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NOTE

From: General Secretariat of the Council
To: Delegations

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Subject: Proposal for a Council Regulation on the election of the members of the EP by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the EP by direct universal suffrage annexed to that decision
- Contributions by delegations

Following the meeting of the Working Party in General Affairs on 15 July 2022, the Presidency invited delegations to send written contributions on the above mentioned EP proposal by 20 July.

Delegations will find in the Annex the written contributions received to date from DK/DE/EE/IE/ES/HR/IT/LU/HU/MT/AT/RO/SI/SK/SE.

**- Contributions received following the
GAG meeting of 15 July 2022**

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Denmark

DK maintains parliamentary and scrutiny reservations. Against this background, the following comments are preliminary:

- DK looks favourably to most of the elements in **category 1**, as we have adopted and ratified the Council Decision from 2018. However, we do not find references to a “union-wide constituency” acceptable. This also goes for the references in the articles in category 1. We expect to be able to support the following:
 - Art. 4.2 og 4.3 – the right to vote (NB without reference to “union-wide constituency”).
 - Art. 12.2 – electoral system (NB without reference to “union-wide constituency”).
 - Art. 13.1 – electoral threshold
 - Art. 26 – personal and independent vote
 - Art. 27.1, 27.3, 27.4 og 27.5 – vacancies.
- As to the modified elements in **category 2**, we are currently consulting internally at national level. However, on a preliminary basis, DK is sceptical of new elements in the following provisions:
 - Art. 6 – exercise of the right to vote
 - Art. 8 – postal voting
 - Art. 13.2 – electoral threshold
 - Art. 14 – national constituencies
 - Art. 17.4 – common provisions related to electoral campaigns, among this symbols and logos on ballots
 - Art. 19.4 – election day/publicity of the results
 - Art. 21 and 22 – Parliamentary term and mandate and convening of Parliament
 - Art. 23 – Verification of credentials
 - Art. 24 – incompatibilities, including regional parliaments and associations
- Likewise, several provisions in **category 3** raise concerns. This is the case, inter alia, for art 4. (age of voting) and particularly art. 15 (union-wide constituency) as we fear that transnational lists would widen the gap between citizens and their representatives rather than close it. Furthermore, it would run counter to the fundamental principle that national candidates, anchored in national parties, represent the voters of their country in Parliament. We are also concerned that in practice, candidates from countries whose native language is one of the most widely spoken EU languages would have an advantage. Likewise, DK remains highly sceptical of the preambular references to the Spitzenkandidat-procedure, since such a procedure would significantly shift the institutional balance as set out in the treaties.
- Finally, we would appreciate clarification on the legal implications of **changing the legal status of the electoral law** from a Council Decision to a Regulation.

Germany

- **Reforming the electoral act is an integral part of our overall efforts to strengthen our democratic institutions and thus should be high up on our agenda. We encourage the CZ Presidency to start the detailed discussion article by article as soon as possible. Germany is looking forward to the assessment of the Legal Service right after the summer break, in order to facilitate in-depth political discussions!**
- The current electoral act provides for 27 different electoral law systems for one and the same election. It needs modernization in order to make the election of the European Parliament fit for future. We therefore support a **coherent electoral law with common minimum standards** to be in place for the next European elections.
- **We should increase inclusion, participation and transparency of the European elections.** In this respect, the European Parliament proposes many good ideas:

Category 1

- Generally, we support maintaining the provisions of category 1. We should not fall behind the framework that the current electoral act provides for!
- We welcome maintaining the provisions on the fight against double voting. Moreover, there is a clear link between the fight against double voting and the provisions concerning the exchange of data between Member States on the electoral roll in Article 18. The earlier Member States authorities can exchange the relevant data, the easier it is to detect potential cases of double voting in advance. Earlier administrative deadlines on the other hand must not make the elections less accessible for citizens.

Category 2

- We welcome the addition of the EP in **Art. 3** stipulating that national provisions regulating the European elections shall ensure respect for **democratic standards** with regard to the registration of a political party and the submission of candidates. This guarantees that all MEPs have to comply with similar minimum requirements and are truly on an equal footing. In that sense, we also welcome the addition of the **principle of “equality”** in **Art. 12**.
- We welcome the possibility for Member States to constitute **special single member constituencies** to allow for better representation of linguistic or ethnic minorities, overseas nationals, outermost regions or overseas territory. This change could make the European Parliament more inclusive (**Art. 14**).
- In order to foster the European public we also support efforts to enhance the visibility of European political parties. **Uniform ballot papers or campaign material** giving equal visibility to names, acronyms, symbols and logos of European political parties are a good step in that direction (**Art. 17.4**). Moreover, it would be a logical consequence of the fact that MEPs are not national representatives, but “representatives of the Union’s citizens” according to Art. 14 TEU.

