to provide proxy or digital voting may address the exclusion of MEPs from the legislative process during maternity leave.

Nonetheless, this alteration necessitates political backing and endorsement from the Parliament, presenting a considerable obstacle to surmount.

In summary, the Rules of Procedure are essential in delineating the procedural rights of MEPs within the European Parliament, with Rule 193 serving as a pivotal regulation concerning voting rights. The stipulation that voting must be conducted personally and in person is a considerable obstacle for MEPs on maternity leave, as they are precluded from participating in votes during their absence. The inability to revise these regulations establishes an obstacle to participation that could be mitigated by implementing measures such as proxy voting or electronic voting.

## Appendix IV

### 7.5. Comparative Jurisdictions Overview

#### 7.5.1. The Netherlands

##### *Regulatory framework*

The Netherlands' constitutional and regulatory framework for the temporary substitution of elected officials during instances of pregnancy, childbirth, or illness. Article 57a of the Constitution, in conjunction with Articles X10 to X12 of the Electoral Act, delineates the provisions for Members of Parliament to take leave and for substitutes to be appointed from the same electoral list. So in the Netherlands, political representatives can request temporary leave. This looks like an effective means to balance personal interests with the needs of the institution, but the system still has significant issues with becoming flexible and quick to respond. One of the positive aspects of the Dutch approach is that it recognizes the necessity for temporary replacement instead of forcing someone to quit or be absent for a long time without coverage. This keeps both political representation and the integrity of democracy. The procedure of choosing a temporary replacement, which is normally the next person on the party's electoral list, also keeps proportional representation and stops by-elections. In this way, the system is legally solid and helps keep parliament stable. But in practice, the implementation often fails to resolve the complicated situations that representatives deal with. Leave is provided for a set amount of time, sixteen weeks, and can only be extended in specific increments and under rigorous conditions. You need to have medical records, and there is a limit on how many leave requests you can make each term. These factors make matters more bureaucratic and less flexible than they should be. The strict timetable for pregnant leave, like needing a set start date weeks before the due date, does not properly consider how unpredictable pregnancy and recuperation might be.

### *Reforms and flexibility*

In 2023, the Dutch Advisory College was requested to investigate this system to see what the legal standing of politicians was.<sup>116</sup> Their conclusions were clear: under the Work and Care Act (Wazo), political representatives should have the same rights to leave as regular workers. This would make sure that holding a political post is possible while also taking care of personal and family duties. For full-time politicians like MPs or aldermen, political office is their sole job and source of income. This makes the lack of good leave options even more important. The College also suggested that there be more leeway in how leave is given. For instance, letting extensions last four weeks instead of sixteen would make the system more flexible. Also, it would be better to schedule the whole time off in advance if lengthier absences are foreseen. This would cut down on paperwork and make issues clearer for both the representative and their replacement. These suggestions are meant to not only make things easier for the government, but also to make it more accessible for individuals to get involved in politics, especially women, parents, and caregivers, who are frequently the ones who are most affected by strict work rules. Another approach was to examine vote delegation to avoid full replacement, especially for short-term absences. This would let a representative temporarily give their voting power to a trustworthy colleague while still being in office. International examples indicate that this can work well if certain conditions are met. The Dutch government agreed to examine the possibility of making leave arrangements more flexible but rejected the idea of vote delegation, citing constitutional and political concerns, including challenges to democratic legitimacy, representational accountability, and procedural feasibility.<sup>117</sup>

### *Evaluation*

In conclusion, the Dutch system for temporary leave and replacement in politics is a good way to let democracy continue, but it is too strict for today's needs. The Advisory College's ideas are better since they advocate for more flexible, predictable, and open arrangements. The

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<sup>116</sup> Adviescollege Toetsing Regeldruk, *Advies verlof en vervangingsregelingen* (March 2023) <https://adviescollege-rpa.nl/wp-content/uploads/2023/03/Advies-verlof-en-vervangingsregelingen.pdf> accessed 22 April 2025

<sup>117</sup> Dutch Ministry of Interior and Kingdom Affairs, 'Kabinetsstandpunt verlof- en vervangingsregeling volksvertegenwoordigers en dagelijks bestuurders.' (March 2024) <https://open.overheid.nl/documenten/185f7748-57e5-41fe-819a-dd0e7019544a/file>



government seems prepared to make the current system better, but its refusal to allow vote delegation shows that it prefers tradition to new ideas. For political office to be truly open to everyone, especially those who aren't represented enough, reforms need to go beyond just following the law and focus on people instead.

### 7.5.2. Spain

#### *Regulatory Framework*

The Spanish Parliament (Cortes Generales) is a bicameral legislature, composed of the Congress of Deputies (the lower house) and the Senate (the upper house),<sup>118</sup> and operates in accordance with the Constitution and the respective Standing Orders, which are adopted with full autonomy by each chamber. In this context, the voting procedure of the Congress of Deputies is relevant for comparison with the European Parliament, as both bodies are directly elected by the people (whereas the Senate is the House of Territorial Representation),<sup>119</sup> ensuring direct representation in their legislative mandate.<sup>120</sup> Therefore, to assess the voting procedure of the Congress of Deputies, including special circumstances and deviations, it is essential to consider both the Constitution and the Standing Orders of the Congress of Deputies.

### **The Spanish Constitution (Relevant Provisions)<sup>121</sup>**

#### **Section 72**

(1) The Houses lay down their own Standing Orders, adopt their budgets autonomously and, by common agreement, regulate the Personnel Statute of the Cortes Generales.

The Standing Orders and their reform shall be subject to a final vote over the whole text, which shall require the overall majority. (Senate Standing Orders, section 196 and third additional provision)

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<sup>118</sup> European Parliament, 'Factsheet: Congress of Deputies (Spain)' (2024) [https://www.europarl.europa.eu/cmsdata/280857/Factsheet%20ES\\_Congress%20of%20Deputies\\_2024.pdf](https://www.europarl.europa.eu/cmsdata/280857/Factsheet%20ES_Congress%20of%20Deputies_2024.pdf) accessed 9 May 2025.

