

27 October 2016

Working document from the Presidency

on the Proposal for a Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage

(the "Electoral Act")

Subject: Consolidated Presidency drafting suggestions

In order to facilitate the discussion at the GAG meeting on 4 November, the Presidency has prepared two consolidated versions of the Electoral Act, presented in the Annex, on the basis of the EP's proposal and the drafting suggestions discussed in GAG. In both versions, the proposed additions to the Electoral Act are marked in ***bold and italics*** and the proposed deletions in ~~strikethrough~~.

The Presidency invites delegations to comment at the GAG meeting on 4 November on the revised drafting suggestions concerning Articles 3, 3a (new recital), 3c and 3d (in form of a new recital), 3e(2), 4a (including a new recital), 7, 9a (including a new recital), 9b and 10(2).

It should be noted that part of the current Presidency drafting suggestions regarding Articles 3a and 9b have been placed in square brackets due to on-going consultations regarding the possible wording for this article.

In addition, some purely technical changes have also been made to Articles 5(1), 7(3) and (4), 11(2) and 13(2) in order to correct the mistakes in the consolidated version of the Electoral Act drawn up in the Publications' Office, which served as a basis for the this working document. These changes do not affect the substance of the provisions and have not been separately marked in the text as changes.

**Consolidated version of the Electoral Act
based on the EP's proposal**

**Consolidated version of the Electoral Act
based on the Presidency drafting
suggestions discussed in the Working
Party on General Affairs**

Article 1

1. In each Member State, members of the European Parliament shall be elected *as representatives of the citizens of the Union* on the basis of proportional representation, using the list system or the single transferable vote.

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2. Member States may authorise voting based on a preferential list system in accordance with the procedure they adopt.

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3. Elections shall be by direct universal suffrage and shall be free and secret.

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Article 2

In accordance with its specific national situation, each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

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Article 2a (new)

The Council decides by unanimity on a joint constituency in which lists are headed by each political family's candidate for the post of President of the Commission.

Deleted

Article 3

Member States may set a minimum threshold for the allocation of seats. At national level this threshold may not exceed 5 per cent of votes cast.

Member States may set a minimum threshold for the allocation of seats. At national level this threshold may not exceed 5 per cent of valid votes cast.

For constituencies, and for single-constituency Member States, in which the list system is used and which comprise more than 26 seats, Member States shall set a threshold for the allocation of seats, which shall not be lower than 3 per cent, and shall not exceed 5 per cent, of the votes cast in the constituency, or the single-constituency Member State, concerned.

Member States in which the list system is used shall set a minimum threshold for the allocation of seats for constituencies which comprise more than 32 seats. The threshold shall, at constituency level, not be lower than 3 per cent, and shall not exceed 5 per cent, of the valid votes cast.

In case of changes in the number of seats allocated to a Member State, the obligation set out in the second subparagraph shall apply to that Member State as from the elections to the European Parliament which follow the upcoming ones.

Article 3a (new)

Each Member State shall set a deadline for the establishment of lists of candidates for election to the European Parliament. That deadline shall be at least 12 weeks before the start of the electoral period referred to in Article 10(1).

Where national provisions set a deadline for the submission of candidacies for election to the European Parliament, that deadline shall be at least [four weeks] before the start of the electoral period referred to in Article 10(1)¹.

Article 3b (new)

The deadline for the establishment and finalisation of the electoral roll shall be eight weeks before the first election day.

Deleted

Article 3c (new)

Political parties participating in elections to the European Parliament shall observe

Deleted²

¹ Completed by the following recital, covering also Article 3e para 1:

Whereas:

(...) Transparency of the electoral process and access to reliable information are important preconditions for raising European political awareness and for securing a solid election turnout, and whereas it is desirable that citizens be informed well in advance about the candidates standing in the European Parliament elections and about the affiliation of national political parties to a European political party.

² Replaced by recitals covering both, Article 3c and 3d:

Whereas:

(...) Articles 11 and 12 of the Charter of Fundamental Rights of the European Union state that the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers, and the right to freedom of association at all levels, for example in political and civic matters, are fundamental rights of every citizen of the Union.

(...) The Union is founded on the values of democracy, rule of law, non-discrimination, respect for human rights and equality between women and men.

(...) The autonomy of political parties is considered to be the governing principle of their internal organisation.

(...) It is important that political parties, in exercising their autonomy, adhere to these values and principles when nominating candidates for election to the European Parliament.

democratic procedures and transparency in selecting their candidates for those elections.

