Towards new rules for European elections?

OVERVIEW

In May 2022, the European Parliament adopted a draft legislative act proposing to repeal the 1976 European Electoral Act and replace it with a new Council regulation on the election of the Members of the European Parliament (MEPs) by direct universal suffrage. The aim is to harmonise a number of rules applicable to European elections, which are currently a combination between the common principles under the European Electoral Act and the different national rules implementing them. Harmonisation would affect several areas, such as the age for voting or standing as a candidate; the electoral calendar for European elections; the principles applicable to the selection of candidates, including from a gender perspective; and the electoral threshold. In addition, the proposal would establish a common electoral system for the election of 28 MEPs in a Union-wide constituency comprising the entire territory of the European Union. The ambition is to further Europeanise the elections to the European Parliament, which are frequently criticised for focusing mainly on domestic political considerations and less so on the EU project.

To enter into force, the proposal needs to be adopted by the Council unanimously, after obtaining Parliament’s consent by a majority of its component members. Moreover, all Member States need to approve it as per their constitutional requirements.

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

| Committee responsible: | Constitutional Affairs (AFCO) |
| Rapporteur: | Domènec Ruiz Devesa (S&D, Spain) |
| Shadow rapporteurs: | Sven Simon (EPP, Germany) |
| | Guy Verhofstadt (Renew, Belgium) |
| | Damian Boeselager (Greens/EFA, Germany) |
| | Gerolf Annemans (ID, Belgium) |
| | Angel Dzhambazki (ECR, Bulgaria) |
| | Leila Chaibi (The Left, France) |
| Next steps expected: | Council agreement |

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Special legislative procedure (Legislative initiative from Parliament; unanimity in Council; Parliament’s consent; approval by all Member States)

Next steps expected:
- Council agreement
Introduction

The current rules applicable to the election of Members of the European Parliament (MEPs) result from a combination of the common principles established in the 1976 European Electoral Act (1976 Act), as amended by Council Decision 2002/772/EC, Euratom, and the different national rules implementing those principles. Article 223 of the Treaty on the Functioning of the European Union (TFEU) tasks the European Parliament with drafting a proposal to establish a uniform electoral procedure applicable in all Member States for the election of MEPs, or to provide for their election in accordance with principles common to all Member States. Parliament’s legislative initiative has to be adopted unanimously by the Council, after obtaining Parliament’s consent, and then approved by all Member States according to their constitutional requirements to become a binding legal text.

Although Parliament has always sought to harmonise the rules applicable to European elections, that objective is still to be attained. During the current term, a new proposal to modify the rules applicable to European elections was adopted by Parliament during its May 2022 plenary session, thus initiating the special legislative procedure that may lead to the entry into force of new European electoral rules.

Development of European electoral rules

The establishment of a fully harmonised electoral procedure for European elections has been an objective of the European Parliament since the first proposals providing for the direct election of its members by EU citizens (Dehousse report, adopted in 1960; Patijn report, adopted in 1975). Not in vain, the original Article 138(3) of the Treaty establishing the European Economic Community (TEEC) established that the European Parliament – then named Assembly – should propose a uniform electoral procedure applicable to the election of its members through direct universal suffrage. At the same time, Article 138(3) TEEC determined the composition of Parliament as made up of delegates designated by national parliaments of each Member State until those electoral rules were adopted. Wishing to enhance its democratic legitimacy, Parliament made direct elections its main priority leaving the adoption of a uniform electoral procedure to a later stage.

On this basis, the 1976 Act established only basic rules, concerning the distribution of seats in the European Parliament among Member States; a common term of office for MEPs of 5 years; the personal and representative character of an MEP’s mandate; a list of incompatibilities for MEPs that did not include membership of their national parliament (thus allowing a dual mandate); the prohibition of double voting in European elections; a common electoral period running for 4 days (Thursday to Sunday); the attribution to the European Parliament of the power to verify the credentials of its members, and the procedure for filling vacant seats in the European Parliament during the mandate.

After the first direct European elections in 1979, Parliament attempted several reforms of the 1976 Act in a bid to harmonise the rules applicable to European elections (Seitlinger report in 1982, Bocklet report in 1984, and the two De Gucht reports in 1991 and 1993). However, none of those proposals succeeded. Introducing a proportional electoral system for European elections became a major contentious issue, with British authorities objecting to the change and fearing the spill over effects on the British electoral system, traditionally based on the first-past-the post principle. As a consequence, 20 years after the adoption of the 1976 Act, Parliament’s members were still elected on the basis of different national rules.