<sup>119</sup> Constitución Española [Spanish Constitution], s 69.

<sup>120</sup> Congreso de los Diputados, 'Functions' <https://www.congreso.es/en/cem/func> accessed 9 May 2025.

<sup>121</sup> Spanish Constitution 1978, s 69 <https://www.senado.es/web/conocersenado/normas/constitucion/detalleconstitucioncompleta/index.html?lang=en> accessed 9 May 2025.



### **Section 79**

(1) In order to adopt agreements, the Houses must meet in statutory manner, with the majority of their members present. (Senate Standing Orders, sections 82, and 93.2, 3 and 4)

(2) In order to be valid, such agreements must be approved by the majority of the members present, without prejudice to the special majorities that may be required by the Constitution or the organic acts and those which are provided for by the Standing Orders of the Houses for the election of persons. (Senate Standing Orders, section 93.1)

(3) The vote of Senators and Members of Congress shall be personal and may not be delegated. (Senate Standing Orders, section 92.3)

## **The Standing Orders of the Congress of Deputies (Relevant Provisions)<sup>122</sup>**

### **Chapter IV Voting**

#### **Section 78**

1. For the passage of resolutions, the full House and its bodies shall be assembled in accordance with these Standing Orders and with the attendance of the majority of their members.

2. If at voting time, or after a vote has been taken, it is found that the quorum referred to in the preceding paragraph is not present, the voting shall be postponed for a maximum period of two hours. If after the lapse of this time it again proves impossible for a vote to be validly taken, the matter shall be referred to the decision of the appropriate body at its next sitting.

#### **Section 79 (modified by the Plenary Sitting on July 21th, 2011)**

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<sup>122</sup> Congress of Deputies, *Standing Orders of the Congress of Deputies* (Madrid, 2004) [https://www.congreso.es/webpublica/ficherosportal/standing\\_orders\\_02.pdf](https://www.congreso.es/webpublica/ficherosportal/standing_orders_02.pdf) accessed 9 May 2025.



1. In order to be valid, resolutions must be carried by a single majority of members of the appropriate body in attendance, without prejudice to special majorities provided for in the Constitution, Organic Acts or these Standing Orders.
2. A Member's vote is personal and may not be delegated. No Member may vote on resolutions affecting his status as such.
3. Members of the Chamber expressly authorized by the Bureau to participate in a vote, even if absent, will be counted as present.

### **Section 80**

Voting may not be interrupted for any reason whatsoever. During the course of the voting, the Speaker shall not grant the floor and no member may enter or leave the House.

### **Section 81**

In the cases considered herein, and in such other cases as, due to their special nature or importance, the Speaker may so decide, votes shall be taken at a fixed time previously announced by the Speaker. If at the time appointed the debate has not concluded, the Speaker shall appoint a new time for voting.

### **Section 82 (modified by the Plenary Sitting on May 26th, 2022)**

1. Voting may be:
  - i) By assent to the Speaker's proposal.
  - ii) Ordinary.
  - iii) Public, by roll call.
  - iv) Secret.
2. In the event of pregnancy, maternity, paternity or exceptionally serious situations preventing a Member of Parliament from carrying out his or her parliamentary functions and considered sufficiently justified taking into account the special circumstances, the Bureau may authorize in a motivated document the Member to cast his or her vote through the telematic procedure.

The same voting regime shall be applicable to the members of the Standing Delegations of the Cortes Generales before Parliamentary Assemblies, or the members of the Congress of Deputies *with institutional representation commitments abroad in*



*European, Latin-American, NATO and G-20 summits*, as well as in official UN General Assembly meetings, its Conventions or related meetings, when the participation in their official activities prevents them from attending the voting in the plenary sitting.

To this end, the member of the Congress of Deputies shall issue a due application by means of a document addressed to the Bureau, which, in turn, will inform him or her of its decision, specifying the period of time during which he or she will be allowed to cast the vote through this procedure. The vote cast through this procedure will have to be verified by means of a system established to this end by the Bureau and shall be in possession of the Presidency of the Chamber prior to the beginning of the voting.

### **Section 83**

The proposal made by the Speaker shall be deemed adopted by assent if, when put to the House, no objection or opposition is raised.

### **Section 84**

Ordinary voting may be conducted, at the discretion of the Speaker, in either of the following ways:

1. By those in favour standing up first, those against next and lastly those who abstain. The Speaker shall order the Secretaries to count the votes if he is in any doubt as to the outcome, or if, even after the result has been announced, any parliamentary group so requests.
2. By an electronic process recording each member's vote, and the total result of the voting.

### **Section 85**

1. Voting shall be public by roll call or secret when so required by these Standing Orders, or when requested by two parliamentary groups or one-fifth of Members of the House or the committee's members. In the event that more than one request is made, to opposite effects, the request for a secret ballot shall prevail. In no case shall voting be secret on legislative procedure or in those cases in which resolutions must be passed according to the principle of weighted voting.

2. Voting on investiture of the Prime Minister, motions of censure and questions of confidence shall in all cases be public by roll call.

### *Voting Procedure*

In relation to the passage of resolutions, the Standing Orders require attendance of Members as the vote of the Congress of Deputies is personal and, thus, may not be delegated.<sup>123</sup> Enforcing the non-transferable nature of the vote, the Standing Orders remain flexible in general circumstances - Members of the Chamber expressly authorized by the Bureau to vote, even if absent, are counted as present.<sup>124</sup> This Bureau, elected in accordance with Section 37 of the Standing Orders, is entrusted with the management of the House, including such internal regulations.<sup>125</sup>

For special circumstances such as maternity and parental leave, the Standing Orders permit members to vote through the telematics procedure with identity identification, in plenary sessions in votings which cannot be subject to fragmentations or modifications.<sup>126</sup> To exercise the option, the member on leave should request the Bureau to apply this special procedure in a specific plenary voting.<sup>127</sup> However, this accommodation should not be considered revolutionary, as even in conventional voting, an electronic process can be employed to record each member's vote and ensure the accurate tallying of the total result.<sup>128</sup> Similarly, the Senate accommodates Senators on maternity or parental leave, pursuant to Article 92 of its Standing Orders, Senators may be authorised to use telematics voting when the method and timing of such voting is not subject to fragmentation or modification and, thus, foreseeable.