- Every EU citizen should have equal access to make use of his or her right to vote in European elections. **Postal voting (Art. 8)** has the potential to enhance participation in the elections. This is especially true for people with disabilities, who are often facing difficulties at polling stations due to their mobility needs.

Category 3

European election day

- Whereas we support the idea of a European election day in principle there is a certain uneasiness about having European Elections on a working day. It would be contrary to the democratic electoral tradition in Germany and might constitute an impediment to the participation of the working population in the elections. It would put our electoral organization, which is highly reliant on thousands of volunteers, under stress. And it might cause an unwelcome decrease of participation in the European Elections. We must therefore look for pragmatic solutions (i.e an election week including 9th May).

Transnational Lists

- Transnational lists have the potential to strengthen European democracy by bringing the EU closer to its citizens and answering their call for more transparency: Transnational lists (and potentially a lead candidate system) would make the appointment to top positions on European level more transparent.
- We are looking forward to have this discussion in light of the upcoming assessment of the Council Legal Service which should be issued as soon as possible (ideally by the end of the summer break) and which should include the issue of the maximum “threshold” of 96 seats per MS.
- Our understanding of the “threshold” is that an MEP with e.g. German nationality elected through transnational lists would not qualify as national MEP, but represent Europe as a whole.
- Therefore, **transnational lists – which are by definition non-national lists – would not interfere with the provision of Art. 14 TEU stating that no Member State should have more than 96 seats.**
- This has also been handled accordingly in the past: It is not the nationality that decides to which Member State an MEP is allocated, but the constituency. For instance, Daniel Cohn-Bendit, MEP from 1994 until 2014 and holding only German nationality at the time, was elected MEP in France and therefore allocated to the French quota. Accordingly, transnationally elected MEPs should not be allocated to any Member State’s quota.

European Electoral Authority

- We support in principle the idea of a European Electoral Authority, which should be in charge of the implementation of the European dimension of the electoral act, i.e. the organization of an EU wide constituency. Concrete competences and tasks will have to be discussed further. In order to avoid the creation of additional administrative structures, it could be a good idea to further develop the existing Authority for European political parties and foundations into a European Electoral Authority.

Estonia

Position: From a forward-looking perspective, we can say that we see questions about a number of provisions. In our view, some of the new provisions do not increase the voter turnout, but may, on the contrary, have a chilling effect — such as the introduction of May 9th as the Election Day. In addition, there are many provisions in the regulation that would require a large part of our national legislation to be amended — for example ballot papers, or different deadlines in the electoral process. The need and purpose for determining the start date of the campaign needs also further clarifications.

We have some questions regarding Articles 4 and 5:

Our Constitution does not stipulate the voting age or the age of standing as a candidate in the EP elections. These requirements are set out in the European Parliament Election Act - Estonian citizens who have attained 18 years of age by the Election Day have the right to vote and those citizens who have attained 21 years of age by the Election Day have the right to stand as candidates. Regulation is the same as for our general elections.

Does the new Regulation mean that as our Constitution is not laying down the age requirements, we need to change our legislation in order for harmonize both the voting and the candidate age?

We would be interested to know how or where this issue is regulated in other Member States.

Ireland

- Does the inclusion of the new subsection referring to the democratic requirements for the registration of a political party or association of electors included at the end of the new Article 3 (Article 8 in original Act) encroach on issues of subsidiarity? (i.e. national provisions **shall** in any event ensure respect for);
- Does the inclusion of the provisions in Article 6 (Article 9a in original Act) obliging member states to provide for the possibility of voting, not only for citizens residing in a third country, but also for citizens in other special situations (without permanent residence, without a fixed abode, living in a closed environment or in prison) encroach on issues of subsidiarity?
- Does the inclusion of the provisions in Article 8 (Article 4a in original Act) requiring Member States to provide for the possibility of postal voting encroach on issues of subsidiarity?
- The text in respect of the inclusion of political party names and logos on ballot papers in new Article 17(4) (Article 3b in original Act) appears to be binding on Member States. Do these revisions encroach on issues of subsidiarity? (i.e. the ballot papers used in elections to the European Parliament **shall** be uniform, give equal visibility.....);
- The Irish authorities note the additional incompatibility for members of a regional parliament or regional assembly with legislative powers with membership of the European Parliament as set out in new Article 24 (Article 7 of the original Act).

Spain

The following are **Spain's preliminary comments** on the Articles referred to in the first two blocks of the analytical note prepared by the former French Presidency. However, **the text is under scrutiny reserve and further comments may be sent at a later stage.**

- **On Articles 13.1 and 13.2 (electoral thresholds)**, it would be necessary to clarify whether the thresholds would be optional or mandatory. We find contradiction between the optional nature of the rule with the result that in some Member States the threshold is established or not and the objective of the rule, which is a harmonization of the electoral processes in the Member States.