The election of a Labour government in the UK under Tony Blair, and the modification of Article 138(3) TEEC brought a change to the situation. The new Article 138(3) allowed Parliament to propose the election of its members on the basis of principles common to all Member States, and not only on the basis of a common electoral procedure. This paved the way to the adoption of the first amendments to the 1976 Act (Council Decision 2002/772/EC, Euratom), the only major amendments to the Act currently in force. In 2018, the Council agreed on further amendments to the 1976 Act (Council Decision (EU, Euratom) 2018/994), but those amendments are still not in force, as three Member States (Germany, Cyprus and Spain) have not yet approved them. However, neither
the 2002 amendments nor those adopted in 2018 establish a uniform electoral procedure applicable to European elections.

**Rules as amended by Council Decision 2002/772/EC, Euratom**

The 2002 amendments to the 1976 Act were adopted based on the Anastassopoulos Report (A4-0212/98, 15 July 1998) proposing from the outset the adoption of common principles that would need to be implemented in national electoral legislation. Leaving wide discretion to Member States as to the electoral system they wished to apply to European elections, the report was approved by the Council with few modifications (Council Decision 2002/772/EC, Euratom). The Council agreed to the election of MEPs through a list system of proportional representation, but allowed Member States to use a list system or the single transferable vote system. Member States were allowed to establish several constituencies or maintain a single one for European elections, provided that they respected the proportional nature of the electoral system. In addition, Member States were allowed to establish a minimum electoral threshold not exceeding 5 %, use preferential voting, and to set a ceiling for candidates' campaign expenses. The prohibition of dual mandates (national and European) was also introduced into the 1976 Act, as well as a prohibition on making the results of vote counts public until the polls in the last voting Member State have closed.

As a result of the amendments introduced in 2002, the electoral systems used by all Member States to elect MEPs have been proportional since the 2004 European elections. However, there are still significant differences among Member States in relation to major elements of the electoral system they apply for European elections. In the latest European elections (2019), the minimum age for standing as a candidate varied between 18 and 25 years of age depending on the Member State; five Member States provided for compulsory voting (Belgium, Bulgaria, Cyprus, Greece, and Luxembourg) whereas the rest did not impose such an obligation; the election period spanned 4 days, with the Netherlands and the UK voting on Thursday, Ireland on Friday, Latvia, Malta and Slovakia on Saturday, Czechia on Friday and Saturday, and the remaining Member States on Sunday. Eleven Member States had some kind of legislated gender quota whereas the rest did not.

As shown in Figure 1, most Member States considered their territory a single electoral constituency for European elections, while a few divided their territory into several constituencies. Similarly, closed-list systems were used in a minority of EU Member States for the 2019 European elections (France, Germany, Hungary Portugal, Romania and Spain), with the majority of Member States allowing some type of preferential voting, and Malta and Ireland opting for the single transferable vote system. The electoral thresholds applied in the 2019 European elections ranged between 5 % of the valid votes cast, required in nine Member States, and 1.8 %, required in Cyprus, while 14 Member States set no threshold. As a final example, Member States also used different methods to allocate seats among candidates after the elections, although most of them used the D'Hondt method in the 2019 elections (Belgium, Czechia, Denmark, Estonia, Spain, France, Croatia, Hungary, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, and Finland).

The entry into force of the 2002 amendments to the 1976 Act did not exhaust Parliament’s appetite for electoral reforms. Soon after the entry into force of the Lisbon Treaty (2009), Parliament revived its initiatives to reform the 1976 Act, with three successive reports drafted by Andrew Duff (2011, 2012, 2013). Lacking the support of the biggest political group in Parliament at the time (the European People’s Party, EPP), the first two Duff reports were never voted upon in plenary. Only the third Duff report gained the backing of the plenary. However, it did not propose to amend the 1976 Act, but only to introduce some practical arrangements ahead of the 2014 European elections. Among them, Parliament called on the European political parties to nominate their candidates for the European Commission presidency well in advance of the elections, thus introducing the Spitzenkandidaten – or lead candidates – process.

Following the lowest ever turnout, seen in the 2014 European elections (42.6 %), the Parliament again revived the debate on electoral law reform, and a new report was drafted in Parliament’s AFCO committee (Hübner–Leinen report, 2015). Originally quite limited in its scope, the Hübner–Leinen report was modified in plenary. The Council approved Parliament’s legislative initiative two and a half years later (Council Decision (EU, Euratom) 2018/994), but its final decision watered down many of the proposals put forward by Parliament. The main novelties introduced by the 2018 amendments to the 1976 Act covered: i) the deadline set by Member States for the submission of candidacies for the elections should be at least 3 weeks before the election period; ii) Member States could also provide for the display of the name or logo of European political parties on ballot papers, in order to enhance their visibility; iii) Member States could also provide for advance voting, postal voting, and electronic and internet voting, and could allow citizens residing in third countries to vote in European elections; and iv) Member States were obliged to establish an electoral threshold of between 2 % and 5 % for constituencies comprising more than 35 seats. The 2018 amendments were expected to enter into force before the 2019 European elections. However, not all EU Member States approved them before the elections, so they took place based on the 1976 Act, as modified in 2002. Those amendments are still not in force.

