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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2) / Council
No. prev. doc.:	9603/23, 7582/23
Subject:	Meeting of the Council (General Affairs) on 27 June 2023 preparation Proposal for a COUNCIL REGULATION on the election of the Members of the European Parliament by direct universal suffrage, repealing Council Decision 76/787/ECSC, EEC, Euratom and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision ("European Electoral Law") - State of play

1. In May 2022, the European Parliament submitted a proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision.
2. The Council discussed the proposal in various meetings, both at technical and political level. Following an exchange of views in the Working Party on General Affairs on 3 March 2023, the Presidency launched a survey (7582/23) on 30 March 2023¹ with a view to providing greater clarity and a more granular level of analysis of delegations' positions on the proposal.

¹ 7582/23

3. Upon request of the Presidency, the General Secretariat of the Council prepared a summary as set out in the Annex to this note, based on the responses of 24 Member States received as of 8 June 2023.
 4. The Permanent Representatives Committee is invited to take note of the report and to submit it to the General Affairs Council with a view to the exchange of views on the European Electoral Law at its meeting on 27 June.
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Summary of the survey on Electoral law

I. INTRODUCTION

1. **Content:** The Summary report (Part II) provides an overview of Member States' comments categorising the provisions of the draft Regulation in three groups:
 - provisions facing broad and/or firm opposition ²;
 - provisions raising questions and requiring further in-depth discussions ³; and
 - provisions securing the most support⁴.
2. **Methodology:** The summary report aims at providing a general overview of Member States' comments and positions on each of the Articles of the EP proposal. Member States' level of response and justification varied greatly: from simply ticking boxes to providing comments or proposing alternative wording. Without aiming at exhaustivity, the summary report aims at transcribing the general orientations, the most commonly shared comments, as well as showing the diversity of views expressed by showcasing examples.

II. SUMMARY REPORT

A. General comments on the proposal

3. **Objectives:** Regardless of their positions on individual provisions, some Member States could accept adjusting certain elements of the Electoral Act to make the rules fit for the future. While some saw the benefits of moving away from the current 27 different models of

² Large number of Member States having ticked the box "not acceptable" and/or expressing strong views against.

³ Large number of Member States having ticked the box "to be discussed", with some Member States having ticked the box "not acceptable" and/or expressing strong views against.

⁴ Large number of Member States having ticked the box "acceptable", with some Member States still indicating various difficulties to be discussed and/or a smaller number expressing positions against.

elections for one European election, a large number of Member States flagged the lack of detailed statements on compliance with the principles of subsidiarity and proportionality and the financial impact of the proposal. These delegations preferred the regulation of European Parliament elections to continue to be handled at national level.

4. **Form of the Act:** Legislating on electoral procedures by means of a regulation had little support. A large number of Member States expressed doubts, and a few are even firmly opposed to changing the current form of the Electoral Act, arguing that a regulation setting a uniform electoral procedure would raise legal concerns and lead to inconsistencies between the rules on elections to the European Parliament and those on national elections.

B. Provisions facing broad and/or firm opposition

5. A majority of Member States opposed the **lead candidate** process (recital 8) on the grounds that it conflicted with the institutional balance set out in the Treaty, would undermine the Commission's impartial role and would favour candidates from the larger Member States.
6. A large number of Member States indicated they could not support transnational lists due to serious legal and institutional issues, lack of accountability and representation of citizens, and legitimacy of the members of the European Parliament elected from transnational lists. They further pointed out that the structure and organisation of European political parties is not fit for that purpose. Several Member States thus opposed any reference to the EU-wide constituency throughout the text (referred to as a controversial reference). Few Member States generally supported the **transnational lists** set out in Article 15, with some caveats, notably on the operational details. One Member State set out an alternative proposal to define and operationalise transnational lists. Another group of Member States expressed doubts, but were open to further discussions.
7. The Member State suggesting a new system for transnational lists also proposed a revised Article 28 creating a **European Electoral Authority**. Its creation, linked to the EU-wide constituency, however raises doubts for a large number of Member States who fail to see the added-value of this authority and who consider its financing unclear. These Member States

generally opposed any reference to it throughout the text (referred to below as a controversial reference).

8. Despite the proposal providing for the possibility to set a higher voting age, there is a firm and broad opposition to setting the **voting age at 16** (Article 4). Arguments against put forward by Member States include: a national Parliament recently rejected the proposal; voting age needs to be consistent with that of national elections; there is no justification to depart from a national system and lack of public support in some Member States for such a reduction. Several Member States also had questions and concerns over the expression “**regardless of their legal capacity**”, and the term “**disabled persons**”. The **right to stand as candidate from the age of 18** similarly faces opposition (Article 5).
9. Despite some support, the **obligation to introduce postal voting** (Article 8(1)) prompted large opposition on grounds of feasibility, security concerns, uncertainty on the scope and compatibility with national systems. The same applies to paragraph 2 on additional possibilities of voting. Most Member States prefer a voluntary system as in the 2018 Decision.
10. A majority of Member States were firmly opposed to the concept of **European Electoral Roll** (Article 9), which they considered to be unjustified, unreasonable, too far-reaching, asking thus for these references to be removed from the text. Other Member States proposed shortening the deadline for the establishment of the Electoral Roll.
11. Several Member States opposed imposing strict quotas on **gender** (Article 10(1)) on political parties, who should freely nominate candidates. The reference to “**non-binary**” was also unacceptable for some.
12. Most of the Member States either requested more time for **tabling lists of candidates** (Article 11), or opposed the 12 week proposal arguing it was unjustified, unreasonable and contrary to national systems.
13. Harmonising national rules and practices on **electoral campaigns** (Article 17) is unacceptable for several Member States and raises questions for several others. Member States stressed,

among other reasons, the adverse impact on deep-rooted national practices and traditions, as well as on campaigning expenses.