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<sup>123</sup> Constitución Española [Spanish Constitution], s 79 (3).

<sup>124</sup> Standing Orders of the Congress of Deputies, s 79(3).

<sup>125</sup> Congress of Deputies, *Standing Orders of the Congress of Deputies* (Madrid, 2004) ss 30, 31(1).

<sup>126</sup> Directorate-General for Internal Policies, *Openness, Transparency and the Right of Access to Documents in the EU: In-Depth Analysis for the PETI Committee* (European Parliament 2016); Congress of Deputies, *Standing Orders of the Congress of Deputies* (Madrid, 2004) ss 82.3.

<sup>127</sup> Congress of Deputies, *Standing Orders of the Congress of Deputies* (Madrid, 2004) s 82(2).

<sup>128</sup> *ibid.*

In such telematic voting systems, votes are computer generated and sent to remote Polling Stations by means of telematic networks.<sup>129</sup> Deployment of such technology in Spain demonstrates that votes cast through networks have potential to guarantee the security levels of traditional voting systems. This includes safeguarding voter anonymity, preventing unauthorized voting or multiple votes, and ensuring accurate vote counts.<sup>130</sup>

The possibility of telematics voting is also extended to members of the Congress of Deputies who have institutional representation commitments abroad, such as at European, Latin American, NATO, and G-20 summits, or during official UN General Assembly meetings and related conventions.<sup>131</sup> This ensures that these representatives can participate in voting, even if their official duties prevent them from being present in the plenary session. However, this provision does not apply to Spanish Members of the European Parliament (MEPs), as there are no specific regulations outlining whether the Standing Orders of the Congress of Deputies or the Election Law are applicable to them in such contexts.<sup>132</sup>

#### *Special Circumstances: Introduction by Way of Amendments*

In both the Standing Orders of the Congress of Deputies and the Senate, provisions addressing special circumstances, such as maternity and parental leave, and the specific accommodations for these situations, were introduced through amendments.

#### *Congress of Deputies: Standing Orders*

In the case of the Congress of Deputies, the Standing Orders initially did not include a provision for special circumstances in Section 82, which only outlined the forms of voting.<sup>133</sup> This provision was introduced later, during the Plenary Sitting on May 26, 2022 at latest. However, since there is no direct access to the plenary session or a detailed discussion of the motivation behind this amendment, conclusions about its intent and implications must be

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<sup>129</sup> Gómez Oliva A, Pérez Belleboni E, Sánchez García S, Carracedo Gallardo J, Moreno Blázquez J, and Carracedo Verde JD, 'VOTESCRIPT: Telematic Voting System Designed to Enable Final Count Verification' (University Politécnica of Madrid).

<sup>130</sup> *ibid* 2.

<sup>131</sup> Congress of Deputies, *Standing Orders of the Congress of Deputies* (Madrid, 2004) s 82(2).

<sup>132</sup> Spanish Parliament, *Standing Orders of the Congress of Deputies* [http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist\\_Normas/Norm/standing\\_orders\\_02.pdf](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/standing_orders_02.pdf) accessed 9 May 2025.

<sup>133</sup> Spanish Parliament, *Standing Orders of the Congress of Deputies* (Madrid, 2004) [https://www.aelpla.org/documentos/reglamentos\\_parlamentarios/reg\\_congreso\\_eng.pdf](https://www.aelpla.org/documentos/reglamentos_parlamentarios/reg_congreso_eng.pdf) accessed 9 May 2025.

drawn from the Standing Orders of the Senate.<sup>134</sup> This allows for a broader understanding of how similar provisions have been structured and implemented in the Senate, providing context for the Congress of Deputies' amendments.

#### *Senate: Standing Orders*

In 2013, the Senate amended its Rules of Procedure to protect the right of Senators to vote in plenary sessions, which is an essential element of the exercise of their parliamentary office. The purpose of the reform was to make possible, in cases of justified reasons, for the exercise of this right to vote by Senators who could not be present at the plenary session, using a telematic voting procedure. Such special circumstances included pregnancy, maternity and paternity leave, as well as illness, by way of a new paragraph 3 in Article 92 of the Rules of Procedure.<sup>135</sup> Thus, in 2013, the Senate introduced, for the first time, remote electronic voting to facilitate the reconciliation of parliamentary and family life.

Subsequently, in the same vein, the Rules of Procedure were amended in 2022 to reflect the situation created by Covid-19, which allowed all Senators to exercise their right to vote remotely as long as the circumstances of the pandemic required physical remoteness. Thus, in contrast to the European Parliament voting procedure, in Spain, the family life amendments served as a model to accommodate remote, electronic voting to all matters included in the agenda and for any type of voting. Thus, the 2022 reform merely aimed to codify, for reasons of caution, the provisions contained in the Supplementary Rule of the Presidency of the Senate, which allowed for remote voting during Covid-19 as sufficiently accredited unforeseen circumstances.<sup>136</sup>

#### *Relation between Institutional Amendments and Women Representation in Spanish Politics*

The outcome of the 2019 Spanish general election marked a historic milestone – as women made up 48% of the Congress of Deputies, Spain became the European country with the

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<sup>134</sup> Spanish Senate, *Standing Orders of the Senate* (Madrid, 1994)

<https://www.senado.es/web/conocersenado/normas/reglamentootrasnormassenado/detallesreglamentosenado/index.html?lang=en> accessed 9 May 2025.