Preparation of the proposal

Parliament’s desire to harmonise the rules applicable to European elections was revived during the present legislative term, at the same time as Parliament was considering its report on stocktaking of the results of the May 2019 European elections and taking into account the major findings of that report (rapporteur: Pascal Durand, Renew, France, 2020/2088(INI)).

In line with the findings of the Commission’s report on the 2019 European elections (report and staff working document of 19 June 2020), Parliament’s resolution taking stock of the 2019 European elections welcomed the increased turnout in 2019 (50.66 %), the highest since the 1994 European elections (56.67 %), as well as the higher participation of younger generations and the improved gender balance among MEPs. However, the Parliament regretted the substantial differences among Member States as regards turnout and the percentage of women elected, the fact that few MEPs belong to minorities, that an estimated 800 000 citizens with disabilities were unable to vote in the elections due to lack of provision in national rules, and that homeless people and prisoners encountered various difficulties in voting. It thus proposed different actions to address those shortcomings.

The Parliament also highlighted the differences among Member States’ electoral systems applicable to European elections, and proposed to modify the 1976 Act and discuss possible harmonisation of several aspects. It also called for establishment of a European Electoral Authority to monitor the implementation of European electoral rules. Parliament’s resolution recognised the failure of the Spitzenkandidaten process in the aftermath of the 2019 elections and expressed its intention to reform the process before the next elections (2024). Parliament also noted the indications of foreign interference in the run-up to the 2019 elections, and called for adoption of the necessary measures
to combat disinformation campaigns. Finally, Parliament noted the importance of European political parties for fostering European political debate, and proposed to enhance their visibility by displaying their logos on the ballot papers used for European elections, and to allow them to fully participate in European elections by granting them the right to present candidates, campaign and use EU funds for campaigning.

The changes the proposal would bring

The AFCO committee requested authorisation to draw up a legislative-initiative report on the modification of the 1976 Act on 24 September 2020 (Rules 46 and 54 of Parliament’s Rules of Procedure), although it was agreed that work on the report would only start after the adoption of Parliament’s resolution on the stocktaking of the 2019 European elections. After obtaining the authorisation of the Conference of Presidents on 22 October, AFCO decided to appoint Domènec Ruiz Devesa (S&D, Spain) as rapporteur for the file on 19 November 2020.

The draft legislative initiative report was published on 12 June 2021 and was first discussed by the AFCO committee on 15 June 2021. With the aim to incorporate in the report recommendations from the Conference on the future of Europe, launched in May 2021, the deadline for amendments was set for 5 November 2021, and 731 amendments were tabled. After considering the amendments, the AFCO committee adopted its final report on 28 March 2022, with 19 MEPs voting in favour and 9 voting against. The vote in AFCO had been postponed to enable agreement to be found on certain elements of the proposal (i.e. transnational lists, gender balance and electoral threshold), showing the complex nature of the political negotiations on this file. The legislative-initiative report was tabled for plenary and the Parliament adopted it during its May I plenary session: the draft legislative act was approved by 323 votes for, 262 against and 48 abstentions.

Departing from the more conservative amendments of 2018 to the 1976 Act, the draft legislative act seeks to repeal the 1976 Act. In its place, it proposes the adoption of a Council regulation establishing a common electoral procedure for the election of 28 MEPs in a Union-wide constituency, and a common set of principles that would apply to all Member States in the election in the national constituencies (Article 1). For matters not covered by the proposed regulation, national electoral provisions would still apply (Article 3), although the draft legislative act reduces the margin of discretion that Member States currently enjoy to regulate European elections.

Common rules applicable to all constituencies

The draft legislative act adopted by Parliament does not propose to substantively change the main features of the electoral system applicable to European elections in national constituencies as it stands today. As such, European elections would still be based on direct universal suffrage, and MEPs would still be elected in national constituencies through a system of proportional representation (Article 12). Relevant elements of the electoral system applicable to European elections would however remain a national issue. In this vein, Member States would still be free to decide whether they wish to establish a single constituency or several constituencies for European elections, providing that the option retained does not affect the proportional nature of the electoral system (Article 14). However, Member States would be allowed under the proposal to create single constituencies to represent linguistic or ethnic minorities, or overseas nationals or territories. The system of proportional representation to be applied to the elections in the national constituencies still remains a national issue: Member States can decide to use a list system of proportional representation or the single transferable vote; they can still decide if they wish to opt for a closed-list system or a system allowing some kind of preferential voting; and they can still decide on the electoral formula (D’Hondt or any other) used to allocate seats among different candidate lists and within each list.