- **On Article 11 (tabling of the lists of candidates)**: Spain considers that the deadline for tabling lists of candidates is too long. It would also make the electoral process for elections to the European Parliament far longer than the other electoral processes in Spain. This could have negative consequences for the electorate. In Spain's electoral law, the deadline finishes four weeks and six days before the election day. The proposed length goes against the principle of reducing electoral costs

Besides, given that the Regulation foresees an election day, it would be useful to establish specific days for those deadlines.

We would also like to note that the provision does not specifically mention that candidacies to the EU constituency would have to be submitted to the European Electoral Authority.

- **On Article 14 (national constituencies)**: in accordance to the Spanish Electoral Law, Spain has a nation wide constituency for elections to the European Parliament.

We also note that the possible incompatibility of submitting a candidacy to the national lists and to the Union lists is not foreseen in the proposed Regulation.

- **On Article 17 (common provisions related to electoral campaigns)**: the electoral campaign period and the electoral reserve period being foreseen (eight weeks and 48 hours, respectively) are too long and contrary to the Spanish electoral traditions. This may cause a rejection by the electorate and a debate on the need to review the amounts allocated for the financing of electoral expenditures. The proposed length goes against the principle of reducing electoral costs

It would also be convenient to establish given days instead of deadlines to avoid different interpretations of these ones.

It would be convenient to establish uniform criteria for the electoral campaign in order to avoid a discriminatory treatment of European electoral entities in the Member States.

The equal treatment in campaign by Member States and broadcasting entities makes it necessary to establish clearer and uniform rules on sharing, or at least to determine who should establish these rules.

Concerning ballot papers to the national constituency, in Spain the inclusion of the denomination and logo of the European electoral entity of affiliation may imply some very complex technical difficulties. If the intention of the proposal is to ensure uniformity, in principle it would require a common design of the ballot and do not leave it to each member state.

- **Article 23** → *under scrutiny reserve.*

- **As a further comment, some aspects of the proposed Regulation would require complementary measures, such as, for example:**

- **On Article 3 (national provisions):** *considering the legal nature of a Regulation, whatever is not in conformity with the Spanish Electoral Law may require its reform.*
- **On Article 6 (exercise of the right to vote):** *regarding the part of the provision about persons experiencing homelessness, it may be difficult to guarantee their right to vote without adopting complementary measures which are at present not foreseen in the Spanish electoral law.*

I.

We maintain general scrutiny reservation on the text – currently we are conducting consultations with the competent authorities and therefore we are not able to express our position on the Proposal for the Regulation.

We will present the official positions of the Republic of Croatia in September.

II.

In order to be able to take a comprehensive position on the Proposal of the Regulation, we ask for clarification of the text in regard to the right to vote from Article 4 and the postal voting from Article 8 of the Proposal for the Regulation:

1) According to the Article 4 paragraph 1: *„Every Union citizen from 16 years of age ... shall have the right to vote in elections to the European Parliament without prejudice to existing constitutional orders establishing a minimum voting age of 18 or 17 years of age.“*

Accompanying recital number 17 in this context states, among other things, that *„Without prejudice to existing constitutional orders establishing a minimum voting age at 18 or 17 years of age, the minimum age for voting should be set at 16“*.

In order to remove all doubts and potential ambiguities, we would appreciate if these provisions could be clarified: Does Article 4 impose an obligation on a member states to enable voting from the age of 16 or is it just an option available to member states that they may or may not introduce?

We need an unequivocal confirmation of Article 4, given that our constitutional framework determines that *„All Croatian citizens who have reached the age of eighteen years (voters) shall be entitled to universal and equal suffrage in elections for the Croatian Parliament, the President of the Republic of Croatia and the European Parliament and in decision-making procedures by national referendum, in compliance with law.“*

Bearing in mind the above, we ask for clarification as to whether the provision from Article 4 of the Proposed Regulation on the right to vote at the age of 16 is binding (obligatory) or optional.

2) According to the Article 8 paragraph 1: *„Member States shall provide for postal voting in elections to the European Parliament, including for citizens living in a third country, and shall adopt measures that ensure that postal voting is accessible, in particular for persons with disabilities“*.

Accompanying recital number 15 in this context states: *„In order to encourage voter participation in elections to the European Parliament, Member States should provide for postal voting...“*.

We would appreciate if these provisions could be clarified: Does the quoted part of Article 8 result in an obligation for member states to introduce postal voting in the European Parliament elections, or is it only an option available to member states that they may or may not introduce?

According to the quoted text of Article 8, it seems that it is binding (obligatory) because it says „Member States shall provide for postal voting in elections to the European Parliament“, while from the wording of the recital derives the non-binding character because it states „Member States should provide for postal voting...“.

It is fundamentally important for us to get confirmation of the goal and scope of this provision, given that our constitutional framework does not recognize the possibility of postal voting.