<sup>135</sup> Senado de España, *Boletín Oficial de las Cortes Generales. Senado*, n.º 269, 10 de noviembre de 2023, 113-114.

<sup>136</sup> Senado de España, *Boletín Oficial de las Cortes Generales. Senado*, n.º 269, 10 de noviembre de 2023, pg 8-11.



highest percentage of women in parliament.<sup>137</sup> However, in the 2023 elections, this proportion decreased to 44.3%.<sup>138</sup> Despite this decline, there is evidence suggesting a relationship between accommodating remote voting for special circumstances, such as pregnancy and maternity leave, and women's representation in Spanish politics.

A study on the effects of institutional reforms aimed at promoting equal representation and participation found no evidence that the introduction of legal quotas directly improved women's access to the floor as Members of Parliament (MPs) or their overall participation in parliamentary activities. However, the study did identify indirect effects on how political parties select their candidates. Prior to the implementation of legal quotas, male candidates were five times more likely to appear on party lists than female candidates. After the introduction of quotas during the 8th legislative term, this ratio improved, with male candidates being selected only twice as frequently as female candidates. This shift highlights a positive change in gender representation within party structures.<sup>139</sup>

In sum, while there is a link between institutional amendments, such as remote voting, and women's representation in politics, these studies suggest that such amendments have not significantly impacted women's participation in parliamentary activities.

### *Evaluation*

In conclusion, the regulatory framework governing voting procedures in the Spanish Parliament, particularly the provisions for remote voting in special circumstances, including pregnancy and maternity leave, reflects an ongoing effort to accommodate gender equality. While the introduction of such amendments has helped improve women's representation in politics, particularly in terms of candidate selection, studies suggest that these reforms have not had a significant impact on women's direct participation in parliamentary activities.

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<sup>137</sup> The Economist, 'Which European country has the most female politicians?' (3 May 2019) <https://www.economist.com/graphic-detail/2019/05/03/which-european-country-has-the-most-female-politicians> accessed 9 May 2025.

<sup>138</sup> Instituto Nacional de Estadística, 'Mujeres en el Congreso de los Diputados y en el Senado' (2024) [https://www.ine.es/ss/Satellite?L=es\\_ES&c=INESeccion\\_C&cid=1259925595398&p=1254735110672&pagename=ProductosYServicios%2FPYSLayout&param1=PYSDetalle&param3=1259924822888](https://www.ine.es/ss/Satellite?L=es_ES&c=INESeccion_C&cid=1259925595398&p=1254735110672&pagename=ProductosYServicios%2FPYSLayout&param1=PYSDetalle&param3=1259924822888) accessed 9 May 2025.

<sup>139</sup> Sanjaume-Calvet M, Vallbé J-J y Muñoz-Puig M, 'Can women take the floor in parliament? Evidence from the Spanish lower chamber' (2023) 97 *Women's Studies International Forum*, pg 8.

Nonetheless, the integration of telematics voting highlights the Spanish Parliament's commitment to ensuring equal representation through protection of the MP's democratic mandate as well as the security of remote voting.

### **7.5.3. Ireland**

#### *Regulatory framework*

Ireland's maternity leave framework for politicians has undergone significant evolution, culminating in the enactment of the Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024. Historically, the absence of formal maternity leave provisions for members of the Oireachtas (parliament) reflected broader gender disparities in Irish politics, where female representation has long been hindered by systemic barriers. While maternity protections in employment law have developed in line with European Directives, political office remained an anomaly, relying on ad hoc arrangements to accommodate maternity leave. The COVID-19 pandemic further highlighted the discrimination of parliamentary procedures, particularly the constitutional requirement for physical presence when voting. As discussions on gender equality and political representation continue, Ireland's approach to maternity leave and parliamentary voting procedures remains a critical aspect of ensuring an inclusive and modern democracy.

### **Irish Maternity Leave Regulatory Framework**

#### Irish Constitution

##### *Article 40.1*

The Irish Constitution forbids any exclusion on account of sex from Irish nationality and citizenship. Article 40.1 states that 'all citizens shall, as human persons, be held equal before the law' and proceeds to allow the state, in its enactments, to 'have due regard to differences of capacity, physical and moral, and of social function.' This provision can be referred to in the striking of discriminatory legislation that passes through the houses.

*Article 15.11.1°*

This provision states that: all questions in each house shall “be determined by a majority of the votes of the members present and voting other than the chairman or presiding member.” This provision has been interpreted as everyone must be present to cast their vote and absenteeism results in a vote being forfeited. During the Covid-19 pandemic ‘lockdowns’, the Irish Government hired out large spaces for votes to ensure safety and compliance with Covid-19 social distancing regulations.<sup>140</sup> All members of parliament had to be present for voting with efforts focused on attendance safety, rather than virtual voting. Emergency legislation could not be brought in for such a period due to the unconstitutionality of its nature.

E.U. ‘Maternity Leave’ Directive

In 1992, the EU introduced a directive to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth.<sup>141</sup> As a Member State, Ireland transposed this through the Maternity Protection Act 1994 and its subsequent amendment in 2004.

Existing Maternity Legislation

*Maternity Protection (Amendment) Act 2004*

Article 2 of the amended Act grants pregnant people a minimum of 18 weeks of maternity leave which must be taken two weeks before the person’s due date and may not return until four weeks after the birth.<sup>142</sup> In 2007, by ministerial order, this minimum period was extended to 26 weeks, with the two and four week rule still applying.<sup>143</sup>

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<sup>140</sup> House of Oireachtas Press Centre, ‘How the Dáil is Sitting During the Covid-19 Pandemic’ (House of Oireachtas, 22 September 2020) <<https://www.oireachtas.ie/en/press-centre/news-and-features/20200922-how-the-dail-is-sitting-during-the-covid-19-pandemic/>> Accessed 02 April 2025.

