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**A7-0027/2012**

1.2.2012

# SECOND REPORT

on a proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976
(2009/2134(INI))

Committee on Constitutional Affairs

Rapporteur: Andrew Duff

PR_INI_art114mod

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on a proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976 (2009/2134(INI))**

*The European Parliament*,

– having regard to the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to the Council decision of 20 September 1976, as amended[1], in particular Article 14 thereof,

– having regard to its previous resolutions on the electoral procedure of the Parliament, in particular its resolution of 15 July 1998[2],

– having regard to its resolution of 11 October 2007 on the composition of the European Parliament[3],

– having regard to the Presidency Conclusions of the European Council held on 14 December 2007,

– having regard to its resolution of 6 May 2010 on the draft protocol amending Protocol No 36 on transitional provisions concerning the composition of the European Parliament for the rest of the 2009-2014 parliamentary term: the European Parliament's opinion (Article 48(3) of the EU Treaty)[4],

– having regard to Article 39 of the Charter of Fundamental Rights of the European Union,

– having regard to Articles 9, 10, 14(2), 48(2), (3) and (4) and 51 of the Treaty on European Union (TEU) and to Articles 22, 223, 225 and 343 of the Treaty on the Functioning of the European Union, and to Article 3 of Protocol No 2 on the application of the principles of subsidiarity and proportionality,

– having regard to Protocol No 7 on the Privileges and Immunities of the European Union,

– having regard to the Commission proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (COM(2006)0791),

– having regard to Rules 41, 48(3), 70, 74a and 175 of its Rules of Procedure,

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[1] Council Decision 76/787/ECSC, EEC, Euratom (OJ L 278, 8.10.1976, p. 1), as amended by Council Decision 93/81/Euratom, ECSC, EEC (OJ L 33, 9.2.1993, p. 15) and by Council Decision 2002/772/EC, Euratom (OJ L 283, 21.10.2002, p. 1). See Annex.
[2] OJ C 292, 21.9.1998, p. 66.
[3] OJ C 227 E, 4.9.2008, p. 132.
[4] OJ C 81 E, 15.3.2011, p. 78.

– having regard to the report of the Committee on Constitutional Affairs (A7-0176/2011),

– having regard to the second report of the Committee on Constitutional Affairs (A7-0027/2012),

Whereas:

A. Parliament has the right to initiate the reform of its own electoral procedure, and to give its consent thereto,

B. Parliament has the right to initiate a change in its own composition, and to give its consent thereto,

C. Parliament has the right to initiate a revision of the Treaties,

D. Parliament has been directly elected every five years since 1979 and has seen its powers and influence increase throughout this period, most notably as a result of the entry into force of the Treaty of Lisbon,

E. the Treaty of Lisbon amended the official mandate of Members of the European Parliament, changing them from being 'representatives of the peoples of the States' into 'representatives of the Union's citizens'[1], and provided that 'Citizens are directly represented at Union level in the European Parliament'[2],

F. even without agreement on a uniform electoral procedure, there has been a gradual convergence of electoral systems over this period, notably with the universal adoption of proportional representation in 1999, the formal establishment of political parties at EU level[3] and the abolition of the dual mandate[4],

G. the concept of European Union citizenship, formally introduced into the constitutional order by the Treaty of Maastricht in 1993, included the right to participate under certain conditions in European and municipal elections in Member States other than one's own, and the Charter of Fundamental Rights of the European Union, which now has binding legal force under the terms of the Lisbon Treaty, has reinforced that right and other civic rights,

H. popular recognition of Parliament's democratic function remains limited, political parties at European level are still in the early stages of development, electoral campaigning remains more national than European, and media reporting of Parliament's proceedings is irregular,

I. overall turnout in the elections to Parliament has fallen steadily from 63 per cent in 1979 to 43 per cent in 2009, which obliges Parliament, the Council and the Commission to take

[1] Respectively, Article 189 of the Treaty establishing the European Community and Article 14(2) TEU.
[2] Article 10(2) TEU.
[3] Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ L 297, 15.11.2003, p. 1).
[4] Council Decision 2002/772/EC, Euratom, Article 1(7), point (b).

