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Committee on Constitutional Affairs

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DRAFT 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

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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 amended¹, 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 1998²,
- having regard to its resolution of 11 October 2007 on the composition of the European Parliament³,
- 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) and 48(2), (3) and (4) of the Treaty on European Union (TEU) and to Articles 22, 223 and 225 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Protocol (No 7) on the Privileges and Immunities of the European Union,
- having regard to Rules 41, 48(3) and 74a of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs (A7-0000/2010),

Whereas:

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

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).

² OJ C 292, 21.9.1998, p. 66.

³ OJ C 227 E, 4.9.2008, p. 132.

⁴ Texts adopted, P7_TA(2010)0148.

- 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. 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 level¹ and the abolition of the dual mandate²,
- F. 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, which now has binding legal force under the terms of the Lisbon Treaty, has reinforced that right and other civic rights,
- G. 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 reportage of Parliament is irregular,
- H. overall turnout in the elections to Parliament has fallen steadily from 63 per cent in 1979 to 43 per cent in 2009,
- I. there are several differences in the systems used by States for elections to the European Parliament, particularly with respect to the organisation of constituencies and to preferential voting, but also with respect to measures aimed at increasing the representation of women and ethnic minorities,
- J. the number of EU 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,
- 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 EU law and are precluded from treating different categories of EU citizens who are in the same circumstances in a way that discriminates between them³; likewise, while it is for each State to lay down its own conditions for the

¹ 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).

² Council Decision 2002/772/EC, Euratom, Article 1(7), point (b).

³ Case C-145/04 *Spain v United Kingdom* [2006] ECR I-7917 (concerning Gibraltar) and Case C-300/04 *Eman and Sevinger v College van burgemeester en wethouders van Den Haag* [2006] ECR I-8055 (concerning Aruba).

acquisition and loss of nationality, it must at the same time have regard to the status of citizenship of the Union¹,

- L. current proposals of the Commission to facilitate electoral participation by EU citizens resident in Member States other than their own are stalled in the Council²,
- M. across the 27 States the minimum age for eligibility to stand as a candidate now varies between 18 and 25, and for eligibility to vote between 16 and 18; it is important to encourage young people to participate in elections,
- N. the number of women MEPs now stands at 35 per cent; measures should be taken to further reduce the gender imbalance in Parliament, especially in certain States,
- O. there remain a number of other issues that could be reviewed in respect of the elections, including the question of thresholds, the use of electronic polling, verification of the credentials of MEPs and the filling of vacancies,
- P. 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 States³,
- Q. the redistribution of parliamentary seats among States needs to take place on a regular basis in order to reflect demographic change in the resident populations of the States and to strictly respect the principle of degressive proportionality; it may be possible to reach agreement on an apolitical, mathematical formula which would respect the criteria laid down in the Treaties and spelt out in the Act⁴,
- R. 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 had entered into force⁵,
- S. in spite of the fact that the Council has previously agreed to keep the 1976 Act under review, the last formal review of electoral procedure by Parliament was initiated as long ago as 1998⁶,

¹ Case C-135/08 *Rottmann v Freistaat Bayern*: judgment of 2 March 2010 (OJ C 113, 1.5.2010, p. 4).

² 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 resolution of 26 September 2007 on the proposal for a Council directive amending Directive 93/109/EC 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 (OJ C 219 E, 28.8.2008, p. 193).

³ 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).

⁴ Declaration No 5 annexed to the Final Act of the Lisbon Treaty IGC.

⁵ Declaration of 3 June 2005 by Representatives of the Member States meeting within the Council.

⁶ 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

- T. Parliament's electoral procedure must uphold the practice of free, fair and secret elections, achieve overall proportionality of representation, and be durable and comprehensible,
 - U. Parliament's electoral system is a compromise between the democratic principle of equality ('one man one vote') and the international law principle of equality among states, and the TEU lays down the principle of the equality of its citizens while forbidding discrimination on the grounds of nationality,
 - V. 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,
 - W. Parliament has previously resolved to study the possibility of electing some MEPs on transnational lists, considering that this would impart a genuine European dimension to the campaign, particularly by entrusting a central role to European political parties¹,
 - X. the TEU provides that '[p]olitical parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union'²,
 - Y. the Lisbon Treaty changed the relevant wording concerning the composition of Parliament from 'representatives of the peoples of the States brought together in the Community'³ to 'representatives of the Union's citizens'⁴,
 - Z. notwithstanding the current addition of 18 MEPs, in accordance with the provisions of the Treaty of Lisbon, the composition of Parliament will not be in line with the principle of degressive proportionality⁵,
1. Decides to reform its electoral procedure in good time before the 2014 elections with the aim of enhancing the legitimacy and efficacy of Parliament by strengthening the European democratic dimension and by providing for a fairer distribution of seats among the States in accordance with the Treaties;
 2. Proposes that an additional 25 MEPs will be elected by a single constituency formed of the whole territory of the European Union; transnational lists will be composed of candidates drawn from at least one third of the States, and will be gender-balanced; each elector will be enabled to cast one vote for the EU-wide list in addition to their vote for the national or regional list: voting for the EU constituency will be in accordance with the preferential semi-open list system (whereby votes are allotted either to the party list or to individual candidates within a list); and seats will be allocated in accordance with the Sainte-Laguë method⁶; further, proposes that an electoral authority will be established at EU level in order to regulate the conduct and to verify the result of the election taking place from the EU-wide list;