However, the draft legislative act proposes to further harmonise several aspects of the electoral procedure applicable in European elections, with a focus on the exercise of the right to vote and
stand for election. As regards the exercise of the **right to vote**, the draft legislative act proposes to establish a **minimum common voting age of 16 years of age**, except for Member States whose constitutional order establishes a minimum voting age of 17 or 18 years old (Article 4). In addition, Article 6 of the draft legislative act stresses the obligation for Member States to ensure the right to vote in European elections to EU citizens living in a third country, those without permanent residence, those living in closed residential settings, those experiencing homelessness and those serving a prison sentence. Similarly, aiming to facilitate the exercise of the right to vote, including from third countries, Article 8 of the draft legislative act proposes to impose on Member States an obligation to provide for **postal voting** and the possibility to allow advance physical voting, proxy voting, electronic and internet systems for voting. The draft legislative act also proposes to introduce relevant provisions concerning the exercise of the right to vote by persons with disabilities, as Member States would be required to ensure that persons with disabilities have equal access to electoral materials, voting facilities and polling stations (Article 7) and that postal voting is also accessible to them (Article 8).

In the **2019 European elections**, only 15 Member States, including the UK, allowed postal voting, and three more allowed it only from another EU Member State, but not from a third country; 4 Member States allowed proxy voting, including the UK, and only Estonia allowed for e-voting. Therefore, the adoption of the draft legislative act would modify the situation as it currently stands in many Member States.

As regards the exercise of the right to **stand as a candidate**, Article 5 of the draft legislative act establishes a minimum common age of 18 years of age, a provision that would modify the state of play in some Member States which required candidates to have attained 21, 23 or 25 years of age to stand in the 2019 European elections. Article 10 of the draft legislative act also reiterates the idea, already present in the Hübner–Leinen report, to impose an obligation on all political parties and other entities participating in European elections to observe ‘**democratic procedures and transparency**’ when electing their candidates for European elections, and to ensure **gender equality** in their candidates, either by using a zipped system (alternation of candidates of both genders on the ballot paper) or quotas. However, political entities remain free to opt for a zipped system or a quota, and the percentage of the quota needed to respect the principle of gender equality is not indicated in the text, thus softening the content of the rule.

In the 2019 European elections, from the 11 Member States applying gender quotas, six Member States opted for **legislated gender quotas**, ranging from 33 % to 40 % (Croatia, Spain, Slovenia, Portugal, Poland and Greece), four of them opted for a 50 % gender quota (France, Italy, Belgium and Luxembourg), and the Romanian legislation established that no all-women or all-men lists were allowed.

A more detailed **electoral calendar** is also provided for in the draft legislative act. Member States would be obliged to finalise the electoral roll 14 weeks before the election day, although errors in the electoral roll could be corrected until the day of the elections (Article 9). The deadline for tabling the list of candidates for elections would be uniformly fixed at 12 weeks before the election day (Article 11). A common electoral campaign would start 8 weeks before the election day, with the last 48 hours before the election day being considered a European electoral reserve period during which it should not be permitted to ask electors about their voting intentions (Article 17). A **common day for holding European elections** across the whole EU would be fixed on 9 May (every 5 years), the date that marks the anniversary of the historic Schuman declaration. After the elections, the election results should be proclaimed by the newly created European Electoral Authority (see below) and published in the **Official Journal of the EU**.

Finally, the draft legislative act reiterates the idea of imposing the establishment of an **electoral threshold** for European elections in big national constituencies, as already provided for in Council Decision (EU, Euratom) 2018/994. However, the requirements are loosened and, although Member States remain free to establish an electoral threshold of no more than 5 % of the valid votes cast, they would be obliged to establish a threshold – of no less than 3.5 % and no more than 5% – only for national constituencies comprising more than 60 seats.
Towards new rules for European elections?

The rule concerning the compulsory electoral threshold for national constituencies comprising more than 60 seats would only affect Germany. Only three Member States are currently allocated more than 60 seats in Parliament in line with the 2018 European Council Decision on the composition of Parliament: Germany (96), France (71) and Italy (76). Italy has five constituencies and none of them elected more than 60 seats in the 2019 European elections. Germany and France have just one single constituency for European elections, but France already imposes an electoral threshold of 5% (Article 3 Loi n° 77-729 du 7 juillet 1977 relative à l’élection des représentants au Parlement européen). Although the German legislature has tried to impose an electoral threshold for European elections, the Federal Constitutional Court declared it unconstitutional.