Italy

As preliminary remarks:

- as stated in previous occasions, Italy confirms the support to the introduction of a limited but symbolically important EU transnational constituency, which will serve the purpose to reinforcing the European political space and debate political parties and enrich the very notion of EU citizenship.
- we are still examining the most innovative elements foreseen by the EP related to the modalities of vote, i.e. the possibility of postal voting and of voting in third countries;
- particular attention will be given to the provisions related to the age of the right to stand for election (for the impact on the national law), the new deadline of twelve weeks for the submission of candidate lists, the single election date and the closure of polls at 9 pm, on which we maintain a scrutiny reservation.
- more in general, we look forward to getting more information and clarifications concerning the establishment of a new European Electoral Authority, in particular as regards the coordination that will be established with existing national authorities.

Luxembourg

- Luxembourg enters a scrutiny reserve on the entire proposal for a regulation, as the internal evaluation and consultation process is still ongoing. Generally, there is a need to pay attention to Member States' national specificities. In Luxembourg's case, this includes compulsory voting and a high number of mobile EU citizens. In addition, there is a need to take into account Luxembourgish law, the Constitution, and the ongoing review of the Constitution.
- Without prejudice to its final position, Luxembourg considers that the positions validated in the Council's 2018 decision constitute a good basis for further discussions.
- With regard to provisions that were incorporated in a modified form (category 2), Luxembourg argues in favour of a thorough analysis of references made to a Union-wide constituency and the proposed European Electoral authority as these changes could have far-reaching implications.
- Similarly, some new elements of the proposal require further clarifications, notably from the Council legal service. In this context, Luxembourg would like to receive additional information on the wording "including persons with disabilities regardless of their legal capacity" (art.4). What does this imply for a person under guardianship ("personne placée sous tutelle ou curatelle") ? Given Luxembourg's provisions on compulsory voting, there is a need to avoid that people under guardianship would risk being automatically and unfairly subjected to fines, in case they do not participate in an election.
- There are also outstanding questions on the structure, the competences, and the budgetary impact of the proposed European Electoral Authority. The current proposal does not specify the role of said authority in terms of verification of credentials or whether national electoral authorities would still be allowed to publish provisional and unofficial elections results after the closure of polling stations. If the latter is not the case, does this prohibition then also apply to projections published by the media?
- With regard to the implementation of provisions relating to gender equality and non-binary people, Luxembourg is wondering whether there is a legal or regulatory framework upon which Member States could draw. There is a need for clear guidance on how to apply the modalities of such provisions in practice.

Hungary

While maintaining our scrutiny reservation, the Hungarian delegation would like to highlight the following issues regarding the EP's proposal.

- In Hungary's view the new Electoral Law would significantly curtail Member States' freedom to organize European elections according to their own legal systems and customs, thus going against the principle of subsidiarity and proportionality without sufficient justification as to the necessity of these reforms.
- Furthermore, the proposed Union-wide constituency and the use of transnational lists is an idea we've long opposed as it would only widen the gap between MEPs and their electorate and would be the precursor to the reestablishment of the lead candidate system. Our worries were proven true as the EP's current proposal, in our understanding, would irrevocably upset the balance between Member States, with little to no guarantee that citizens of smaller Member States would have the same level of representation among MEPs elected in the Union-wide constituency as those of the more populous ones, in addition to the questions regarding its compatibility with article 14(2) of the TEU.
- We have similarly long held views on the question of gender quotas regarding candidates that in our view would only lead to the curtailing of political parties' autonomy in choosing their candidates, not to mention the fact that such discrimination – although positive – could be in conflict with our Constitution.
- The new proposal also opens up debates on more technical aspects of elections that have been the subject of prolonged deliberation in the lead-up to the adoption of the 2018 reform, such as the matter of postal voting, the minimum voting age and the electoral threshold. In 2018, we have found compromise solutions to all these issues. Rather than reopening these debates, we believe that it is the 2018 text that we should return to and build upon.
- All in all, it is evident that the Electoral Law will again prove to be a complex file that we will have to carefully examine instead of rushing it through, as good law-making takes time; it is in this spirit that we are looking forward to the Legal Service's analysis.

1) **Clarifications:**

Article 4 – The Right to vote

Maltese legislation is already in line with the statement in Article 4 insofar as the voting age being 16 years is concerned.

However, the comment that “*persons with disabilities regardless of their legal capacity*” shall have the right to vote, is in conflict with Article 12 of the European Parliament Elections Act (CAP. 467 of the Laws of Malta), which states that: “*No person shall be qualified to be registered in the European Union Electoral Register if - (a) he is interdicted or incapacitated for any mental infirmity by a court in a Member State or is otherwise determined in a Member State to be of unsound mind*”. This is a very sensitive issue. Malta would like to understand what is meant by ‘legal capacity’ here, why this provision was proposed, and also what legal ramifications it would have.