<sup>141</sup> Council Directive 92/ 85/ EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 ( 1 ) of Directive 89/ 391 /EEC) [1992] OJ L 348/ 7, Article 8.

<sup>142</sup> Maternity Protection (Amendment) Act 2004, Section 2, 4.

<sup>143</sup> Maternity Protection Act 1994 (Extension of Periods of Leave) Order 2006.



### Ad Hoc Interim Arrangement

In 2020, then Minister for Justice, Helen McEntee TD, announced her pregnancy and intention to take maternity leave while in office.<sup>144</sup> This brought the lack of protections for politicians into focus.<sup>145</sup> The then Taoiseach (Prime Minister) Micheál Martin consulted with the Attorney General to ensure former Minister McEntee could take six months leave (24 weeks).<sup>146</sup> McEntee temporarily lost her justice portfolio but retained her Cabinet seat. Her workload was transferred to another elected member of her party, Fine Gael, Heather Humphreys TD. The same procedures were adopted a second time for former Minister McEntee's second pregnancy in 2022.

### Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024

In November 2024, the Maternity Protection, Employment Equality and Preservation for Certain Records Act was enacted. Section 4(1) of the Act sets out that maternity leave for members of the House of Oireachtas. It states that “Any absence by a member from performing duties as such a member, duly notified to the Ceann Comhairle or to the Cathaoirleach of Seanad Éireann, as may be appropriate, during a period (whether or not deferred or paused in the event of the member having a serious health condition) of up to 26 weeks starting no earlier than 2 weeks before the end of the expected week of, and no later than the date of, the member's giving birth to a child, shall be called maternity leave for a member of the Houses of the Oireachtas.” This explicitly sets out protections for pregnant TDs positions. The wording of this provision seems to follow that of the statement of Micheál Martin in the announcement of

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<sup>144</sup> Jack Power, ‘Helen McEntee announces she is pregnant’ *The Irish Times* (Dublin, 05 December 2020) <<https://www.irishtimes.com/news/politics/helen-mcentee-announces-she-is-pregnant-1.4428780>> Accessed 04 April 2025.

<sup>145</sup> Frances Meehan, ‘European network of legal experts in gender equality and non-discrimination’ (Ireland, 18 December 2025) <<https://www.equalitylaw.eu/downloads/5329-ireland-maternity-leave-73-kb>> Accessed 01 April 2025.

<sup>146</sup> Shawn Pogatchnik, ‘Irish minister's pregnancy raises constitutional questions’ *Politico* (11 March 2021) <<https://www.politico.eu/article/irish-ministers-pregnancy-raises-constitutional-questions-helen-mcentee/>> Accessed 04 April 2025.

the ad hoc procedures for McEntee in 2021.<sup>147</sup> No remote voting is allowed in the case of pregnancy related absence.

### *Voting Procedure Regulatory Framework*

#### Special Procedures: Covid-19 Pandemic

During the Covid-19 Pandemic, Ireland faced challenges in adopting parliamentary voting procedures. Unlike other countries that swiftly adopted remote voting mechanisms to ensure legislative processes continued amidst lockdowns and social distancing measures, Ireland could not implement remote voting. As mentioned, the constitutionally protected voting method requires physical attendance of the Oireachtas to cast votes.<sup>148</sup> Therefore, those who were immunocompromised or had to self-isolate were unable to represent their constituents' interests.

In the context of maternity leave for politicians, remote voting could offer major benefits to pregnant people, as well as those with illnesses that affect their ability to attend voting sessions, such as: accessibility; efficiency; safety; and inclusivity. Despite these constitutional restrictions, the decision not to implement remote voting was influenced by various factors, including concerns about the security and integrity of remote voting systems, and potential technical challenges.

#### Thirty-Ninth Amendment of the Constitution (Remote Parliamentary Voting) Bill 2020

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<sup>147</sup> Shawn Pogatchnik, 'Irish minister's pregnancy raises constitutional questions' *Politico* (11 March 2021) <<https://www.politico.eu/article/irish-ministers-pregnancy-raises-constitutional-questions-helen-mcentee/>> Accessed 04 April 2025.

<sup>148</sup> Bunreacht na hÉireann (Constitution of Ireland) 1937, Article 15.11.1°.

In 2022, a Private Members Bill from Fine Gael's Jennifer Carroll MacNeill TD aimed to amend the Constitution to allow for remote voting.<sup>149</sup> The 39th Amendment of the Constitution (Remote Parliamentary Voting) Bill 2020 would have amended the Constitution with the insertion of a new subsection 4 "Each House may make its own rules and Standing Orders providing for special and limited circumstances in which members of the House concerned, who are not present in that House, may vote when any matter or any class of matter as so provided for, is to be determined by a vote of that House." The Bill did not progress past the Dáil Second Stage, and lapsed with the November 2024 dissolution of the Dáil. However, it marks the first serious attempt of bringing in remote voting for all TDs absent, be it for maternity leave, pregnancy related absence and illness.

Introducing remote voting could help modernise Ireland's parliamentary system, ensuring that all representatives can participate fully, regardless of personal circumstances. While constitutional and technical challenges exist, addressing these barriers could lead to a more inclusive and accessible democracy. Despite the codification of maternity leave for Irish politicians, systems could always be improved. Perhaps remote voting could be beneficial to pregnant people with pregnancy related absences prior to giving birth.

### *Gender Equality*

The enactment of the Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024 marked an important advancement for gender equality in Irish politics. This legislation addresses a longstanding gap that had previously necessitated ad-hoc arrangements for politicians starting families. The absence of formal maternity leave provisions had been a significant barrier to women's full participation in political life, often deterring potential candidates and complicating the careers of sitting female politicians. By formalising maternity leave, the Act fosters a more inclusive and supportive environment, encouraging greater female representation in the political arena.

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<sup>149</sup> Rónán Duffy, 'A referendum to allow TDs to vote remotely is looking likely' *The Journal* (Ireland, 08 February 2022) <<https://www.thejournal.ie/remote-voting-tds-5677317-Feb2022/>> Accessed 03 April 2025.