action to promote popular participation in the Union's democratic process,

J. the number of Union citizens resident in Member States other than their own who vote in elections to the European Parliament is low, and the number who stand for election is negligible; residency qualifications for the franchise vary among States, as does the time after which their own nationals resident elsewhere in the EU are deprived of the right to vote in their original home State; moreover, the exchange of information between Member States on nationals of other Member States who have been entered on electoral rolls or have stood as a candidate is not efficient,

K. according to the case-law of the Court of Justice, while States enjoy substantial discretion in defining who can vote in European parliamentary elections, they are nevertheless bound to respect the general principles of Union law and are precluded from treating different categories of Union citizens who are in the same circumstances in a way that discriminates between them[1]; likewise, while it is for each State to lay down its own conditions for the acquisition and loss of nationality, it must at the same time have regard to the status of citizenship of the Union[2],

L. current proposals of the Commission to facilitate electoral participation by Union citizens resident in Member States other than their own are stalled in the Council[3],

M. the number of women MEPs now stands at 35 per cent; efforts should be made to reduce further the gender imbalance in Parliament, especially in certain States,

N. Parliament has urged the Council to bring forward the date of the election to May so that it can better organise itself to expedite the election of the new Commission President and avoid the beginning of the summer vacation in several States[4],

O. Parliament is empowered and obliged by the Lisbon Treaty to initiate a decision to redistribute seats among States within the constraints of threshold, ceiling and overall size, while respecting the principle of degressive proportionality; Parliament has previously resolved to correct historical inequalities in seat distribution and to adapt its composition on a regular basis in order to reflect changes in the demography and membership of the Union[5]; moreover, it considers it important to give expression in Parliament's composition to plurality between parties and solidarity among States,

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[1] Judgments of the Court of Justice of 12 September 2006 in Case C-145/04 *Spain* v *United Kingdom* [2006] ECR I-7917 (concerning Gibraltar) and in Case C-300/04 *Eman and Sevinger* v *College van burgemeester en wethouders van Den Haag* [2006] ECR I-8055 (concerning Aruba).

[2] Judgment of the Court of Justice of 2 March 2010 in Case C-135/08 *Rottmann* v *Freistaat Bayern* [2010] ECR I-1449.

[3] See Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (OJ L 329, 30.12.1993, p. 34) and Parliament's position of 26 September 2007 on the proposal for a Council directive amending Directive 93/109/EC (OJ C 219 E, 28.8.2008, p. 193).

[4] As proposed in Parliament's resolution of 1 December 2005 on guidelines for the approval of the Commission (OJ C 285 E, 22.11.2006, p. 137).

[5] Resolution of 11 October 2007 on the composition of the European Parliament (OJ C 227 E, 4.9.2008, p. 132) (Lamassoure-Severin report).

P. the accession of Croatia will in any case trigger a reapportionment of seats in the European Parliament at the next elections in 2014,

Q. Parliament lacks an autonomous system for regulating the legal privileges and immunities of its Members; the Council has previously agreed to examine the request of Parliament to revise the 1965 Protocol on Privileges and Immunities once the Members' Statute was adopted[1],

R. in spite of the fact that the Council had previously agreed to keep the 1976 Act under review, the last formal review of electoral procedure by Parliament was initiated as long ago as 1998[2],

S. Parliament's electoral procedure must be durable and comprehensible, must promote intra-party democracy, and must uphold the practice of free, fair and secret elections resulting in overall proportionality of representation,

T. Parliament's electoral system is a compromise between the democratic principle of equality (‘one person one vote’) and the international law principle of equality among states, and the Treaties lay down the principle of the equality of Union citizens while forbidding discrimination on the grounds of national citizenship,

U. reform of the electoral procedure must also respect the principles of subsidiarity and proportionality and should not seek to impose uniformity for its own sake,

V. Parliament has previously resolved to study the possibility of electing some MEPs on pan-European lists, considering that this would impart a genuine European dimension to the campaign, particularly by entrusting a central role to European political parties[3],

W. electoral equality must remain the overriding principle if pan-European lists are introduced; the status of Members in Parliament should therefore remain equal regardless of whether they are elected from pan-European, national or regional lists,

X. the TEU provides that ‘political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union’[4], and to this end Parliament has called on the Commission, in its resolution of 6 April 2011 on the application of Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding[5], to initiate legislation for a common EU status for European political parties and foundations,