Article 7 - Accessibility

What is proposed at Article 7(3) – “*Member States shall ensure that persons with disabilities receive, at their request, assistance in voting by a person of their choice*”, is not provided for in Maltese law. This is very sensitive. Malta also questions whether this goes against the provisions in Article 12(1) and Article 7(2).

Article 17 - Common provisions related to electoral campaigns

The rationale behind the provision in Article 17(1) that “*Electoral campaigning shall not start until eight weeks before the Election Day*” (sub-article 1), is not understood. Malta would like a clarification on this point regarding the time limitation. It is also important to bear in mind that given the contemporary nature of electoral campaigning, and how political parties engage in regular campaign-like activities outside official electoral periods, this provision may be difficult to enforce in practice.

2) **Malta places a scrutiny reserve on the elements concerning the Union-wide constituency.**

3) **MT’s position on the Category 1 provisions:**

Malta’s comments on the elements of the Parliament’s proposal, which incorporate as they stand the provisions of the existing Electoral Act or the amendments to the Electoral Act validated in the Council Decision of 2018:

- The provisions on the fight against double voting (Article 4.2; Article 4.3).

No issues. [reserve concerning the Union-wide constituency]

- Provisions relating to the proportional voting system and the fact that Members of Parliament are now qualified as “representatives of the citizens of the Union” (Article 12.2).

No issues. [reserve concerning the Union-wide constituency]

- The provisions relating to the possibility for Member States to set a threshold for the allocation of seats (Article 13.1).

No issues.

- The provisions relating to the personal and independent nature of the vote (Article 26).

No issues.

- The provisions relating to the procedure for filling vacancies (Article 27.1; Article 27.3; Article 27.4; Article 27.5).

No issues.

Preliminary remarks:

- On the introduction of transnational lists, the political decision-making process is not yet completed in our capital.
- In our view, the ratification of the act before the 2024 EP elections is not feasible, if it includes the creation of a Union constituency. Without prejudice to the political discussion about this point, we would therefore suggest that said provisions should (also) be discussed with a view to an entry into force for the 2029 EP elections and to inform the EP accordingly.
- Regarding the provision on the possibility for each Member State to set a ceiling for candidates' campaign expenditure (p. 34, WK8793/22): We would be interested in the reasoning, why this was not taken up in the proposal? In Austria there is a ceiling for candidates' (or rather: parties) campaign expenditure.

General remark on modifications of the 2018 Act:

- Not too many provisions of the 2018 Act were taken over without any modification. Since Austria was in favour of the 2018 Act, we welcome the inclusion of those provisions in the new draft.
- A more complicated situation arises with regard to some of the provisions that were taken over in a modified form, e.g. regarding the Election Day, which is now foreseen on a fixed day (9 May). This would be highly problematic for Austria, where elections are held on Sundays (and only theoretically on public holidays).

Budgetary implications:

- In order to enable a constructive discussion, it is essential to have a breakdown of the costs – including a description of the funding within the adopted budget respectively the adopted multiannual financial framework (2021-2027).

Art. 19/Closing of polling stations:

- Does Art. 19 (3) mean that all polling stations in all Member States have to keep open until 21:00 local time or is this the final closing time and polling stations are allowed to close earlier?
- For Austria, it is also very important that the counting of the ballots in future still would be possible immediately after closing the polling station.

European Electoral authority:

- Are there already any detailed plans regarding the setting up of the European Electoral Authority? Will it work on a permanent basis or rather mainly before and after European Elections? Where should it be located? Is there any current infrastructure that could be used to build upon? How would immediate staffing be ensured?
- Given the narrow timelines in the draft, the authority would have to be fully operative by the end of next year in order to take up all the assigned duties.

Introduction of postal voting:

- Article 8 prescribes that „Member States shall provide for postal voting in elections...“. Austria is one of the few Member States that have used full postal voting in elections since 2008.
- Sharing experiences made in the course of introducing postal voting in our country, we would like to stress that implementing such a system requires careful preparation and a considerable amount of time. It entails legal questions (in Austria, for example, a constitutional amendment was necessary) as well as logistical and operational questions. Moreover, other preparatory works such as poll officer training and voter education have to be taken into account.
- It should be highlighted that problems in the postal voting system – even in a country with a lot of experience – can, in the worst case, lead to repeat elections.

Processing of personal data:

- For the purpose of predictability and clarity of the processing of personal data and in light of the principle of data minimisation according to Art. 5 para 1 lit. c GDPR, Art. 9/Art. 18 should be redrafted, e.g. in order to include a conclusive list of data categories that have to be transmitted by the national authorities.