The Union-wide constituency

The creation of a Union-wide constituency, comprising the territory of all Member States, in which 28 MEPs would be elected through transnational electoral lists in the forthcoming European elections (2024) is probably the most innovative aspect of the draft legislative act (Article 15). It is to be noted, however, that Parliament has already attempted to create a pan-European constituency on several occasions without success. Already in 1998, the Anastassopoulos Report proposed to allocate 10 per cent of the total number of European Parliament seats to a single constituency comprising the territory of all the Member States, with effect from the 2009 European elections. That proposal was not retained by the Council, as was also the case of the proposal included in the Hübner–Leinen report, almost 20 years later (2015). In that latter case, Parliament proposed to include a new article in the 1976 Act that would have provided for the creation of a pan-European constituency through a unanimous decision of the Council. Although the proposal left a wide margin for the Council to decide on the concrete arrangements for the creation of that pan-European constituency, it was also rejected by the Council. Two other proposals to create a pan-European constituency have also been discussed in Parliament (first and second Duff reports, in 2011 and 2012), although neither were voted upon in plenary.

The draft legislative act not only proposes to create a Union-wide constituency electing 28 MEPs but also sets out the details of the uniform electoral system that would apply to elections in that constituency. In this vein, it is to be noted that European citizens would have two votes: one for their national constituency and another one for the Union-wide constituency. In both the national and the Union-wide constituency, the electoral system would be a proportional one. However, in the Union-wide constituency, the draft legislative act proposes to use a closed-list system and the D’Hondt formula for the allocation of seats after the elections. No electoral threshold would apply to the elections in the Union-wide constituency.

As regards the right to stand as a candidate, the obligation applicable to national constituencies to establish democratic and transparent procedures to elect candidates and the obligation to ensure gender equality within the list of candidates would also apply to candidacies for the Union-wide constituency. In addition, strict requirements would be set on candidacies for the Union-wide constituency, in order to ensure wide geographical representation. To mitigate the risk that candidates from big Member States become predominant in the candidacies for the Union-wide constituency, to the detriment of candidates from smaller Member States, the draft legislative act provides that electoral lists should include a certain number of candidates from small and medium-sized Member States in electable positions. Annex 1 of the draft legislative act splits Member States into three different groups depending on the size of their population: Member States with population sizes ranging up to 5.8 million inhabitants (Group C), Member States with population sizes ranging from 6.9 million to 19.3 million inhabitants (Group B), and Member States with population sizes above 37.9 million inhabitants (Group A). Electoral lists would also be divided into sections of three slots, and each slot should be filled with section one candidate from each of the three groups of Member States (Groups A, B and C). As such, candidate lists would not be able to include only candidates from the biggest Member States in the leading positions, but would have to alternate candidates from the five biggest Member States (Germany, France, Italy, Spain and Poland – Group A); from medium-sized (Group B), and small Member States (Group C). As lists are closed and no preferential voting is allowed, citizens would not be able to modify the order in which
candidates are placed, thus ensuring the election of a number of candidates from Member States in Groups B and C.

**European political parties** registered under Regulation (EU, Euratom) No 1141/2014 would not be the only ones entitled to submit candidacies for the Union-wide constituency. Such a right would also be recognised for **European associations of voters** (representing at least 0.02% of the voting age population in at least a quarter of Member States), **European electoral coalitions** (formed by at least two European political parties or associations of voters), and **European coalitions of national parties or associations** of voters from at least a quarter of Member States. While the recognition of such a right for European political parties is a novelty, as European elections have until now been dominated by national candidates and national political parties, the extension of such a right to European political movements and coalitions would help minoritarian and new political movements to emerge and gain representation in the elections.

Although the draft legislative act does not detail the rules applicable to the electoral campaign and its financing, it is to be noted that Article 15(13) would oblige European and national public broadcasters to grant **broadcasting time** to European political parties and entities in proportion to their results in the latest European elections. For those that participate in elections in the Union-wide constituency for the first time, a minimum broadcasting time should be granted. However, nothing is said in relation to the rules applicable to private broadcasters, so the potentially different national rules would apply. As regards the financing of electoral campaigns, Article 16 of the draft legislative act refers to Chapters IV and V of Regulation (EU, Euratom) No 1141/2014, which currently sets out the **financing rules** applicable to European political parties. Although a **proposal** to modify that regulation is currently being discussed by the co-legislators, the original text of the proposal does not include any specific provision concerning the financing of electoral campaigns in a possible Union-wide constituency, and does not envisage the possibility to grant EU funds to European entities other than European political parties, even if they can compete in the elections in the Union-wide constituency. The draft legislative act also does not impose any limit on the amount of funds European political parties and/or entities can spend in the electoral campaign for the Union-wide constituency. Although many national regulations impose limits on campaign expenditure to ensure a level playing field for all candidates, it is doubtful whether those limits would apply to the Union-wide electoral campaign, a circumstance that may benefit those political entities that are able to raise more private funds.