Article 3d (new)

The list of candidates for election to the European Parliament shall ensure gender equality.

Deleted³

³ See above.

Article 3e (new)

The ballot papers used in elections to the European Parliament shall give equal visibility to the names and logos of national parties and to those of the European political parties.

Member States shall encourage and facilitate the provision of those affiliations in television and radio campaign broadcasts and on electoral campaign materials. Electoral campaign materials shall include a reference to the manifesto of the European political party, if any, to which the national party is affiliated.

The rules concerning the posting of electoral materials to voters in elections to the European Parliament shall be the same as those applied for national, regional and local elections in the Member State concerned.

Article 3f (new)

European political parties shall nominate their candidates for the position of President of the Commission at least 12 weeks before the start of the electoral period referred to in Article 10(1).

Article 4

Each Member State may set a ceiling for candidates' campaign expenses.

1. Where national law allows for the display of the name or logo of a national party on ballot papers, the national party may require that the name or logo of the European political party to which it is affiliated also be displayed.⁴

2. The rules concerning the sending of ballot papers and other electoral materials, such as lists of political parties, of their coalitions and of candidates standing in the elections, by public authorities, to voters in elections to the European Parliament shall be equivalent to those applied for national elections. This obligation is without prejudice to means by which such materials are sent and without prejudice to the sending to voters of electoral communications relating to the organisation of the European Parliament elections.

Deleted

Each Member State may set a ceiling for candidates' campaign expenses.

⁴ For the recital, see footnote 1.

Article 4a (new)

Member States may introduce electronic and internet voting for elections to the European Parliament and, where they do so, shall adopt measures sufficient to ensure the reliability of the result, the secrecy of the vote and data protection.

Member States may provide for the possibilities of advance voting, postal voting, and electronic and internet voting, in elections to the European Parliament.

*Where they do so, they shall adopt measures sufficient to ensure the reliability of the result, **the secrecy of the ballot**, and the protection of personal data in accordance with the applicable Union law. **5***

Article 4b (new)

Member States may afford their citizens the possibility of casting their vote by post in elections to the European Parliament.

Deleted⁶

Article 5

1. The five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election.

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~~It may be extended or curtailed pursuant to the second subparagraph of Article 10 (2).⁷~~

It may be extended or curtailed pursuant to the second subparagraph of Article 11(2).

2. The term of office of each member of the European Parliament shall begin and end at the same time as the period referred to in paragraph 1.

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Article 6

1. Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate. *They shall represent all Union citizens.*

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⁵ Completed by the following recital:

Whereas

(...) In order to encourage the turn out in the European Elections and to fully take advantage of the possibilities offered by technological developments, Member States should be allowed to introduce the possibility of advance voting, postal voting, electronic and internet voting, while granting the principles of secret and universal suffrage, the reliability of the result and the protection of personal data.

⁶ Covered by Article 4a.

⁷ In Article 5(1), the second subparagraph is deleted.

2. Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of ~~the Protocol of 8 April 1965 on the privileges and immunities of the European Communities~~ ***Protocol No 7 on the privileges and immunities of the European Union, annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.***

2. Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of ~~the Protocol of 8 April 1965 on the privileges and immunities of the European Communities~~ ***Protocol No 7 on the privileges and immunities of the European Union, annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.***

Article 7

1. The office of member of the European Parliament shall be incompatible with that of:

- member of the government of a Member State,
- ***member of a national or regional parliament or assembly vested with legislative powers,***
- member of the Commission ~~of the European Communities,~~
- Judge, Advocate-General or Registrar of the Court of Justice of the European ***Union*** ~~Communities~~ or of the Court of First Instance,
- member of the Executive Board of the European Central Bank,
- member of the Court of Auditors ~~of the European Communities,~~
- European Ombudsman ~~of the European Communities,~~
- member of the Economic and Social Committee ~~of the European Community and of the European Atomic Energy Community,~~

1. The office of member of the European Parliament shall be incompatible with that of:

- member of the government of a Member State,
- ***member of a national parliament,***
- member of the Commission ~~of the European Communities,~~
- Judge, Advocate-General or Registrar of the Court of Justice of the European ***Union*** ~~Communities~~ or of the Court of First Instance,
- member of the Executive Board of the European Central Bank,
- member of the Court of Auditors ~~of the European Communities,~~
- European Ombudsman ~~of the European Communities,~~
- member of the Economic and Social Committee ~~of the European Community and of the European Atomic Energy Community,~~

- member of the Committee of the Regions,
- member of committees or other bodies set up pursuant to the ~~Treaties establishing the European Community and the Treaty on the Functioning of the European Union~~ or the *Treaty establishing* the European Atomic Energy Community for the purposes of managing the ~~Communities' Union's~~ *Union's* funds or carrying out a permanent direct administrative task,
- member of the Board of Directors, Management Committee or staff of the European Investment Bank,
- active official or servant of the institutions of the European Union or of the specialised bodies attached to them or of the European Central Bank.