Detailed explanation:

- Art. 9 para 2 obliges the competent national authorities to provide the European Electoral Authority with “all necessary data in accordance with Article 18.
- Neither Art. 18 para 1 nor Art. 18 para 2 clarify, which data Member States have to transmit. Art. 18 para 1 only refers to “necessary data in accordance with Article 9 para 2”. Art. 18 para 2 only refers to the “data indicated in Articles 9 and 10 of Council Directive 93/109/EC concerning citizens of the Union who have been entered on the national electoral rolls and European electoral roll or are standing as candidates in a Member State of which they are not nationals”.
- First of all, we would assume that in order to establish a European electoral roll the same data is needed from each person who is eligible to vote. Therefore, it seems contradictory that the proposal does not determine itself which data has to be transmitted in order to establish a central European electoral roll but instead – via very complicated referrals within the text – leaves it up to Member States’ rules on national electoral rolls.

- How would the European Electoral Authority cope with different sets of data categories that are transmitted by different Member States according to their different national regulations? What happens with data categories that one Member State transmits but another does not (and which must therefore be deemed unnecessary for the purpose of establishing a European electoral roll)? How does this provision relate to the principle of data minimisation according to Art. 5 para 1 lit. c GDPR?

Art. 12 (1) – reference to conditions of equality in first sentence:

- This provision can in our view be read as a result of Art. 10 para 1 TEU that states that the functioning of the Union is founded on the principle of representative democracy. Equal votes are a principle of the Austrian electoral system as well.

Art. 12 (2) – reference to proportional voting system and MEPs as “representatives of the citizens of the Union”:

- Art. 14 para 2 TEU refers to the proportional voting system and qualifies Members of the European Parliament as “representatives of the citizens of the Union”. The references in Art 12 (2) align the provisions in these regards and should thus be retained in our view.

I. Elements of the Parliament's proposal which incorporate as they stand the provisions of the existing Electoral Act or the amendments to the Electoral Act validated in the Council Decision of 2018

We have no objections regarding the aforementioned provisions. Romania ratified the amendments to the Electoral Act introduced by the Council Decision of 2018.

II. Elements of the Parliament's proposal which incorporate in a modified form the provisions of the existing Electoral Act or the amendments to the Electoral Act validated in the Council Decision of 2018

- Article 8: The possibility of **postal voting** is currently foreseen in the applicable national legislation for national presidential and parliamentary elections and only for citizens living abroad. Consequently, national legislation would need to be correspondingly amended to accommodate the possibility of postal voting in EU elections, including for citizens residing in Romania.
- Article 11: National legislation would need to be amended to accommodate the new deadline of 12 weeks before the ballot for the **submission of the lists of candidates** (in contrast to the 60 days deadline as currently foreseen at national level).

III. Elements of the Parliament's proposal that introduce new provisions compared to the provisions of the existing Electoral Act or the amendments to the Electoral Act validated in the Council Decision of 2018

- Article 5: The right to **stand for election** for the EP from the age of 18 contrasts national legislation, where the minimum age is currently set at 23.
- Article 17.1: The **8-week campaign** period contrasts national legislation, where the timeframe for campaigning is currently set at 30 days before the election.
- Article 19: Without exception, according to the applicable national law, all types of elections in Romania are and have been organized on a Sunday. Setting a **single election day** for EU elections (9 May) would therefore necessarily involve the need to change national legislation accordingly. We maintain the concerns expressed previously, and shared by other Member States, that this change might also negatively impact the turnout in the subsequent EU elections in Romania.

Slovenia

Article 3

According to Article 3 the proposal regulates the *electoral procedure*. Some provisions seem to go further than that, for example Article 17 regulates the electoral campaigns. The regulation of electoral campaigns entails the rules for candidates and political parties proposing the candidates and is not part of the electoral procedure in the strict sense (rules governing the work of the electoral commissions, electoral disputes etc). If the proposal intends to regulate the »electoral campaigns« then this would need to be explicitly mentioned in Article 3. The question arises however, if regulating electoral campaigns in the Council regulation is in line with the principle of subsidiarity.

Article 4

Para 1 – Do we understand correctly that the proposal would not influence the voting right where the national constitution sets the right to vote at the age of 18?

Article 7

Para 1 – Does »equal access« mean that all polling stations in the country must be physically accessible for voters with disabilities?

Para 3 – The provision is very broad. In Slovenia for example 12-13 percent of population has some sort of disability. However, while persons with some disabilities might need help (blindness, partial blindness, physical disability, mental disability) other disabilities do not in any way necessitate any help in voting. The obligation for the MSs entailed in this provision, related to providing every person with any kind of disability the right to an assistant, therefore seems to be too broad.

Article 9

Para 1 – According to our colleagues who are running the electoral register, the provision stating that »errors can be corrected until the day of elections« is technically impossible to implement. This is so, because the electoral registers used at the polling stations are not electronic but rather printed, therefore 2 weeks before the elections is at the minimum necessary for everything to be prepared and printed sufficiently early for the election day. Ex-post corrections are however possible (to take into consideration for example the voters who died just before the elections).

Para 2 – the European voter register would need to be defined in full by the proposal, meaning that all types of data to be run within this register would need to be stated explicitly. Taking into consideration the GDPR this cannot be regarded as a »technical matter« and therefore cannot be left to be regulated by the act of the Commission.

