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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	ST 11768 2022 REV 1 (LIMITE)
Subject:	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 ("EU Electoral Law") - Answers from the AFCO Secretariat on questions from Member States

Delegations will find in annex answers that the AFCO Secretariat provided to the questions that Delegations had formulated over the summer.

ANNEX

COUNCIL QUESTIONNAIRE - AFCO SECRETARIAT PROPOSAL

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Costs

What would be the **financial impact** of the proposal and does the EP suggest to fund it within the adopted budget and the current MFF? The Council would like to receive more practical details and a breakdown of costs and budgetary impact on the following:

- creation of the new European Electoral Authority,
- the technicalities and organisation of the elections for the Union-wide constituency in the Member States (e.g. production and distribution of ballots)
- the design and printing of ballot papers?

The costs of organising elections for the European Parliament are covered by Member States, including the printing and the distribution of ballot papers. That would not change as compared to how elections are funded now.

Article 28(8) of the EP proposal provides that the costs of the European Electoral Authority, including the remuneration of its members shall be financed by appropriations from the general budget of the Union . This would have to be reflected in the MFF and annual budgets. The EP proposal does not include a memo of budgetary impact of the creation of the European Electoral Authority. A draft budgetary plan for the European Electoral Authority will be submitted to the European Parliament by its President

Article 16 of the EP proposal deals with the financing of electoral campaigns of European electoral entities.

If necessary, the European Parliament could request the assistance from Parliament's research services to provide further elements.

Art 4 - Voting age

- *"... without prejudice to existing constitutional orders establishing a minimum voting age of 18 or 17 years of age"* > Does the proposal mean to establish an exception to the application of the provision and safeguard Constitutional provisions establishing a higher voting age?

Indeed, the proposal establishes an exception for regulating the minimum voting age of 16 years for those Member States whose constitutional order establish a minimum voting age of 18 or 17 years.

- *"... including persons with disabilities regardless of their legal capacity"* > What does "legal capacity" mean in this context? What would it imply for persons under guardianship? What specific improvements is the EP hoping to achieve with this new provision?

The Article should be seen in the context of relevant provisions and applicable case law on the right to vote, as laid down in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, Article 3 of Protocol No. 1 to the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

The objective of this provision would be to ensure that all the persons with disabilities enjoy political rights on an equal basis with others. That would imply that persons with disability would enjoy the right to vote and that there should not be an automatic deprivation of this right because of an impairment or disability or due to being under guardianship.

In this context, the ECHR has rejected automatic disenfranchisement of persons under guardianship - the ECHR considered that the routine removal of voting rights of persons under guardianship, irrespective of their actual faculties, was in violation of Article 3 of Protocol 1 to the Convention,

Art 7 - Accessibility

- *"equal access*" in Art 7(1): What is considered "equal access" and does the EP have a best practice in mind. Would "equal access" mean that all polling stations in the country must be physically accessible for voters with disabilities ?

That is one of the objectives (see also Parliament's resolution accompanying the proposal in this respect). Member States should ensure that the arrangements to guarantee that voters with disabilities can effectively vote are put in place.

However, "equal access" could be read also in the sense of the "equality of opportunity" and the related "neutral attitude by state authorities" (Venice Commission - Code of Good Practice in Electoral matters)

- Is Art 7(3) in contradiction to Art 7(2) and Art 12(1)? Does the fact that people with disabilities might seek the help from a person of their choosing to vote, breach the secrecy of the vote?

It doesn't breach the secrecy of the vote more than proxy voting, which is also provided for in the proposal (and practised in some Member States)

Art 8 - Postal voting

- "***including*** *for citizens living in a third country*" > Does this mean that Member States also need to grant postal voting to voters within the Member State?

Yes. For the purpose of clarifying this, see also recital 33 of the political resolution accompanying the proposal.

- What is the intended goal of this Article?

The objective of the proposal is to encourage voter participation in elections to the European Parliament. Likewise, Member States could also allow for advance physical (see recital 15 of Parliament's proposal).

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Art 9 - Electoral roll

Could the EP provide more specifics on the purpose and the modus operandi of the European electoral roll?

The objective of the European electoral roll is essentially to ensure the transparency of the electoral process and reliability of and timely information on voters in the context of the Union-wide lists (prevention of double voting, etc.). And that is also why the management of this roll is for the European Electoral Authority (Art 28(1)(e)).

Article 9 of the EP proposal lays down that the modus operandi or "technical requirements" will be established by the European Commission through implementing acts.

Art 10 - Selection of candidates

Do we understand right that this provision aims at establishing two separate tracks: a national track for election of MEPs per Member State (National electoral authority > national courts, which may possibly ask the ECJ for a preliminary ruling) and a European track for MEPs elected under the Union-wide constituency system (European Electoral Authority > ECJ)?

If the "reasoned complaint" concerns the national electoral list, the authority competent to resolve it at national level should be addressed

According to Art 15(3), European electoral entities may submit to the European Electoral Authority Union-wide lists. That is why complaints regarding the Union-wide lists would have to be addressed solely to the European Electoral Authority. The provisions on the competences of the Court, and in particular Art 263, will apply. See also Articles 28(b), (d) and (g) in this context.

Art 11 - Tabling of the lists of candidates

- What benefits does the EP seek to achieve with the extension of the period to **12 weeks**, as opposed to the 3 weeks agreed in 2018?

The European Parliament, in its proposal of 2015, had put forward 12 weeks. This is therefore not new, and the Parliament has decided to retrieve that deadline to the 2022 proposal.