~~2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament.~~

~~By way of derogation from that rule and without prejudice to paragraph 3~~

~~— members of the Irish National Parliament who are elected to the European Parliament at a subsequent poll may have a dual mandate until the next election to the Irish National Parliament, at which juncture the first subparagraph of this paragraph shall apply;~~

~~— members of the United Kingdom Parliament who are also members of the European Parliament during the five-year term preceding election to the European Parliament in 2004 may have a dual mandate until the 2009 European Parliament elections, when the first subparagraph of this paragraph shall apply.⁸~~

3. In addition, each Member State may, in the circumstances provided for in Article 7, extend rules at national level relating to

- member of the Committee of the Regions,
- member of committees or other bodies set up pursuant to the ~~Treaties establishing the European Community and the Treaty on the Functioning of the European Union~~ or the *Treaty establishing* the European Atomic Energy Community for the purposes of managing the ~~Communities' Union's~~ *Union's* funds or carrying out a permanent direct administrative task,
- member of the Board of Directors, Management Committee or staff of the European Investment Bank,
- active official or servant of the institutions of the European Union or of the specialised bodies attached to them or of the European Central Bank.

~~2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament.~~

~~By way of derogation from that rule and without prejudice to paragraph 3:~~

~~— members of the Irish National Parliament who are elected to the European Parliament at a subsequent poll may have a dual mandate until the next election to the Irish National Parliament, at which juncture the first subparagraph of this paragraph shall apply;~~

~~— members of the United Kingdom Parliament who are also members of the European Parliament during the five-year term preceding election to the European Parliament in 2004 may have a dual mandate until the 2009 European Parliament elections, when the first subparagraph of this paragraph shall apply.~~

23. In addition, each Member State may, in the circumstances provided for in Article 8, extend rules at national level relating to

⁸ Paragraph 2 is deleted.

incompatibility.

4. Members of the European Parliament to whom paragraphs 1~~5~~² and 3 become applicable in the course of the five-year period referred to in Article 3 shall be replaced in accordance with Article ~~13~~¹².

Article 8

Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.

Article 9

No one may vote more than once in any election of members of the European Parliament.

Article 9a (new)

All Union citizens, including those living or working in a third country, shall have the right to vote in elections to the European Parliament. Member States shall take the necessary measures to ensure the exercise of this right.

incompatibility.

34. Members of the European Parliament to whom paragraphs 1~~5~~² and 3 become applicable in the course of the five-year period referred to in Article 5 shall be replaced in accordance with Article 13.

Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.

No one may vote more than once in any election of members of the European Parliament.

Member States shall take necessary measures to ensure that double voting in the elections for the European Parliament is subject to effective, proportionate and dissuasive penalties.

Union citizens residing in a third country shall have the right to vote in elections to the European Parliament in accordance with the law of the Member State of which they are nationals. Member States shall define, in accordance with their respective constitutional and electoral traditions, the conditions and requirements to be fulfilled by their nationals residing in third countries, in order to exercise the right to vote.⁹

⁹ In addition, the following recitals covering this Article would be included:

Whereas:

(...) Citizens of the Union have the right to participate in its democratic life by voting or standing as candidates in elections to the European Parliament.

Article 9b (new)

Each Member State shall designate the contact authority responsible for exchanging data on voters with its counterparts in the other Member States. That authority shall transmit to those counterparts, at the latest six weeks before the first day of the election and via uniform and secure electronic means of communication, data concerning Union citizens who are nationals of more than one Member State and Union citizens who are not nationals of the Member State in which they are residing.

The information transmitted shall include at least the surname and forename, age, city of residence, and date of arrival in the Member State concerned, of the citizen in question.