1976 Act which are the subject of this Decision' – that is, before 2009.

¹ Most recently in its above-mentioned resolution of 11 October 2007 (Lamassoure-Severin report).

² Article 10(4) TEU.

³ Article 189 of the Treaty establishing the European Community.

⁴ Article 14(2) TEU.

⁵ Paragraph 6 of its abovementioned resolution of 6 May 2010.

⁶ The Sainte-Laguë method uses divisors of 1, 3, 5, 7, etc, and was used in the 2009 European elections in Germany, Latvia and Sweden. It produces a slightly more proportional result than the D'Hondt method.

3. Proposes that a redistribution of the existing 751 seats among States will take place, if justified objectively by figures established by Eurostat, based on the total resident population, before every election; the redistribution will be made in accordance with a mathematical formula respecting the criteria laid down in the Treaties, and will be announced at least twelve months before the end of the mandate;
4. Repeats its proposal to bring forward the timing of the election from June to May;
5. Urges States and political parties to promote the better representation of women and ethnic minority candidates at both the EU and the national level;
6. Calls on the Council, 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 for revision of Council Directive 93/109/EC 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;
7. Reiterates its long-standing request that the 1965 Protocol on Privileges and Immunities be amended with a view to establishing a uniform supranational regime for Members of the European Parliament¹;
8. Submits to the Council for the amendment of the Treaties the amendments contained in Annex II;
9. Submits to the Council for the amendment of the Act concerning the election of the Members of the European Parliament by direct universal suffrage the amendments contained in Annex III;
10. 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 European Parliament 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 I - 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

**ACT¹
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.

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 6(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 Council 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 month¹ 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

¹ In the versions of Decision 2002/772/EC, Euratom as published in the Official Journal, other than the English and Spanish versions, this period is stated to be one year.

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-sechundsiebzig.

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 zesenze-ventig.

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 1975¹.

¹ OJ C 89, 22. 4. 1975, p. 1.

ANNEX II - Proposal for the amendment of the Treaties

TREATY ON EUROPEAN UNION

Amendment A

Treaty on European Union Article 14 – paragraph 2

Treaty on European Union

2. The European Parliament shall be composed of representatives of the Union's citizens. ***They shall not exceed seven hundred and fifty in number, plus the President.*** Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision ***establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.***

Amendment

2. The European Parliament shall be composed of representatives of the Union's citizens.

2a. There shall be seven hundred and fifty one seats allocated to constituencies established in the Member States.

Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The distribution of those seats among the States shall be reviewed regularly in accordance with a formula based on the total resident population of the States. Not later than twelve months before the end of the mandate of each Parliament the European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision on the redistribution of seats.

2b. In addition, there shall be twenty-five seats allocated to a single constituency comprising the entire territory of the Union.

**PROTOCOL (NO 7) ON THE PRIVILEGES AND IMMUNITIES OF THE
EUROPEAN UNION**

Amendment B

**Protocol on the Privileges and Immunities of the European Union
Article 7**

Protocol (No 7)

Amendment

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall enjoy freedom of movement throughout the European Union.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

This right may not be restricted by law or by order of a public authority or court.

(a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Amendment C

**Protocol on the Privileges and Immunities of the European Union
Article 8**

Protocol (No 7)

Amendment

Members of the European Parliament shall **not** be subject to any form of inquiry, detention or

Members of the European Parliament shall **at no time** be subject to any form of

legal proceedings in respect of *opinions expressed or votes cast by them in the performance of their duties.*

inquiry, detention or legal proceedings in respect of *any action taken, vote cast or statement made in the exercise of their mandate.*

The European Parliament shall decide, on an application from a Member, whether an action was taken or a statement was made in the exercise of his/her mandate.

The European Parliament shall lay down provisions for the implementation of this Article in its Rules of Procedure.

Or. en

Amendment D

Protocol on the Privileges and Immunities of the European Union Article 9

Protocol (No 7)

Amendment

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European

1. Any restriction of a Member's personal freedom shall be permitted only with the consent of the European Parliament, except where he/she is caught in the act of committing an offence.