For the 2015 procedure, the value-added assessment considered that there were "very substantial variations in the existing national practices on setting of deadlines for establishing candidate lists at the national level and registering these with the national authorities. They range from a maximum of around three months in Sweden to a minimum of less than three weeks in Greece and Spain. In addition, in some cases, the deadline seems uncertain: for instance, in Croatia the deadline is 14 days after the announcement of the election, but in the case of a European Parliament election, it is not clear when (and by whom) is it announced. There is thus no level playing field for electoral campaigns across the EU. This affects both candidates as well as voters."

The co-rapporteurs of the 2015 procedure had wanted to establish a common deadline that could cover all those variations. The value-added assessment considered that "twelve weeks - or eighty four days- is significantly longer than established practices in all Member States. (...) However, a longer deadline for the European elections could be an advantage as it would reveal the specificity and the European character of these elections."

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Furthermore with the establishment of a new and additional Union-wide constituency, as well as the introduction of postal and possibly other additional possibilities of voting , it may be beneficial to have additional time for the preparation and coordination among the 27 Member States.

- Would the European Electoral Authority also receive candidacies to the EU constituency?

It is the European Electoral Authority who will receive the candidacies to the Union-wide lists and proclaim these lists. See for this purpose, Arts 28(1)(a), 28 (3) and 15(3).

Art 15 - Union-wide constituency

Could the EP clarify how the provision aims to ensure **geographical balance**? Is it correct to understand the text as meaning that any given list could hold candidates from a minimum of three Member States (one from each group) and up to 28 Member States?

The geographical balance rule, as conceived in the EP proposal avoids that Union-wide lists favour candidates from the most populated states, to the detriment of those from medium and small states, ensuring that candidates from the largest Member States do not take all the top positions

The geographical balance criteria work as follows: the Union-wide lists are divided in sections of three slots, with candidates coming from three different groups of Member States (divided according to population) (see Annex I of the proposal) It is not a question of "up to 28 Member States", as there are 27 Member States. Instead, it is that 28 MEPs will be elected from the EU-wide lists. There can be repetitions of Member State of origin across groups of three (see Annex II of the proposal), as explained below.

Article 15(10) means that until the position 14 (as the lists must have 28 names), you would have to vary the nationalities, but to a certain extent only: in each section of 3 candidates until candidate 14 you would need to have 1 candidate coming from each of the three groups of MS (as divided by population ranges). You could have the first name (top candidate) coming from a MS in group A, then the second position would be for a candidate from group C, and the third one from group B (or any other order). And then the next section of three names would follow the same logic. However, there can be repetition of Member States across sections of three names – for instance, we could have a candidate from the Netherlands in the first section of three candidates and again in the second section of three candidates.

Art 16 - Financing of electoral campaigns of European electoral entities

Had the EP considered providing for a mandatory ceiling for candidates' campaign expenses and if so, what was the reasoning for ruling it out?

The EP has not considered providing a mandatory ceiling in this regard. The rules on the financing are left to Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations.

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Art 17 - Common provisions related to electoral campaigns

- Could the EP explain the rationale to set the beginning of campaign to **8 weeks** before the election date, at the earliest?

Currently there are substantial variations in the existing national practices on setting of deadlines for tabling the lists of candidates and as a result there is no level playing field for electoral campaigns across the EU.
Given the nature of the European elections and the establishment of a new and additional Union-wide constituency, the EP proposal contains common deadlines for tabling the lists of candidates and the start of electoral campaigning, aiming to overcome the current lack of a level playing field and to grant sufficient time for campaigning, so as to promote the further development of the European public sphere.

- What would the "**electoral reserve period**" consist of precisely? Is it solely about the prohibition to ask voters about their voting intentions or would there be other dimensions to it like the prohibition of campaigning or political advertising?

The electoral reserve period of 48 hours intends to prohibit asking electors for their voting intentions. It would exclude means of political advertising and campaigning that would do so.
Exit-polls on Election day are not excluded.

Art 19 - Election day

- If the European Electoral Authority is the one to proclaim the election results, including for national constituencies (Art 20(1)), what results could the Member States/national electoral authorities make public under Art 19(4)?

There is a distinction to make between making public the results of the count at national level, which is for the Member States, and the proclamation of the results of the Elections as a whole, and this latter is for the European Electoral Authority.

- Do you share the understanding that "Election shall **end by**…" gives a final closing time, but polling stations might individually close earlier?

Correct

- Would Art 19(4) also apply to projections released by the media?

Article 19(4) does not apply to projections released by the media.

Art 20 - Determination and publication of the election results
When is the European Electoral Authority expected to proclaim the results?

The European Electoral Authority will proclaim the results when in possession of the official information provided by the national contact authorities.

Art 23 - Verification of credentials

Would the European Electoral Authority have a specific role in verifying credentials?

No, this is a competence of the European Parliament.

Art 28 - European Electoral Authority

- Would the EP be able to provide further details on the setting up of the European Electoral Authority (permanent or temporary basis, location, infrastructure, staff, structure, competences…)?

The European Electoral Authority would be a permanent structure, with members appointed for a five-year term (renewable once) and permanent functions (see in this regard the competence of the Authority in cases of seats falling vacant, in accordance with Art 27, and the tasks of the Authority in relation to the implementation of the regulation as whole, in line with Art 28(1)(a))). It would have legal personality and the necessary offices, staff, services and administrative support facilities to carry out its functions.

- The Council would welcome clarifications on how the EEA would coordinate with existing national authorities.

According to Article 18, Member States would appoint national contact authorities with whom the EEA would liaise (see Art 28(1)(c)). In view of the wide-ranging competences of the Authority, the contact authorities would be connected to the Authority in a relationship similar to a network.

- Could the EP provide some examples of disputes mentioned in Art 28 (1g)?

These could have to do with the compliance with the principles of the selection of candidates for the Union-wide list under Art 10(1).

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