No article in the proposal explicitly mentions the **lead candidate process**. However, the procedure figures prominently in several recitals of the legislative resolution adopted by Parliament and in the preamble of the draft legislative act. The text stresses that ‘all European voters should be allowed to vote for their preferred candidate for the Presidency of the Commission’, and that lead candidates should be able to stand for elections in all Member States on Union-wide electoral lists. A clear link is established between the lead candidate system and the Union-wide constituency, envisaging the latter as the means for lead candidates to present themselves to all EU voters. Conscious of the reasons behind the failure of the lead candidate system following the 2019 European elections, the draft legislative act proposes to institutionalise the procedure through a political agreement of the European political entities competing in the elections and an InterInstitutional Agreement between Parliament and the European Council whereby the President of the European Council would commit to consulting the leaders of European political entities and political groups to inform the nomination process of the Commission President.

### The European Electoral Authority

The creation of a European Electoral Authority is one of the other main novelties of the draft legislative act. The Electoral Authority would be an **independent body**, comprised of **27 members** appointed by each Member State from professors of law or political science and other experts in electoral systems, for a five-year term of office (Article 28). To ensure its independence, the draft legislative act provides that the term of office of its members should begin two and a half years after the beginning of each parliamentary term. In addition, the members of the authority cannot receive instructions from any institutions, government or entity and they cannot be members or former members of the
European Parliament, national parliaments or governments, hold an electoral mandate or be officials or other servants of any EU institution, European political party or foundation, or association of voters.

As regards its **functions**, the Electoral Authority would be in charge of conducting the elections in the Union-wide constituency, but also of coordinating the exchange of information among the national electoral authorities and monitoring the implementation of the regulation, including in the national constituencies. As regards the elections in the Union-wide constituency, the Electoral Authority would be in charge, inter alia, of managing the European electoral roll, built on the basis of the national electoral rolls and used in the elections to the Union-wide constituency; proclaiming the lists of candidates 11 weeks before the elections; proclaiming the electoral results, and ruling on any dispute that arises from the application of the regulation, other than those arising from the implementation of the national provisions governing European elections.

**National parliaments**

The subsidiarity deadline for national parliaments to submit their reasoned opinions was 1 July 2022. Eight parliamentary chambers examined the proposal and the Swedish and Danish Parliaments, together with the two houses of the Dutch Parliament, issued a ‘reasoned opinion’ taking the view that the proposal conflicts with the principle of subsidiarity. The Swedish Parliament took the view that the goals the proposal sets itself can be better attained by the Member States themselves, as the rules most of them have decided to apply to EU elections are similar to those they apply to national elections, which allows citizens to become familiar with the system and maintain their trust in the reliability of existing rules. Both the Swedish and Danish Parliaments expressed the view that the internal organisation of political parties and the functioning of the electoral campaign should be regulated at the national level to take into account national practices and traditions. A similar opinion was expressed by the Danish Parliament as regards the lowering of the voting age to 16 years of age.

**Stakeholder views**

Parliament’s proposals to reform the rules applicable to European elections have always sparked extensive academic and political debate, especially on the controversial topics of the **lead candidate** process and transnational electoral lists. The drafting and adoption of the Devesa report has revived some of those debates.

In this vein, some academics and stakeholders have shown their support for the main aspects of the draft legislative act adopted by Parliament. The **European Movement International** has taken the view that to build a truly transnational European democracy a reform of the European electoral system and the rules applicable to European political parties is needed. According to that organisation, such a reform should include, inter alia, the creation of a pan-European constituency and the reform of the lead candidate system. **Alberto Alemanno** also stressed the lack of an autonomous European political system and a European public sphere where competing views on the EU can be presented to citizens and citizens can participate in the EU decision-making process. According to this author, transnational lists may help to build that political arena, as they would oblige European political parties to present themselves to citizens with a single political programme and pool of candidates.