2. The seizure of a Member's documents or electronic records or the searching of his/her person, office or place of residence or interception of his/her mail and telephone calls may be ordered only with the consent of the European Parliament.

3. A Member shall be entitled to decline to give evidence about information which that Member has obtained in the exercise of his/her mandate or about persons from or to whom he/she has obtained or given such information.

4. Investigations or criminal proceedings against a Member shall be suspended at the request of the European Parliament.

Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

5. Consent pursuant to paragraph 2 may be applied for only by the authorities competent under national law.

6. Consent pursuant to paragraph 2, or suspension pursuant to paragraph 4, may be granted conditionally, for a limited period or on a restricted basis.

Or. en

ANNEX III - Draft proposal for a Council decision adopting the provisions amending the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976

THE COUNCIL,

Having regard to Article 223 of the Treaty on the Functioning of the European Union,

Having regard to the proposal by the European Parliament,

Having regard to Parliament's consent,

Whereas:

(1) The Treaty provisions concerning the electoral procedure should be implemented,

HAS ADOPTED the provisions annexed to this decision and recommends that they be adopted by the Member States in accordance with their respective constitutional requirements.

This decision and the provisions hereunto annexed shall be published in the Official Journal of the European Union.

The Member States shall without delay notify the Secretary-General of the Council that they have carried out the procedures required under their respective constitutional rules for adoption of the provisions annexed to this decision.

The amendments shall take effect on the first day of the month following the adoption of the provisions of this Decision by the Member States, in accordance with their respective constitutional requirements.

Annex to the draft proposal for a Council Decision – Draft Act amending the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 (1976 Elections Act)¹

Amendment 1

**1976 Elections Act
Article 1 – paragraph 1**

1976 Elections Act

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.

Amendment

1. Members of the European Parliament shall be elected *as representatives of the citizens of the Union* on the basis of proportional representation, using the list system or the single transferable vote.

Or. en

¹ The amendments in this document are based on 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). This consolidation differs from the consolidated version produced by the Publications Office of the European Union (CONSLEG. 1976X1008-23/09/2002) in two respects: it incorporates an indent to Article 6(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 Council Decision 2002/772/EC, Euratom.

Article 2a

1. For the purposes of distributing seats between Member States in accordance with the principle of degressive proportionality pursuant to Article 14(2a) of the Treaty on European Union, the ratio between the population and the number of seats of each State must vary in relation to their respective populations in such a way that each Member from a more populous State represents more citizens than each Member from a less populous State and also, conversely, that no less populous State has more seats than a more populous State.

2. The seats will be distributed in accordance with the mathematical formula laid down in the Annex hereto, on the basis of the total resident population of the States as established by Eurostat.

Amendment 2

**1976 Elections Act
Article 2 a (new)**

Or. en

Amendment 3

**1976 Elections Act
Article 2 b (new)**

Article 2b

1. Pursuant to Article 14(2b) of the Treaty on European Union, there shall be one additional constituency formed of the entire territory of the Union from which shall be elected twenty-five Members.

2. An electoral authority shall be

established to conduct and verify the electoral process of the European Union constituency. The authority shall comprise representatives of the European Parliament, the Commission and each Member State.

3. Transnational lists of candidates for election in the European Union constituency submitted by the European political parties shall be admissible only:

(a) if composed of candidates resident in at least one third of the States, and

(b) if balanced by gender.

4. Each elector shall have one supplementary vote that may be cast for his or her preferred candidate on the European Union-wide list. Voting shall be by the preferential semi-open list system. Seats shall be allocated in accordance with the Sainte-Laguë method.

5. Detailed arrangements for the European Union constituency election, including the delegation of powers to the electoral authority, shall be laid down in implementing measures to be adopted in accordance with Article 14.

Or. en

Amendment 4

1976 Elections Act Article 3

1976 Elections Act

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.

Amendment

*1. Member States may set a minimum threshold for the allocation of seats **distributed in national and/or regional constituencies**. At national level this threshold may not exceed 5 per cent of votes cast.*

*2. **There shall be no minimum threshold***

for the allocation of seats from the European Union constituency.

Or. en

Amendment 5

1976 Elections Act Article 4

1976 Elections Act

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

Amendment

Each Member State may set a ceiling for *the campaign expenses of candidates and political parties at the national and/or regional level. The electoral authority shall set a ceiling for the campaign expenses of candidates and political parties at the European Union level..*

Or. en

Amendment 6

1976 Elections Act Article 5 – paragraph 1 – subparagraph 2

1976 Elections Act

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

Amendment

It may be extended or curtailed pursuant to the second subparagraph of *Article 11(2)*.