1. Decides to reform its electoral procedure with the aim of enhancing the legitimacy and efficacy of Parliament by strengthening the European democratic dimension and by

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[1] Declaration of 3 June 2005 by Representatives of the Member States meeting within the Council.
[2] Council Declaration 6151/02 of 22 February 2002 decided ‘that the provisions of this Act should be reviewed before the second elections to the European Parliament held after the entry into force of the amendments to the 1976 Act which are the subject of this Decision’ – that is, before 2009.
[3] Most recently in its above-mentioned resolution of 11 October 2007 on the composition of the European Parliament (Lamassoure-Severin report).
[4] Article 10(4) TEU.
[5] Texts adopted, P7_TA(2011)0143.

providing for a fairer distribution of seats among the States in accordance with the Treaties;

2. Proposes that 25 MEPs be elected by a single constituency formed of the whole territory of the European Union; pan-European lists would be composed of candidates drawn from at least one third of the States, and may ensure an adequate gender representation; each elector would be enabled to cast one vote for the EU-wide list in addition to their vote for the national or regional list; and seats would be allocated without a minimum threshold in accordance with the D'Hondt method; further, proposes that an electoral authority be established at EU level in order to regulate the conduct and to verify the result of the election taking place from the pan-European list;

3. Notes the need to keep the cost of Parliament and its elections under review, and calls for these reforms to be implemented to a great extent within the present budgetary perspective[1];

4. (i) Proposes that Parliament, acting by a majority of its component Members, will initiate a proposal for a decision establishing its composition taking into account the accession of new Member States and on the basis of population figures established by Eurostat; this decision should be initiated during each parliamentary term and adopted, with its consent, before the end of the fourth calendar year of the parliamentary term[2];

   (ii) Proposes to enter into a dialogue with the European Council to explore the possibility of reaching agreement on a durable and transparent apportionment of seats in Parliament respecting the criteria laid down in the Treaties and the principles of plurality between political parties and solidarity among States;

5. Calls on the Commission to bring forward a proposal for a regulation to improve the consistency and comparability of population data provided by the States;

6. Proposes that the date of the European elections shall be determined by the European Parliament, acting by a majority of its component Members and with the approval of the Council, no sooner than one year, and no later than sixth months, before the end of the five-year term;

7. Calls on States and political parties to promote the better representation of women and minority candidates; considers it important for the legitimacy of the Union that Parliament's composition reflects the diversity of Europe's peoples;

8. Emphasises the importance of ensuring that political parties adhere to democratic principles in the selection of candidates at all levels;

9. Calls on the Council, the Commission and States to intensify efforts to help EU citizens resident in a State other than their own to participate in the European elections in their country of residence; in this context, requests the Commission to submit a new proposal

[1] The average monthly direct payment to MEPs in 2011, including pre-tax salary, insurance, medical expenses, general expenditure allowance, training, travel and subsistence, was EUR 24 298. The average indirect payment for parliamentary assistance was EUR 17 283.
[2] Article 14(2) TEU.

for the revision of Directive 93/109/EC;

10. Reiterates its long-standing request that the Protocol on Privileges and Immunities be amended with a view to establishing a uniform supranational regime for Members of the European Parliament[1];

11. (i) Calls for the opening of a dialogue with the Council, with the participation of the Commission, on the comprehensive amendment of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976; notes the need to reach consensus in particular on the timing of the reforms, the overall size of the Parliament and seat apportionment within it (including a legal definition of degressive proportionality), and the voting system to be used for the pan-European constituency;

(ii) Instructs a European Parliament delegation, appointed by the Conference of Presidents and empowered with a clear mandate, to initiate that dialogue with the Council;

12. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the parliaments and governments of the Member States.

[1] See Parliament's resolution of 6 July 2006 on modification of the Protocol on Privileges and Immunities (OJ C 303 E, 13.12.2006, p. 830), in which Parliament confirmed its intention to use the Members' Statute as a partial basis for the proposed revision (European Parliament decision of 3 June 2003 on the adoption of a Statute for Members of the European Parliament (OJ C 68 E, 18.3.2004, p. 115)).

## ANNEX – Consolidated version of the Act concerning the election of the representatives of the Assembly by direct universal suffrage annexed to the Council decision of 20 September 1976, and of the subsequent amendments thereto

### ACT[1]
### 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 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 2*

In accordance with its specific national situation, each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

*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 votes cast.