Article 10

Para 1 - The part of the provision stating that “without infringing the rights of non-binary people” – how do you see this would be implemented in practice?

Para 2 – The provision provides for the right of appeal in case when democratic procedures were not respected. The complaint can be filled with the national electoral authority OR the European electoral body. The *Code of good practice in electoral matters of the Venice Commission*¹ prescribes strict rules for regulating electoral disputes. Among others, that a right of appeal must be conferred to any voter. Do we understand correctly that the right of appeal here relates to the irregularities for example performed by the electoral committees in relation to the national lists as well as to the Union-wide lists? It must be clear to which body the appeal could be filled; two bodies cannot be simultaneously in charge of the same type of complaint. Also, the provisions should determine which court would have judicial review over such decision.

In relation to Article 28, Para 1 (b) – it is envisaged that the rules of procedure governing the appeal procedure would be determined by the European Electoral Authority itself. From the checks and balances viewpoint and the Venice Commission recommendations this may not seem adequate. The procedure should be determined in the regulation.

Article 17

Para 2 – the definition of *an electoral campaign* seems to be too broad, it entails not only the appeal to the voter to vote for a certain candidate or a certain group of candidates but also the general appeal to the voters to come to the polling state and cast their vote (to secure high turnout). For example, an appeal of the NGOs to the voters to come to the polling stations on a voting day and vote (to promote active citizenship) should in itself not constitute an electoral campaign.

Para 4 - how will this provision be implemented in practice. Who will prepare the uniform design and printing of such uniform ballot papers?

Para 6 – the intention of the provisions seems to give equal rights and opportunities to the European electoral entities in relation to the Union-wide lists as provided to the national political parties (with regard to the national lists?). The national legislation, however, provides for the rights as well as obligations of the political actors that run political campaigns (e.g. “registration” of the organiser of the electoral campaign with the national electoral authority, a separate bank account, offences and supervision by inspectorate authorities). The rights go hand in hand with the obligations, therefore the provision of the proposal is ambiguous.

Para 7 – what is the exact meaning of the “electoral reserve period”? Do we understand correctly that the only consequence would be that during that period, it would be prohibited to ask voters about their voting intentions?

Article 18

In relation to Article 20, Para 1 – it may be that there is more than one “contact body” as there are different tasks envisaged for them (exchanging data from the electoral registers, providing the information on the election results etc).

¹ <https://rm.coe.int/090000168092af01>

Article 19

Para 4 – in relation to “publication of results by the MS” – how is this connected to proclamation of the results by the European Electoral Body (EEB; including in the national constituencies) as envisaged in Article 20, Para1. When will the results be proclaimed by the EEB?

Article 28

Para 1, (g) – please provide few examples of such disputes.



Art. 7 – Accessibility - Request for clarification

Z ustanovenia nie je zrejmé, čo sa rozumie pod pojmom rovnaký prístup. V právnom poriadku Slovenskej republiky sú zavedené inštitúty a nástroje na umožnenie, resp. uľahčenie prístupu zdravotne postihnutým osobám tak, aby si mohli uplatniť svoje volebné právo. Považujeme za vhodné spresniť, resp. objasniť, čo sa považuje za rovnaký prístup a aké opatrenie je potrebné prijať na jeho dosiahnutie.

It is not clear from the provision what is meant by the term **equal access**. In the legal order of the Slovak Republic, means and instruments are established to enable and/or facilitate access for disabled persons so that they can exercise their right to vote. **It would be appropriate to specify and/or clarify what is considered equal access and what action needs to be taken to achieve it.**

Art 8 – Postal voting

So zavedením hlasovania poštou vo voľbách do Európskeho parlamentu pre občanov, ktorí sa zdržiavajú v zahraničí, súhlasíme.

Avšak z dôvodu, že pre tieto voľby nie je v Slovenskej republike dosiaľ ustanovená možnosť hlasovať poštou, a z dôvodu, že voľby do Európskeho parlamentu sú komplikované a rizikové z pohľadu dvojitého hlasovania, požadujeme posunúť účinnosť tohto ustanovenia. Pre zavedenie možnosti hlasovať poštou je potrebné ustanoviť celý nový volebný proces hlasovania poštou, a upraviť s tým súvisiace inštitúty, ako napríklad vydávanie hlasovacích preukazov, výmenu informácií o voličoch, a najmä prijať nevyhnutné opatrenia na zabránenie dvojitého hlasovania.

Požadujeme preto umožniť členským štátom dlhšie časové obdobie na zavedenie hlasovania poštou, a to tak, aby bolo zavedenie hlasovania poštou povinné až pre voľby v roku 2029.

We agree with the introduction of postal voting in European Parliament elections for citizens residing abroad (but only for those citizens).