Or. en

Amendment 7

1976 Elections Act Article 6

1976 Elections Act

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.*

Amendment

Members of the European Parliament shall ***have the rights and obligations laid down in the Members' Statute and*** the Protocol on the privileges and immunities of the European ***Union.***

Or. en

Amendment 8

1976 Elections Act

Article 7 – paragraph 1 – indent 1 a (new)

1976 Elections Act

Amendment

– member of a national or regional parliament,

Or. en

Amendment 9

1976 Elections Act

Article 7 – paragraph 2

1976 Elections Act

Amendment

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.*

deleted

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.

Or. en

Amendment 10

1976 Elections Act Article 7 – paragraph 4

1976 Elections Act

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.

Amendment

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

Or. en

Amendment 11

1976 Elections Act Article 9

1976 Elections Act

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

Amendment

Without prejudice to Article 2b, no one may vote more than once in any election of members of the European Parliament.

Amendment 12

1976 Elections Act

Article 11 – paragraph 1

1976 Elections Act

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

Amendment

1. The Council shall determine the electoral period for the elections ***at least one year before the end of the five-year term referred to in Article 5, in accordance with Article 14.***

Amendment 13

1976 Elections Act

Article 11 – paragraph 2

1976 Elections Act

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 month¹ 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.

Amendment

deleted

¹ In the versions of Decision 2002/772/EC, Euratom as published in the Official Journal, other than the English and Spanish versions, this period is stated to be one year.

Amendment 14

1976 Elections Act Article 11 – paragraph 3

1976 Elections Act

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.

Amendment

3. Without prejudice to **Article 229 of the Treaty on the Functioning of the European Union** 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.

Amendment 15

1976 Elections Act Article 12

1976 Elections Act

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**.

Amendment

The European Parliament shall verify the credentials of **the Members of Parliament on the basis** of the results declared officially by the **electoral authority referred to in Article 2b(3) and the Member States**.

Amendment 16

1976 Elections Act Article 13

1976 Elections Act

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.

Amendment

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.

Or. en

Amendment 17

1976 Elections Act Article 13 a (new)

1976 Elections Act

Amendment

Article 13a

1. In the case of the Members elected in the Member States, and subject to the other provisions of this Act, each 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.

2. Where the law of a Member State provides for a temporary replacement of a member of its national parliament on maternity leave, that State may decide that such provisions are to apply mutatis mutandis to the Members of the European Parliament elected in that State.

3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a Member of the European Parliament elected in that Member State, that mandate shall end pursuant to those legal provisions. Such legal provisions shall not be adopted with retroactive effect. The competent national authorities shall inform the European Parliament thereof.

4. Where a seat of a Member elected in the Member States 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.

Or. en

(This Amendment partly reproduces the wording of paragraphs 2, 3 and 4 of Article 13 of the 1976 Elections Act. See amendment to Article 13.)

Amendment 18

1976 Elections Act Article 13 b (new)

1976 Elections Act

Amendment

Article 13b

1. In the case of the Members elected

for the European Union constituency, and subject to the other provisions of this Act, appropriate procedures for the filling of any vacancy for the remainder of the five-year term of office referred to in Article 5 shall be laid down in implementing measures to be adopted in accordance with Article 14.

2. Where the law of the Union makes explicit provision for the withdrawal of the mandate of a Member of the European Parliament elected on the European Union-wide list, that mandate shall end pursuant to those legal provisions. The electoral authority shall inform the European Parliament thereof.

3. Where a seat on the European Union-wide list falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the electoral authority thereof.

Or. en

Amendment 19

1976 Elections Act Article 13 c (new)

1976 Elections Act

Amendment

Article 13c

The European Parliament shall rule on any disputes which may arise out of the provisions of this Act and which involve the law of the Union.

Or. en

Amendment 20

1976 Elections Act Article 14

1976 Elections Act

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.

Amendment

Measures to implement this Act **shall be adopted by the Council, acting by qualified majority**, on a proposal from the European Parliament, after consulting the Commission, **and with the consent of** the European Parliament.

Or. en

Amendment 21

1976 Elections Act Article 15 – paragraph 2

1976 Elections Act

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

Amendment

deleted

Or. en

Amendment 22

1976 Elections Act Article 15 – paragraph 2a (new)

1976 Elections Act

Amendment

Pursuant to the Accession Treaties, the Czech, Bulgarian, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovenian versions

of this Act shall also be authentic.

Or. en

Amendment 23

1976 Elections Act ANNEX I

1976 Elections Act

Amendment

ANNEX I

deleted

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

Or. en

Amendment 24

1976 Elections Act Annex II

1976 Elections Act

Amendment

ANNEX II

deleted

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 1975¹.

¹ OJ C 89, 22.4.1975, p. 1.

Or. en

ANNEX TO ARTICLE 2A [NEW]

The formula for the distribution of the 751 seats in the European Parliament is as follows:

[to follow]