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European Union

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**NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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No. prev. doc.: 9333/22

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Subject: Preparation for the General Affairs Council on 18 October 2022  
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  
- Policy debate

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1. On 3 May, the EP adopted a draft legislative proposal for a new Electoral law<sup>1</sup>, based on Art 223 TFEU, along with a resolution stating motivations. The original Act<sup>2</sup> dates back to 1976 (modified in 2002 and in 2018, but the latest revision is not yet in force, lacking some ratifications). The 1976 Act contains common principles that Member States must respect, without defining a uniform electoral system across the EU.

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<sup>1</sup> Document 9333/22

<sup>2</sup> Consolidated text: OJ L 283, 21.10.2002, p.1

2. Under Article 223 TFEU, the EP shall draw up a proposal in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the EP, which shall act by a majority of its component Members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements. It enters into force the day following the last notification received by the Council Secretariat.
3. The main features of the current EP proposal are:
- Replacing the decision by a Regulation;
  - Transnational lists for an EU-wide constituency: each voter would have two votes: one to elect MEPs in national constituencies, and one in an EU-wide constituency, composed by 28 additional seats;
  - Zipped lists aiming to tackle gender inequality;
  - The *Spitzenkandidaten* system: citizens could vote for the President of the Commission in a “lead candidate” through the EU-wide lists;
  - Harmonising measures: 9 May as the common European voting day; timings for campaigns or for proposing lists; postal voting, voting age, standing age;
  - A minimum electoral threshold of 3.5% for national constituencies of more than 60 seats; and
  - The creation of a new European Electoral Authority to oversee the process and ensure compliance with the new rules. Beyond its exact mission and scope, this would likely raise questions as to its management, financing or staffing.

4. Discussions in the Working Party on General Affairs (GAG) started under the French Presidency and continued under the Czech Presidency. These preliminary technical discussions pointed to specific challenges around transnational lists, measures aiming to harmonise processes across the EU (e.g. postal vote, voting age, common voting day), and the creation of a new Electoral Authority. Most delegations requested advice from the Council Legal Service to shed light on the nature of the legal act underlying the proposal for a new Electoral Law, its compliance with the principle of subsidiarity, and the compatibility with the Treaties of some of the novelties of the proposal. Delegations' written contributions are compiled in document 11768/1/22 REV1.
5. Against this background, the Presidency considers that further work could benefit from political guidance and has therefore foreseen a policy debate at the meeting of the Council (General Affairs) on 18 October. To steer the ministerial debate, the Presidency has prepared questions, set out in the Annex to this note.

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PRESIDENCY QUESTIONS FOR THE POLICY DEBATE

1. Given the complex nature of the file, the heavy adoption process, as well as the EP strong wish to roll out changes in time for the upcoming EP elections in May 2024, the Presidency feels it is appropriate at this stage to have a political discussion on some of the key features of the proposal.
2. At the General Affairs Council (GAC) on 18 October, Ministers are invited to focus on the following questions:
  - a) Which of the proposed changes do Member States wish to see reflected in an Electoral Law for future EP elections, compared to the current legislative framework?
  - b) What elements of the proposal do Member States consider more challenging, taking into account their respective domestic frameworks, as well as the principles of subsidiarity and proportionality?
  - c) Securing the set-up of transnational lists of candidates for the next European elections in May 2024 is a key feature of the EP proposal. What are your views on the overall concept of establishing transnational lists, the system of the lead candidates (Spitzenkandidaten) and ensuring a balance in the representation of Member States in the distribution of seats?