In the same month of the Act's introduction, Social Democrats leader Holly Cairns became the first politician to avail of this new legislation. Announcing her pregnancy in June 2024, Cairns highlighted the "truly incredible" lack of formal maternity leave arrangements for TDs at the time.<sup>150</sup> Her situation underscored the pressing need for legislative reform to accommodate the realities faced by female politicians. Cairns's decision to take maternity leave set a precedent, demonstrating that political careers can be balanced with family life, and signaling to aspiring female politicians that the political system is evolving to support their participation

Despite this progress, gender representation in Irish politics continues to lag. Women comprise less than a quarter of TDs in the Dáil, reflecting broader systemic challenges.<sup>151</sup> The introduction of formal maternity leave is a significant step toward dismantling some of these barriers, but further efforts are necessary to achieve gender parity.

### *Evaluation*

In conclusion, the introduction of statutory maternity leave for politicians represents a landmark step toward gender equality in Irish politics. However, challenges remain in fully integrating this reform into the broader parliamentary system, particularly concerning voting rights for absent representatives. While remote voting has yet to be implemented, its potential benefits, especially for those on maternity leave, warrant further exploration. The evolving maternity leave framework is a reflection of Ireland's progress, but achieving true gender parity in politics requires continuous reform, increased representation, and a commitment to removing institutional barriers. Ensuring that political structures accommodate everyone's needs is essential in shaping a more equitable and representative democracy.

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<sup>150</sup> Christina Finn, 'Lack of maternity leave arrangement for TDs 'truly incredible', says Holly Cairns' *The Journal* (Ireland, 18 June 2024) <<https://www.thejournal.ie/hilly-cairns-maternity-leave-politicians-6411919-Jun2024/>> Accessed 04 April 2025.

<sup>151</sup> Izzy Copestake, 'The Dáil Has The Worst Gender Diversity In Western Europe' *District* (Ireland, 12 December 2024) <<https://districtmagazine.ie/news/the-dail-has-the-worst-gender-diversity-in-western-europe/>> Accessed 04 April 2025.



#### 7.5.4. Italian Legislation

##### *Regulatory Framework and Legislative Inertia*

The Italian regulatory system is conspicuously deficient in provisions for members of Parliament (MPs) on maternity leave, especially with distant or proxy voting options. In contrast to other democracies that have established flexible processes for legislators in similar circumstances, Italy has not yet implemented a formal system for delegating voting powers or participation by digital means. Article 64(3) of the Italian Constitution is a significant reference in this context. It indicates that "the decisions of each House and of Parliament are invalid if a majority of the members is not present, and if they are not approved by a majority of those present,"<sup>152</sup> thus necessitating both a structural quorum (majority of members physically present) and a functional quorum (majority of those present voting in favour) for parliamentary decisions to be legitimate. The concept of "presence" has conventionally been seen solely as physical attendance, creating a substantial barrier to the use of distant participation or electronic voting systems, even in extraordinary situations like the COVID-19 epidemic.

The COVID-19 epidemic prompted institutions around Europe to reevaluate the methods of democratic discourse, especially inside parliaments. In Italy, the pressing necessity to uphold legislative continuity while protecting public health has resulted in a renewed focus on remote parliamentary participation. A notable initiative in this context was the 2020 proposal to amend the Rules of Procedure of the Chamber of Deputies, introduced by MP Stefano Ceccanti and co-signed by 161 deputies.<sup>153</sup> This proposal sought to implement telematic voting, modelled after the Spanish *Congreso de los Diputados'* "no presencial" system, which let MPs vote remotely under specific conditions, such as maternity and paternity leave. However, the Italian endeavour was solely driven by the exigencies of the pandemic and did not address more fundamental issues such as gender-sensitive institutional design or the enduring necessity to accommodate pregnant MPs.

The traditionalist interpretation of Article 64(3) of the Italian Constitution, which mandates the actual presence of the majority of members for valid parliamentary debates, persisted as a

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<sup>152</sup> Italian Constitution, art 64(3).

<sup>153</sup> Stefano Ceccanti et al., Proposta di modifica del Regolamento della Camera dei deputati, Doc. II, n. 15 (2020).

significant legal and symbolic obstacle. The prevailing interpretation of the Article regards "presence" solely as a physical state, therefore precluding any type of proxy or virtual involvement. Despite the advocacy of some scholars and institutional actors for a functional interpretation of "presence" that includes digital modalities, the dominant legal orthodoxy, rooted in a literalist and originalist interpretation of constitutional terms like "*seduta*," "*riunione*," and "*presenti*," ultimately impeded any meaningful reform. Institutional inertia was bolstered by a jurisprudential and political consensus that highlighted the performative, dialogical, and ceremonial aspects of parliamentary deliberation, viewed as intrinsically linked to physical co-presence. Thus, although the pandemic instigated a transient procedural crisis that highlighted remote voting, it did not catalyse a significant change in addressing the systemic exclusion experienced by pregnant parliamentarians, whose requirements remain overlooked in the existing regulatory and constitutional framework.

The lack of a defined maternity leave system for Italian Parliament members highlights a considerable deficiency in the legal framework regarding the balance between parliamentary duties and maternal safety. Members of Parliament (MPs), unlike public sector employees or private workers, do not engage in a contractual job relationship; instead, they fulfil a public role as individual holders of a constitutional mandate, as specified in Article 67 of the Italian Constitution. This clause emphasises the autonomy and individual nature of the parliamentary mandate by stating that "each Member of Parliament represents the Nation and performs their duties without a binding mandate."<sup>154</sup> Consequently, Members of Parliament are not regarded as State employees and do not qualify for statutory labour rights, including those stipulated in the *Testo Unico sulla Maternità e Paternità (Legislative Decree No. 151/2001)*, which regulates maternity leave and parental benefits for workers.