*Article 4*

Each Member State may set a ceiling for candidates' campaign expenses.

*Article 5*

1. The five-year term for which members of the European Parliament are elected shall begin at the opening of the first session following each election.

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[1] N.B.: This document is a consolidation produced by the Legal Service of the European Parliament on the basis of the Act concerning the election of the representatives of the Assembly by direct universal suffrage (OJ L 278, 8.10.1976, p. 5), as amended by Decision 93/81/Euratom, ECSC, EEC amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ L 33, 9.2.1993, p. 15), and Council Decision 2002/772/EC, Euratom of 25 June 2002 and 23 September 2002 (OJ L 283, 21.10.2002, p. 1). It differs from the consolidated version produced by the Publications Office of the European Union (CONSLEG. 1976X1008-23/09/2002) on two points: it incorporates an indent to Article 7(1) '– member of the Committee of the Regions' resulting from Article 5 of the Treaty of Amsterdam (OJ C 340, 10.11.1997) and is renumbered in accordance with Article 2(1) of Decision 2002/772/EC, Euratom.

It may be extended or curtailed pursuant to the second subparagraph of Article 10 (2).

2. The term of office of each member shall begin and end at the same time as the period referred to in paragraph 1.

*Article 6*

1. Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.

2. Members of the European Parliament shall enjoy the privileges and immunities applicable to them by virtue of the Protocol of 8 April 1965 on the privileges and immunities of the European Communities.

*Article 7*

1. The office of member of the European Parliament shall be incompatible with that of:

– member of the government of a Member State,

– member of the Commission of the European Communities,

– Judge, Advocate-General or Registrar of the Court of Justice of the European Communities or of the Court of First Instance,

– member of the Board of Directors of the European Central Bank,

– member of the Court of Auditors of the European Communities,

– Ombudsman of the European Communities,

– member of the Economic and Social Committee of the European Community and of the European Atomic Energy Community,

– member of the Committee of the Regions,

– member of committees or other bodies set up pursuant to the Treaties establishing the European Community and the European Atomic Energy Community for the purposes of managing the Communities' funds or carrying out a permanent direct administrative task,

– member of the Board of Directors, Management Committee or staff of the European Investment Bank,

– active official or servant of the institutions of the European Communities or of the specialised bodies attached to them or of the European Central Bank.

2. From the European Parliament elections in 2004, the office of member of the European Parliament shall be incompatible with that of member of a national parliament.

By way of derogation from that rule and without prejudice to paragraph 3:

– members of the Irish National Parliament who are elected to the European Parliament at a subsequent poll may have a dual mandate until the next election to the Irish National Parliament, at which juncture the first subparagraph of this paragraph shall apply;

– members of the United Kingdom Parliament who are also members of the European Parliament during the five-year term preceding election to the European Parliament in 2004 may have a dual mandate until the 2009 European Parliament elections, when the first subparagraph of this paragraph shall apply.

3. In addition, each Member State may, in the circumstances provided for in Article 8, extend rules at national level relating to incompatibility.

4. Members of the European Parliament to whom paragraphs 1, 2 and 3 become applicable in the course of the five-year period referred to in Article 5 shall be replaced in accordance with Article 13.

*Article 8*

Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.

*Article 9*

No one may vote more than once in any election of members of the European Parliament.

*Article 10*

1. Elections to the European Parliament shall be held on the date and at the times fixed by each Member State; for all Member States this date shall fall within the same period starting on a Thursday morning and ending on the following Sunday.

2. Member States may not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote within the period referred to in paragraph 1.

*Article 11*

1. The Council, acting unanimously after consulting the European Parliament, shall determine the electoral period for the first elections.

2. Subsequent elections shall take place in the corresponding period in the last year of the five-year period referred to in Article 5.

Should it prove impossible to hold the elections in the Community during that period, the Council acting unanimously shall, after consulting the European Parliament, determine, at least one year before the end of the five-year term referred to in Article 5, another electoral period which shall not be more than two months before or one month after the period fixed pursuant to the preceding subparagraph.

3. Without prejudice to Article 196 of the Treaty establishing the European Community and Article 109 of the Treaty establishing the European Atomic Energy Community, the European Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the electoral period.