However, due to the fact that the possibility of postal voting has not yet been established for these elections in the Slovak Republic, and due to the fact that the elections to the European Parliament are complicated and risky from the point of view of double voting, **we request to postpone the entry into force of this provision**. In order to introduce the possibility of postal voting, it is necessary to establish a completely new electoral process of postal voting and to adjust related means, such as the issuing of voting cards, the exchange of information about voters, and especially taking the necessary measures to prevent double voting.

We therefore request that Member States be given a longer time period to introduce postal voting, so that postal voting becomes mandatory only from the 2029 elections onwards.

Art 9 – European electoral roll - Request for clarification

V návrhu nie je dostatočne vysvetlený európsky zoznam voličov, nie je zrejмый jeho účel ani spôsob je vytvárania.

The proposal does not sufficiently explain the European electoral roll – neither its purpose nor the method of its establishment are clear.

Art 15 – Geographical balance – Request for clarification

Z ustanovenia nie je zrejмый, akým spôsobom bude docielená geografická vyváženosť vzhľadom na jednotlivé členské štáty. Požadujeme vysvetliť, či bude zabezpečená vyváženosť takým spôsobom, aby bol na kandidátnej listine zastúpený každý členský štát zo všetkých troch skupín alebo takáto vyváženosť nie je cieľom nariadenia.

Ustanovenie zároveň neobsahuje technické a organizačné detaily týkajúce sa praktického vykonania volieb v rámci obvodu pre celú Úniu z pohľadu jednotlivých členských štátov, napr. vyhotovovanie a distribúcia hlasovacích lístkov.

It is not clear from the provision how geographical balance will be achieved with respect to individual Member States. We request an explanation as to whether this balance will be ensured in such a way that every Member State from all three groups is represented on the Union-wide list or such a balance is not the aim of the regulation.

In addition, **the provision does not contain technical and organizational details regarding the practical conduct of elections within the Union-wide constituency from the point of view of individual Member States**, e.g. production and distribution of ballots.

Sweden

The current electoral law act of 1976 is based on the foundation that elections to the European Parliament must essentially follow the rules that apply to national regulation. Sweden finds this arrangement as appropriate and suitable. Moreover, it strengthens the voters' confidence that elections are conducted accordingly and that election results are reliable. It is of great importance that national elements are not eroded in the European Parliament election by i.e., establishing full harmonization. Democracy must also continue to be allowed to function in partly different ways in the various Member States.

Sweden is not convinced that the European Parliament's proposal is in all respects necessary to strengthen the European dimension and democratic legitimacy in the European Parliament elections. The proposal to regulate the national parties' nomination are assessed to go beyond what is justified, based on the fundamental aim of strengthening the democratic and cross-border dimension of the European elections. Moreover, the regulation aims to regulate political parties' internal structures, which is not compatible with the protection of freedom of association established in the instrument of government (part of the constitution of Sweden). Sweden can therefore not support the proposal to regulate the conditions for the national parties' participation in elections and how the parties should select their candidates. Even a possible demand directed at the parties to clarify which person is the party's top candidate can be questioned on principled grounds as it risks interfering the inner life of the political parties.

Sweden also questions the proposal to establish a new Union-wide constituency. The purpose of the regulation appears in this part to be unclear and complicated. It is questionable in what way a higher turnout is achieved through a system in which voters, in contrast to how elections normally take place, must cast two votes. The deadlines for drawing up candidate lists and ballot papers, that are proposed, also appear to be unnecessarily far-reaching. Although it is important that the election campaigns contribute to spreading current and available information to voters, Sweden cannot support that Union law should regulate how the election campaigns should be conducted, and what national parties' election campaign material should contain. The proposed regulation constitutes a risk of violating constitutionally protected freedoms and rights, such as freedom of expression. The same applies to the proposed ban on publishing forecasts based on opinion polls before elections.

The proposal to introduce a joint election day can also be questioned. As the proposal is formulated, election day will often take on a weekday. Hence, this can have a negative effect on voter turnout if election day is on a weekday.

We agree on the importance of promoting high voter turnout, even among the younger generations. However, the voting age in elections to the European Parliament should not, without good reason, deviate from what applies in other elections in a Member State. Furthermore, the voting age should, as far as possible, coincide with the voting age.

Sweden views positively on measures that would mean that the conditions for countering double voting are strengthened. Sweden also views positively on measures to strengthening the access to elections for people with disabilities. However, it does not seem obvious that regulating at EU level is required to achieve this.

A crucial precondition for Sweden to be able to accept a reform of the electoral procedure is that the new provisions of the proposed electoral law do not conflict with our constitution, which consist of four fundamental laws:

- the instrument of government,
- the act of succession,
- the freedom of the press act,
- the fundamental law on freedom of expression.

Sweden also stressed the importance that a reform of the electoral procedure does not upset the current institutional balance and the distribution of power between the EU institutions.