As a result, there is no legal acknowledgement of a maternity leave framework expressly designed for lawmakers. Under current regulations governing parliamentary remuneration, particularly as outlined in the internal guidelines of the Chamber of Deputies and the Senate, Members of Parliament receive a fixed monthly indemnity regardless of their attendance at parliamentary sessions. The base compensation, intended to uphold the dignity and autonomy of the position, is not influenced by temporary or extended absences, including those resulting

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<sup>154</sup> Italian Constitution, art 67.

from pregnancy or maternity.<sup>155</sup> Nonetheless, certain benefits, such as daily travel reimbursements, are clearly contingent upon attendance and may be reduced in instances of extended non-participation. Attendance is checked via electronic (in-person) voting or formal roll call, as stipulated in the *Regolamento per l'applicazione del trattamento economico dei deputati*, and absence from these activities results in proportional deductions from supplementary compensations.

Notwithstanding the inflexible framework, certain pragmatic and non-normative adjustments have arisen. These encompass informal arrangements negotiated within parliamentary factions or orchestrated through committee leadership, allowing pregnant MPs or new mothers to maintain specific functions remotely (e.g., engaging in non-voting activities such as consultations, hearings, or informal meetings) or to assign minor responsibilities to colleagues. These agreements, however, remain optional and lack the legal acknowledgement or enforceability that a formalised system of parental leave would require. The lack of structural transformation in this domain not only sustains a gendered disparity in political engagement but also indicates the ongoing inadequacy of parliamentary law to align with the reality of gender equality in institutional contexts. Given this gap, the necessity for a methodical and constitutionally consistent reform, potentially inspired by comparative examples like Spain's regulated telematic participation for MPs on maternity leave, seems increasingly urgent.

#### *The 2022 Procedural Reform on Infants in Parliament*

An important, though restricted, progress in acknowledging the requirements of female parliamentarians in early motherhood occurred with the enactment of a 2022 measure permitting members of the Italian Parliament to bring their infants up to one year old into the parliamentary chambers. This regulatory change was implemented through amendments to the internal *Rules of Procedure of both the Chamber of Deputies and the Senate*, representing a significant advancement in integrating parenting responsibilities into parliamentary life. The legislation does neither establish a formal maternity leave framework nor does it modify the essential structure of the parliamentary mandate as specified in Article 67 of the Constitution. It represents a functional adaptation within the constitutional and procedural framework,

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<sup>155</sup> Italian Constitution, art 69; Law No. 1261 of 31 October 1965, art. 1.

designed to enhance the involvement of women MPs in legislative activity during the postpartum period.

The decision to revise the parliamentary regulations was situated within a wider institutional dialogue on gender equality and inclusivity, and was prompted by ongoing campaigning from civil society representatives and female Members of Parliament. The reform established a provision that explicitly permits the presence of children under one year old in the chamber, especially during voting sessions or debates, thus eliminating prior procedural or decorum-related restrictions that had deterred or outright banned such attendance. Simultaneously, both parliamentary chambers implemented structural modifications to facilitate nursing and early childcare. Dedicated breastfeeding and childcare rooms were built within *Montecitorio* and *Palazzo Madama*, equipped with suitable amenities to provide privacy, hygiene, and accessibility. These spaces were designed to allow mothers to nurse or care for their children without entirely disengaging from their legislative duties, especially in periods of intense parliamentary activity.<sup>156</sup>

Legally and constitutionally, this reform did not necessitate an amendment to Article 64 of the Constitution, which regulates quorum and participation in legislative discussions, as it does not relate to voting procedures or remote participation. Instead, it functioned within the discretionary limits granted to each chamber by Article 64(1) of the Constitution, permitting the chambers to establish their own Rules of Procedure by an absolute majority of their members. The adjustment was made within this procedural autonomy, highlighting the chambers' capacity to interpret and update their internal regulations in accordance with changing societal norms and constitutional principles, including substantive equality under Article 3(2) of the Constitution and maternity protection under Article 31.

Although this initiative holds both symbolic and practical significance, it should be regarded as a limited solution: it facilitates the physical presence of the mother and child but fails to address the institutional barriers that prevent remote participation or proxy voting. This promotes a model where the obligation of physical presence rests solely on the female MP, rather than facilitating a more adaptable allocation of responsibilities through institutional innovation. Nonetheless, the change indicates an increasing awareness within the Italian

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<sup>156</sup> Chamber of Deputies, 'Amendments to the Rules of Procedure' (30 November 2022).

Parliament regarding the necessity for gender-responsive institutional design and may establish a basis for more extensive future reforms.

### *Remote Participation in Municipal Councils*

In Italy, the notion of physical presence in legislative assemblies, as established in Article 64(3) of the Italian Constitution, has historically prohibited remote participation in parliamentary processes. At the municipal level, certain *consigli comunali* (municipal councils) have implemented reforms to support council members on maternity or paternity leave by allowing online participation in council meetings. These local adjustments signify an increasing acknowledgement of the necessity to harmonise public obligations with parental duties, especially in the realm of advancing gender equality and fostering family life. The City Council of Venice exemplifies progressivism when compared to the national standards by amending its internal laws to permit council members to attend sessions via videoconference during maternity or paternity leave.<sup>157</sup> The legislation is applicable irrespective of the member's job position and encompasses situations such as mandatory and voluntary maternity leave, paternity leave, parental leave, and child illness.

The City Council of Rome has established a regulation framework that permits remote participation for councillors on maternity or paternity leave, encompassing high-risk pregnancy and parental care periods.<sup>158</sup> Alongside procedural reforms, Rome's Assembly has implemented a physical support infrastructure by creating a "baby space" within the *Campidoglio*, furnished with a nursing chair, changing station, and cradle, thus fostering an environment that facilitates the complete participation of new mothers. These measurements illustrate how municipal entities can function as experimental grounds for democratic innovation, demonstrating institutional practices that more accurately represent the needs of an inclusive and gender-responsive public sphere.