14. A large majority of Member States objected to **a single election day** (Article 19(1)) due to issues linked with subsidiarity, operational difficulties, risks of lower voter turnout and incompatibility with constitutional traditions. Three Member States could consider a voting period from Thursday to Sunday that would include the 9 May, but others preferred clarifying the original text. Other elements like **political activity near polling stations** (paragraph 2), **voting hours** (paragraph 3) and **results release** (paragraph 4) gathered more support, but nonetheless faced firm opposition, mostly on the grounds that it should be regulated at national level.
15. Several Member States cannot accept Article 20(1) on the **proclamation of election results**, some due to controversial references (see points 6 and 7), some signalling a pending preliminary ruling by the Court of Justice, and others stressing this should be regulated at national level.

C. Provisions raising questions and requiring further in-depth discussions

16. Some Member States are against setting **definitions** (Article 2), arguing that the system would be complicated and legally unclear, and could be done better at national level, but the majority is open to discussing further. The most problematic definitions seem to be those of ‘association of voters’ (paragraph 2), ‘European coalition of national political parties and/or association of voters’ (paragraph 3), ‘European political party’ (paragraph 4), ‘European association of voters’ (paragraph 5), ‘European electoral coalition’ (paragraph 6) and ‘union-wide list’ (paragraph 9). The main obstacles appear to be the incompatibility between those definitions and existing national laws (see points 6 and 7).
17. The **exercise of the right to vote** (Article 6) gathered interest, albeit with questions on issues around the scope, which for some Member States must exclude voting from third countries. Some Member States also opposed paragraph 2 on citizens serving a prison sentence, but a large majority was in favour.

18. Member States appear generally open to discussing Article 12 on **the electoral system** (based on 2018 wording and without transnational lists).
19. Member States indicated the need to discuss Article 13 on **Electoral threshold** in depth to remove some controversial references (see points 6 and 7), and to avoid excluding existing parties or breaching the principle of equal voting and equal competition between parties. The main issues appear to be on the 3.5% threshold (with notably a proposal to set a 2-5% bracket instead) and paragraph 4 on minorities.
20. Should references to the EU-wide constituency, the European Electoral Authority and the European Electoral Roll be removed, a large number of Member States could further discuss Article 18 on **contact authorities** on the basis of the 2018 wording. Issues to address would inter alia be timelines, data scope, and the need to cater for the situation in some Member States whereby different authorities handle data from voters and from candidates.
21. Article 23 on **verification of credentials** gathered large support (except for the controversial references, see points 6 and 7). It will require discussions notably to clarify the EP's role.
22. Article 27(7) on **special leave** will require in-depth discussions to address a substantial list of questions.
23. There are as many Member States favourable to Article 29 and its **committee procedure**, as Member States still reserving their position. Others needed clarifications or suggested alternative proposals. A small number of Member States are opposed.
24. The final provisions in Article 31 on the **review clause** and Article 32 on the **entry into force** will also require further discussion, depending on the outcome of discussions on the substance.

D. Provisions securing the most support

25. The following provisions received the broadest support at this stage:

- Article 3 on **national provisions** (paragraph 3 being the most difficult element);
- Article 4(2) on **double voting** and Article 4(3) on **penalties**;
- Article 5(2) on **double standing**;
- Article 7 on **accessibility**;
- Article 13(1) on the minimum **threshold** for the allocation of seats that shall not exceed 5% of the valid votes cast;
- Article 14 allowing i.a. Member States to establish single **constituencies** for the election;
- Article 16 on **financing electoral campaign of European electoral entities**;
- Article 19(5) on making the **9 May a bank holiday**;
- Article 20(2) on **publication of the election results** (to the exception of controversial references, see points 6 and 7);
- Article 21 on the **parliamentary term and mandate** and Article 22 on the **convening of the EP** (with the exception of one Member State opposing as it would implicitly acknowledge the single voting day and another suggesting it is out of scope);
- Article 24 on **incompatibilities** gathered a large support with the caveat that some Member States would need to resolve the issue of incompatibilities with regional mandates, some to remove controversial references (see points 6 and 7), and others considering that this is out of scope;
- Article 25 on **external parliamentary activities** (one Member State considers that this is out of scope);
- Article 26 on **personal and independent vote** is mostly acceptable to a large majority of Member States, pending a debate on the scope and the interaction with the Protocol on Privileges and Immunities;
- Most of Article 27(1) to (6) on **vacancies** can be accepted by a large majority of Member States, pending a debate on the scope and the removal of controversial references (see points 6 and 7).