Olivier Costa also highlighted, in relation to the draft report presented in the AFCO committee, that it was far more ambitious than previous proposals to reform the 1976 Act and noted that its main objective could be to foster a broad political debate around the two major institutional reforms proposed – i.e. the creation of a Union-wide constituency and the lead candidate system – within the context of the Conference on the Future of Europe. Manuel Müller, writing from the Jacques Delors Centre, also highlights the ambition of the proposal presented by Parliament, although he voices doubts as to whether it would be in force before the 2024 European elections. The **European Disability Forum** welcomed the report discussed in AFCO and stressed its commitment to ensure full participation of persons with disabilities in European elections. It highlighted the need to ensure,
inter alia, that persons with disabilities can vote and be elected regardless of being under guardianship, and that they have full access to the electoral process.

Taking a more critical stance, Tanja Börzel is sceptical about the ability of transnational electoral lists to alleviate the democratic deficit of the EU, and stresses that that deficit comes from the national level and can only be alleviated if national governments decide to give citizens a greater role in EU policy choices. Federico Fabbrini also raises several doubts as regards the creation of transnational lists – risks of undermining the representation of small Member States and the creation of two different types of MEPs, those with a European mandate and others with national mandates – and proposes to increase the politicisation of European elections by re-defining the EU’s executive branch and establishing a single EU executive, directly elected by the people, that could act as a strong integrationist force. Without suggesting such a far-reaching change, Jan Rovny has also highlighted that transnational lists may be considered an attempt to move in the right direction as they seek to create a clearer link between the results of European elections and how they translate into EU policy choices. However, he considers that such an objective could be better attained by the lead candidate system: if the Commission were formed by the party(ies) with a majority in the European Parliament, its political mandate and agenda would be clearer for citizens, as well as the link between the elections and the EU policy choices.

**Legislative process**

The adoption of the draft legislative act in the May I plenary session is only the first stage of the special legislative procedure applicable to this file. According to Article 223(1) TFEU, Parliament’s legislative initiative has to be unanimously approved by the Council, after obtaining Parliament’s consent by a majority of its component members. Furthermore, the legislative act cannot enter into force until it has received the approval of all the Member States in accordance with their constitutional requirements. The draft legislative act is now being analysed by the Council in its General Affairs configuration, and some national delegations have already sent their preliminary written contributions relating to the proposal.
Towards new rules for European elections?

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS


OTHER SOURCES

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, Legislative Observatory (OEIL), European Parliament.

ENDNOTES

1 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under ‘European Parliament supporting analysis’.


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Second edition. The ‘EU Legislation in Progress’ briefings are updated at key stages throughout the legislative procedure.
# Annex

Overview of the main elements of the 1976 European Electoral Act, as amended in 2002, and proposed amendments