4. The powers of the European Parliament shall cease upon the opening of the first sitting of the new European Parliament.

*Article 12*

The European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.

*Article 13*

1. A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.

2. Subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 5 for the remainder of that period.

3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the European Parliament, that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the European Parliament thereof.

4. Where a seat falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the Member State concerned thereof.

*Article 14*

Should it appear necessary to adopt measures to implement this Act, the Council, acting unanimously on a proposal from the European Parliament after consulting the Commission, shall adopt such measures after endeavouring to reach agreement with the European Parliament in a conciliation committee consisting of the Council and representatives of the

European Parliament.

*Article 15*

This Act is drawn up in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all the texts being equally authentic.

Annexes I and II shall form an integral part of this Act.

*Article 16*

The provisions of this Act shall enter into force on the first day of the month following that during which the last of the notifications referred to in the Decision is received.

Udfærdiget i Bruxelles, den tyvende september nitten hundrede og seksoghalvfjerds.

Geschehen zu Brüssel am zwanzigsten September neunzehnhundert-sechsundsiebzig.

Done at Brussels on the twentieth day of September in the year one thousand nine hundred and seventy-six.

Fait à Bruxelles, le vingt septembre mil neuf cent soixante-seize.

Arna dhéanamh sa Bhruiséil, an fichiú lá de mhí Mhéan Fómhair, míle naoi gcéad seachtó a sé.

Fatto a Bruxelles, addì venti settembre millenovecentosettantasei.

Gedaan te Brussel, de twintigste september negentienhonderd zesenzeventig.

ANNEX I

The United Kingdom will apply the provisions of this Act only in respect of the United Kingdom.

ANNEX II

Declaration on Article 14

As regards the procedure to be followed by the Conciliation Committee, it is agreed to have recourse to the provisions of paragraphs 5, 6 and 7 of the procedure laid down in the joint declaration of the European Parliament, the Council and the Commission of 4 March 1975[1].

[1] OJ C 89, 22. 4. 1975, p. 1.

## PROCEDURE

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|---|---|
| **Title** | Proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 |
| **References** | 2009/2134(INI) |
| **Date submitted to Parliament** | 7.7.2011 |
| **Committee responsible**<br>Date announced in plenary | AFCO<br>19.10.2009 |
| **Rapporteur(s)**<br>Date appointed | Andrew Duff<br>21.7.2009 |
| **Date adopted** | 19.4.2011 |
| **Result of final vote** | +: 20<br>–: 4<br>0: 0 |
| **Members present for the final vote** | Andrew Henry William Brons, Carlo Casini, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Daniel Hannan, Stanimir Ilchev, Constance Le Grip, David Martin, Morten Messerschmidt, Algirdas Saudargas, György Schöpflin, József Szájer, Indrek Tarand, Rafał Trzaskowski, Guy Verhofstadt |
| **Substitute(s) present for the final vote** | Elmar Brok, Zuzana Brzobohatá, Marietta Giannakou, Íñigo Méndez de Vigo, Helmut Scholz |
| **Date tabled** | 28.4.2011 |

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## REFERRAL BACK TO COMMITTEE

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| **Date referred back to committee under Rule 175(2)** | 7.7.2011 |
| **Deadline for reporting back** | |
| **Rapporteur(s)**<br>Date confirmed | Andrew Duff<br>21.7.2009 |
| **Date adopted** | 26.1.2012 |
| **Result of final vote** | +: 16<br>–: 7<br>0: 0 |
| **Members present for the final vote** | Andrew Henry William Brons, Carlo Casini, Andrew Duff, Roberto Gualtieri, Enrique Guerrero Salom, Gerald Häfner, Stanimir Ilchev, Constance Le Grip, Morten Messerschmidt, Paulo Rangel, Algirdas Saudargas, Indrek Tarand, Rafał Trzaskowski, Guy Verhofstadt, Manfred Weber, Luis Yáñez-Barnuevo García |
| **Substitute(s) present for the final vote** | Zuzana Brzobohatá, Dimitrios Droutsas, Marietta Giannakou, Anneli Jäätteenmäki, György Schöpflin, Rainer Wieland |
| **Substitute(s) under Rule 187(2) present for the final vote** | Sir Robert Atkins, Edvard Kožušník, Jo Leinen |
| **Date tabled** | 1.2.2012 |