These municipal initiatives function within the framework of *autonomia statutaria* (statutory autonomy) conferred upon local governments by Article 114 of the Italian Constitution, permitting municipalities to self-organise their internal operations, contingent upon

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<sup>157</sup> Comune di Venezia, 'Regolamento per l'eventuale partecipazione in videoconferenza alle sedute del Consiglio comunale' (Delibera del Consiglio comunale n. 2 del 30 gennaio 2023).

<sup>158</sup> Comune di Roma, 'Regolamento per lo svolgimento in modalità telematica del Consiglio Comunale' (Delibera del Consiglio Comunale n. 136 del 23 giugno 2020).

compliance with national legal principles. Certain municipal councils have utilised their power to modify procedural rules to support council members on maternity or paternity leave, establishing precedents that may influence wider legislative reforms at regional and national levels.

These local modifications are varied and dependent on the political will and administrative capabilities of each municipality. The lack of a uniform national framework leads to a disparate array of policies, causing the rights and provisions afforded to council members during parental leave to differ markedly between jurisdictions. This diversity highlights the necessity for a more unified and uniform strategy for incorporating distant involvement in legislative processes, especially to assist elected officials in reconciling public service with familial obligations.

#### *The Normative Impact of European Developments*

The implementation of a European-level framework guaranteeing voting rights for Members of the European Parliament during maternity leave would nevertheless exert a significant normative influence on national parliaments such as Italy's, not through binding legal obligation, but through what constitutional theorists identify as the indirect Europeanisation of national practices. In Italy, where the regulatory framework does not address voting accommodations for MPs on maternity leave, this supranational development would serve as a compelling model, enhancing internal political and doctrinal pressure to update parliamentary procedures in accordance with advancing notions of substantive equality. While it would not invoke the principle of primacy, the establishment of uniform protections at the European level would illuminate the disparities and institutional delays at the national level, emphasising how the stringent interpretation of Article 64(3) of the Italian Constitution (mandating the physical presence of the majority of members for valid deliberation) precludes forms of participation increasingly regarded as vital for representative democracies.

Moreover, as previously emphasised, although Article 64(3) stipulates that a majority of members must be physically present for meaningful deliberation and decision-making, there is no express constitutional provision that necessitates physical attendance exclusively. The Constitution grants each Chamber the discretion to interpret and apply the term "presence."

The Italian constitutional framework permits procedural modifications, especially via parliamentary laws, to facilitate remote participation. These modifications may not necessitate a constitutional amendment, as they can be enacted by revisions to the internal Rules of Procedure of the Chamber and the Senate, provided they conform to the overarching principles delineated in the Constitution. Consequently, enabling online voting or alternative methods of remote participation may be accomplished by internal changes instead of necessitating constitutional amendments.<sup>159</sup>

Constitutional literature has consistently maintained that equality in political rights extends beyond mere formal access to office; it must also include the substantive execution of those tasks. A European precedent on maternity voting rights would enhance the interpretive distinction between a fixed interpretation of constitutional quorum and a progressive comprehension of gender-sensitive institutional architecture. This would exacerbate the constitutional tension between formal procedural mandates and the substantive protections of Article 3(2) of the Italian Constitution, which mandates the Republic to eliminate barriers to the complete development and participation of women. The symbolic and normative authority of European institutions, commonly known as the shadow of hierarchy in EU governance theory, would likely enhance domestic political motivations to reinterpret parliamentary regulations through a more inclusive perspective, even without formal legal obligations.

This influence would not be unprecedented. The Italian legislature has historically modified institutional practices to conform to wider European discussions on anti-discrimination and democratic reform, even in the absence of binding obligations. A European model of maternity-compatible parliamentary procedure would thus act as a constitutional standard, applying both cultural and institutional pressure on the Italian Parliament to address the inherent gender bias present in its existing regulations, a bias that imposes disproportionate physical burdens on female MPs regarding legislative participation. Consequently, EU-level innovation would facilitate a slow but significant transformation in the Italian legal-political culture, bolstering the legitimacy and urgency of domestic reform initiatives.

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<sup>159</sup> Nicola Lupo, 'Perché non è l'art. 64 Cost. a impedire il voto "a distanza" dei parlamentari' (2020) 3 Osservatorio Costituzionale <https://www.osservatoriocostituzionale.it> accessed 31 March 2025.



### *Evaluation*

This chapter's research highlights a significant disparity between the legal rigidity of the Italian parliamentary system and the changing public expectations on gender equality and institutional inclusivity. At the national level, the constitutional and procedural framework, specifically Article 64(3) of the Constitution, remains anchored on an outdated concept of physical presence, thereby precluding any substantial provisions for MPs on maternity leave. Despite the procedural crisis induced by the COVID-19 outbreak and the suggestions it elicited, the prevailing literalist and originalist readings of constitutional clauses dominated, precluding chances for structural transformation.

The lack of a legally established maternity leave system for legislators and the dependence on informal or discretionary practices highlight the institutional vulnerability of gender-inclusive political involvement. The 2022 procedural reform, although symbolically significant in permitting newborns in legislative chambers and establishing breastfeeding facilities, constitutes an isolated act rather than a comprehensive solution. It enables physical co-presence, however, it fails to mitigate the structural exclusion resulting from the rigidity of existing voting protocols.

Conversely, several Italian municipalities have undertaken a reconfiguration of institutional involvement by implementing remote access for councillors on maternity or paternity leave. The local improvements enabled by the constitutional autonomy conferred to municipalities under Article 114 illustrate that more inclusive models are both practicable and currently implemented within the Italian legal framework.

Collectively, these experiences reveal the constraints of Italy's existing parliamentary structure and imply that transformation may currently emerge from grassroots movements rather than from the national legislature. The eventual alteration of parliamentary regulations, especially concerning voting rights during maternity, may rely on the ongoing dissemination of local best practices and the normative impact of supranational entities, such as the European Parliament.