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<th>Exercise of the right to vote</th>
<th>Electoral Act, as modified by Council Decision 2002/772/EC</th>
<th>EP legislative resolution (P9_TA(2022)0129)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- direct, universal, free and secret suffrage</td>
<td>- Voting age: 16, except in Member States where the constitutional order establishes a minimum voting age of 17 or 18.</td>
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<td></td>
<td>- prohibition of double voting</td>
<td>- Each voter has two votes: one for their national constituency and another one for the Union-wide constituency. No one can vote more than once in either one or the other.</td>
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<td></td>
<td>- double voting shall be subject to effective, proportionate and dissuasive penalties</td>
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<td></td>
<td>- all EU citizens, including those living in a third country, without a permanent residence, living in closed residential settings, homeless or serving a prison service, shall be able to exercise their right to vote.</td>
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<td></td>
<td>- Accessibility to electoral materials, voting facilities and polling station shall be ensured, including for persons with disabilities.</td>
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<tr>
<td></td>
<td></td>
<td>- Postal voting shall be ensured, including for citizens living in third countries, and advance physical voting, proxy voting or voting by electronic or internet systems may be provided by Member States.</td>
</tr>
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<thead>
<tr>
<th>Electoral roll</th>
<th>- National electoral rolls shall be established in every Member State 14 weeks before the election day.</th>
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<td></td>
<td>- On the basis of the information provided by national authorities, the European Electoral Authority shall establish a European electoral roll.</td>
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<thead>
<tr>
<th>Exercise of the right to stand as candidate</th>
<th>- Age to stand as candidate: 18.</th>
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<tbody>
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<td></td>
<td>- The selection of candidates shall observe democratic and transparent procedures, and gender equality (either through zipped lists or quotas).</td>
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<td></td>
<td>- Candidate lists must respect requirements to ensure geographical balance.</td>
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<tr>
<th>Registration of candidacies</th>
<th>- Deadline for tabling candidacies: 12 weeks before the election day.</th>
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<td></td>
<td>- Candidates can only be presented by European political entities.</td>
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<thead>
<tr>
<th>Ballot papers</th>
<th>- Uniform ballot papers giving equal visibility to the name and logo of national and European political entities.</th>
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<tbody>
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<td>- Ballot papers shall include the name and logo of the European electoral entity.</td>
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<thead>
<tr>
<th>Electoral campaign and financing</th>
<th>- Member States may set a ceiling for campaign expenses</th>
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<tbody>
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<td></td>
<td>- Starting point of the electoral campaign: 8 weeks before the election day.</td>
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<td></td>
<td>- European electoral reserve period of 48h before the election day.</td>
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<td></td>
<td>- Public broadcasters have to provide broadcasting time to candidates in proportion to the results of the preceding elections.</td>
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<td></td>
<td>- Financing of the electoral campaign of European political entities according to Regulation 1141/2014</td>
</tr>
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<td></td>
<td>- Equal treatment of European electoral entities and national ones as regards the campaign for the Union-wide constituency</td>
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<thead>
<tr>
<th>Election day</th>
<th>- election day fixed by Member States within an ‘electoral period’ (Thursday morning to Sunday), which was first</th>
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<tbody>
<tr>
<td></td>
<td>- 9 May as common election day, every five years, except for overseas territories.</td>
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<tr>
<td></td>
<td>- Closing hour for polling stations: 21:00 local time.</td>
</tr>
<tr>
<td>Towards new rules for European elections?</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------</td>
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</tbody>
</table>
| Determined unanimously by the Council after consulting the European Parliament.  
- prohibition to make the results of the vote officially public before the last-voting Member State has closed the polls  
- Official proclamation of results: by the European Electoral Authority based on information provided by national authorities. |
| **Electoral system**  
- proportional voting system using the list system or single transferrable vote. Preferential lists are allowed based on procedures established by national legislation.  
- Member States may establish constituencies for elections, or subdivide the electoral area, provided the proportional nature of voting is maintained.  
- Member States may set an electoral threshold not exceeding 5% of the valid votes  
- any system of proportional representation  
- Member States may establish single constituencies or subdivide their electoral area. They may form single-member constituencies for linguistic or ethnic minorities, overseas nationals or territories  
- Member States may set an electoral threshold not exceeding 5% of the valid votes and shall set an electoral threshold of between 3.5-5% for constituencies of more than 60 seats  
- Exemptions for political parties/associations of voters representing national minorities and those registered in 1/4 of Member States and obtaining at least one million votes  
- closed list system  
- the Union-wide constituency comprises the territory of all Member States and elects 28 MEPs in the first elections after the entry into force of the Regulation. A European Council Decision would determine the size of the Union-wide constituency thereafter.  
- No electoral threshold.  
- System for allocations of seats after the election: D'Hondt system. |
| **Start and exercise of MEPs’ mandate**  
- definition of start and end of the five-year term of office of MEPs  
- The Assembly (EP) is competent to verify the credentials of members based on results declared by national authorities.  
- individual and personal nature of a MEPs vote, representative nature of MEPs mandate, enjoyment of privileges and immunities  
- The European Parliament verifies the credentials of members based on results declared by national authorities and proclaimed by the European electoral authority. |
| **Incompatibilities**  
Membership of a national government, national parliament, the Commission, the Court of Justice (including registrar and advocate general), the Court of First Instance, the Board of Directors of the ECB, the Court of Auditors of the EU, the EU Ombudsman, the Consultative Committee of the European Coal and Steel Committee, Economic and Social Committee, the Committee of the Regions, other committees and bodies set up by the Treaties, the board of directors, management committees or staff of the European Investment Bank, active official or servant of the institutions or one of their specialised bodies or of the ECB.  
Additional incompatibilities: members of regional parliaments vested with legislative powers; and members of committees and bodies set up by the Treaties to manage the EU’s funds or carry out permanent direct administrative tasks. |
| **Vacancy of seats and replacement of MEPs**  
- Procedures to fill vacancies during the five-year mandate are established in national law.  
- Reasons for a vacancy must be specified: resignation, death or withdrawal of the mandate.  
MEPs may be temporary replaced in case of maternity, paternity parental leave or severe illness for a renewable period of 16 weeks.  
- MEPs may be temporary replaced in case of maternity, paternity, parental leave or severe illness for a renewable period of 16 weeks.  
- A seat falling vacant due to resignation, death or withdrawal of the mandate shall be filled by the next candidate of the list in which the outgoing MEP was elected. |
| **Electoral Administration**  
A European Electoral Authority is established to ensure the correct implementation of the Regulation and conduct and monitor the electoral process in the Union-wide constituency. |