Article 10

1. Elections to the European Parliament shall be held on the date *or dates* and at the times fixed by each Member State. For all Member States ~~this~~ *the date or dates* shall fall within the same period starting on a Thursday morning and ending on the following Sunday. *The election shall end in all Member States by 21:00 hours CET on that Sunday.*

*Each Member State shall designate a **contact authority** responsible for exchanging data on voters and candidates with its counterparts in the other Member States.*

*Without prejudice to national provisions on the **entry** of voters on the electoral roll **and submission of candidacies**, the authority referred to in the first paragraph shall, in accordance with EU data protection standards, transmit to those counterparts, at the latest **[four weeks]** before the first day of the electoral period referred to in Article 10(1), the data indicated in Directive 93/109/EC concerning Union citizens who, in a Member State of which they are not nationals, have been entered on the electoral roll or are standing as candidates.*

1. Elections to the European Parliament shall be held on the date and at the times fixed by each Member State. For all Member States this date shall fall within the same period starting on a Thursday morning and ending on the following Sunday. *The election shall end in all Member States no later than 21:00 hours CET on that Sunday.*

2. Member States shall not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote within the period referred to in paragraph 1. ***First official projections of the results shall be communicated simultaneously in all Member States at the end of the electoral period specified in paragraph 1. Prior to this no exit poll-based forecasts may be published.***

3. The counting of postal votes shall begin in all Member States once the polls have closed in the Member State whose voters vote last within the electoral period referred to in paragraph 1.

Article 11

1. The Council ~~European Parliament~~, acting ~~unanimously~~ after consulting the European Parliament ~~Council~~, shall determine the electoral period for the first elections: ***at least one year before the end of the five-year term referred to in Article 5.***

~~2. Subsequent elections shall take place in the corresponding period in the last year of the five-year period referred to in Article 3.~~

~~Should it prove impossible to hold the elections in the Community during that period, the Council acting unanimously shall, after consulting the European Parliament, determine, at least one year before the end of the five-year term referred to in Article 3, another electoral period which shall not be more than two months before or one month after the period fixed pursuant to the preceding subparagraph.~~

~~2. Member States shall not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote within the period referred to in paragraph 1. *Member States shall publish the results of their count, without undue delay, after the end of the electoral period specified in paragraph 1.*~~

*Without prejudice to the possibility of providing for public counting of votes in line with their electoral traditions, Member States shall not officially make public the **results** of their count prior to the close of polling in all Member States.*

3. Deleted

1. ***Elections to the European Parliament shall be held in the first full week of the month of June in the final year of the five-year term referred to in Article 5.*** ~~The Council, acting unanimously after consulting the European Parliament, shall determine the electoral period for the first elections.~~

~~2. Subsequent elections shall take place in the corresponding period in the last year of the five-year period referred to in Article 3.~~

Should it prove impossible to hold the elections in the **Union**Community during that period, the Council acting unanimously shall, after consulting the European Parliament, determine, at least one year before the end of the five-year term referred to in Article 5, another electoral period which shall not be more than two months before or one month after the period fixed pursuant to the preceding subparagraph.

3. Without prejudice to Article ~~139~~**229** of the Treaty *on the Functioning of the European Union*, establishing the European Community and Article 109 of the Treaty establishing the European Atomic Energy Community, the European Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the electoral period.

~~4. The powers of the outgoing European Parliament shall cease upon the opening of the first sitting of the new European Parliament.~~

Article 12

The European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.

Article 13

1. A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.

2. Subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 3 for the remainder of that period.

3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the European Parliament, that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the European Parliament thereof.

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3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the European Parliament, that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the European Parliament thereof.

4. Where a seat falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the Member State concerned thereof.

Article 14

~~Should it appear necessary to adopt measures to implement this Act, the Council, acting unanimously on a proposal from the Assembly after consulting the Commission, shall adopt such measures after endeavouring to reach agreement with the Assembly in a conciliation committee consisting of the Council and representatives of the Assembly.~~ ***Measures to implement this Act shall be proposed by the European Parliament, acting by a majority of its component members, and adopted by the Council, acting by a qualified majority, after consulting the Commission and obtaining the consent of the European Parliament.***

Article 15

This Act is drawn up in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all the texts being equally authentic.

Pursuant to Accession Treaties, the Bulgarian, Croatian, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovenian versions of this Act shall also be authentic.

Annex I

~~The United Kingdom will apply the provisions of this Act only in respect of the United Kingdom.~~

4. Where a seat falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the Member State concerned thereof.

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~~The United Kingdom will apply the provisions of this Act only in respect of the United Kingdom.~~

Annex II

~~As regards the procedure to be followed by the Conciliation Committee, it is agreed to have recourse to the provisions of paragraphs 5, 6 and 7 of the procedure laid down in the joint declaration of the European Parliament, the Council and the Commission of 4 March 1975.~~

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