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NOTE

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Subject:	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')

1. INTRODUCTION

On 11 November 2015 the European Parliament (EP) adopted a 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, accompanied by a resolution on the reform of the electoral law of the European Union. The proposal is based on Article 223(1) TFEU.

2. STATE OF PLAY

The Working Party on General Affairs (GAG) examined a first set of articles in 2016. Delegations were able to reach agreement on a common approach to a number of provisions in the EP's proposal. However, several provisions in the EP's proposal appeared to be unacceptable to delegations as a matter of principle and/or on legal grounds. These include the provisions on a joint constituency and 'Spitzenkandidaten'. An exchange of views on the file was held in COREPER on 30 November 2016, in particular on several main outstanding issues. The outcome of this discussion was presented informally to the Parliament's co-rapporteurs and shadow rapporteurs in January 2017. On 6 December 2017, COREPER discussed the file¹ again and gave a mandate to the Presidency to orally inform the co-rapporteurs about the state of play in the Council, including on seven provisions which seemed to be the most likely agreeable². The meeting took place on 12 December 2017. The co-rapporteurs stressed that the EP was still waiting for the reply from the Council.

7+2 package

The Presidency continued discussions in the Working Party on the basis of the seven provisions which were identified, plus Article 3 on threshold³. In the last Working Party meeting on 9 March 2018, the Presidency presented a revised compromise proposal with Article 9a concerning the vote of citizens in third countries⁴.

At the Coreper meeting on 28 March, all remaining reservations have been lifted, except one delegation concerning the threshold (see below). This reservation has also been maintained in the subsequent Coreper meeting on 11 April.

¹ 15241/17, WK 12583/2017 REV 2

² Article 1(1) (Treaty language on MEPs as representatives of Union citizens), Article 3a (a deadline of at least three weeks for the submission of candidacies), Article 3e(1) (display of the name or logo of European political parties on ballot papers), Article 3e(2) (rules concerning the sending of electoral materials), Article 4a (advance voting, postal voting, and electronic and internet voting), Article 9, second paragraph (penalties for double voting) and Article 9b (designation of contact authority and deadline for exchanging data on voters and candidates).

³ WK 1800/2018

⁴ WK 1800/2018 REV 1

3. OUTSTANDING ISSUE (ARTICLE 3 ON THRESHOLD)

Article 3(2) is a key provision of the EP proposal establishing an obligatory minimum threshold of 3 % at constituency level for Member States in which the list system is used and which have constituencies with more than 26 seats.

The Presidency compromise suggests modifying the wording of Article 3 so that it would apply only to the constituencies (including single-constituency Member States) which comprise more than 35 seats, with a minimum threshold of 2%.⁵ The provision also sets out that Member States shall comply with the threshold no later than in time for the elections which follow those taking place after the entry into force of this Act. This compromise proposal gained a broad support in the Working Party which was confirmed at the Coreper level. Nevertheless, one delegation could not support setting a threshold, as a matter of principle.

4. PROPOSED ACTION

Taking into account the necessity of having the changes to the current Electoral Act approved in accordance with their constitutional requirements and for adopting the necessary domestic measures in time for the 2019 EP elections, as well as the opinion of the Venice Commission on electoral matters which recommends avoiding any changes to the voting systems just before (within one year of) the elections, the Presidency considers that this is the last opportunity for the Council to reach a unanimous political agreement on the 7+2 package as set out in the Annex. In light of the circumstances it is also proposed to immediately inform the European Parliament of any political agreement reached on the package, so that the Parliament can start undertaking the necessary steps.

⁵ The difference of treatment between constituencies of a different size can be justified by the fact that a "natural threshold" exists in any electoral system without legal intervention. Where a sufficiently high natural threshold already exists, the objective of avoiding fragmentation is assured without the need to introduce a compulsory one.

The natural threshold varies in function of the size of the constituency. According to the generally accredited statistical formula, the natural threshold for a constituency of 35 seats is 2,08%. Therefore, the lowering of the minimum threshold to 2% aims at avoiding an unjustified discrimination in relation to those (smaller) constituencies, the natural threshold of which is comprised between 2,08% and 3% and to which the obligatory threshold would not apply.

The compromise text will then be put in the appropriate legal form of the act to be adopted and submitted, following the lawyer-linguistic revision, in one of the next Coreper meetings for approval, as a basis for the Council to decide on seeking the consent of the European Parliament.

5. CONCLUSION

The Presidency considers that the current compromise which results from difficult and politically sensitive discussions over five presidencies is balanced and takes into account the diverse positions and national interests. The Presidency is of the view that this package is to be considered as a whole, and that taking any part out of it is not an option.

The Council (GAC) is therefore asked to approve the text as set out in the Annex, in order to transmit it to the European parliament.

**Amendments to the Act concerning the election of the members of the European Parliament
by direct universal suffrage**

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.
2. Member States may authorise voting based on a preferential list system in accordance with the procedure they adopt.
3. Elections shall be by direct universal suffrage and shall be free and secret.

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 valid votes cast.

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 35 seats. This threshold shall not be lower than 2 per cent, and shall not exceed 5 per cent, of the valid votes cast in the constituency, including single-constituency Member State, concerned.

Member States shall take the necessary measures to comply with the obligation set out in the second paragraph no later than in time for the elections to the European Parliament which follow the first ones taking place after the entry into force of this Act.

Article 3a (new)

Where national provisions set a deadline for the submission of candidacies for election to the European Parliament, that deadline shall be at least three weeks before the date fixed by each Member State, in accordance with Article 10(1), to hold the elections to the European Parliament⁶.

Article 3e (new)

1. Member States may allow for the display, on ballot papers, of the name or logo of the European political party to which the national political party or individual candidate is affiliated.⁷

2. The rules concerning the sending of electoral materials⁸, by public authorities, to voters in elections to the European Parliament shall be equivalent to those applied for national elections, without prejudice to the means by which such materials are sent and without prejudice to the sending of communications concerning the organisation of the elections.

Article 4a (new)

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 in particular the reliability of the result, the secrecy of the vote, and the protection of personal data in accordance with the applicable Union law.⁹

⁶ Completed by the following recital, covering also Article 3e para 1:

Whereas:

(...) Transparency of the electoral process and access to reliable information are important for raising European political awareness and for securing a solid election turnout, and whereas it is desirable that citizens of the Union 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.

⁷ For the recital, see footnote 6.

⁸ To be completed by a recital providing examples of the materials concerned (ballot papers, and lists of political parties, their coalitions and candidates standing in the elections).

⁹ Completed by the following recital:

Whereas

(...) In order to encourage voter participation in the elections to the European Parliament and to fully take advantage of the possibilities offered by technological developments, Member States could provide for the possibilities of inter

Article 9

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.

Article 9a(new)

In accordance with their national electoral procedures, Member States may take the necessary measures to allow their citizens residing in third countries to vote in elections to the European Parliament.¹⁰

Article 9b (new)

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, begin transmitting to those counterparts, six 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.

alia advance voting, postal voting, and electronic and internet voting, while ensuring in particular the reliability of the result, the secrecy of the vote, and the protection of personal data in accordance with the applicable Union law.

¹⁰ Completed by the following recitals:

Whereas:

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

(...) Member States are encouraged to take the necessary measures to allow their citizens residing in third countries to vote in elections to the European Parliament.