

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DECISION

**of 25 June and 23 September 2002****amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom***(2002/772/EC, Euratom)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 190(4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Article 108(3) and (4) thereof,

Having regard to the draft from the European Parliament <sup>(1)</sup>,Having regard to the assent of the European Parliament <sup>(2)</sup>,

Whereas:

- (1) The Act concerning the election of members of the European Parliament by direct universal suffrage should be amended to enable members to be elected by direct universal suffrage in accordance with principles common to all Member States while leaving Member States free to apply their national provisions in respect of aspects not governed by this Decision.
- (2) To improve the readability of the Act as amended by this Decision, its provisions should be renumbered, thus producing a clearer consolidated text,

HAS LAID DOWN the following provisions which it recommends to the Member States for adoption in accordance with their respective constitutional requirements.

*Article 1*

The Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to

<sup>(1)</sup> OJ C 292, 21.9.1998, p. 66.<sup>(2)</sup> Opinion delivered on 12 June 2002 (not yet published in the Official Journal).Council Decision 76/787/ECSC, EEC, Euratom <sup>(3)</sup>, (hereinafter referred to as 'the 1976 Act'), is hereby amended in accordance with this Article.

1. In the 1976 Act, with the exception of Article 13, the words 'representative' or 'representative in the European Parliament' shall be replaced by 'member of the European Parliament'.
2. Article 1 shall be replaced by the following:

*'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.'

3. Article 2 shall be replaced by the following articles:

*'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 2A*

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.

<sup>(3)</sup> OJ L 278, 8.10.1976, p. 1.

*Article 2B*

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

## 4. Article 3 shall be amended as follows:

- (a) paragraph 1 shall be deleted and paragraphs 2 and 3 shall become paragraphs 1 and 2;
- (b) in the new paragraph 1, the words 'This five-year period' shall be replaced by 'The five-year term for which members of the European Parliament are elected';
- (c) in the new paragraph 2, the reference to 'paragraph 2' shall be replaced by a reference to 'paragraph 1'.

## 5. Article 4(2) shall be replaced by the following:

'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.'

## 6. Article 5 shall be repealed.

## 7. Article 6 shall be amended as follows:

- (a) in paragraph 1:
  - (i) at the end of the third indent, the words 'or of the Court of First Instance' shall be added;
  - (ii) between the current third and fourth indent, the following indent shall be added:
    - '— member of the Board of Directors of the European Central Bank;'
  - (iii) between the current fourth and fifth indent, the following indent shall be added:
    - '— Ombudsman of the European Communities;'
  - (iv) in the current fifth indent, the words 'member of the Consultative Committee of the European Coal and Steel Community or' shall be deleted;
  - (v) in the current sixth indent, the words 'The European Coal and Steel Community' shall be deleted;
  - (vi) the current eighth indent shall be replaced by the following:
    - '— 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;'

(b) after paragraph 1, the following paragraph shall be inserted and the current paragraphs 2 and 3 shall become paragraphs 3 and 4:

'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.'

(c) in the new paragraph 3 the words 'lay down' shall be replaced by 'extend' and the reference to Article 7(2) shall be replaced by a reference to 'Article 7';

(d) in the new paragraph 4 'paragraphs 1 and 2' shall be replaced by 'paragraphs 1, 2 and 3'.

## 8. Article 7 shall be replaced by the following:

*'Article 7*

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.'

## 9. Article 9 shall be amended as follows:

- (a) in paragraph 1 the words 'on the date fixed' shall be replaced by 'on the date and at the times fixed';
- (b) in paragraph 2 the words 'The counting of votes may not begin' shall be replaced by 'Member States may not officially make public the results of their count';
- (c) paragraph 3 shall be deleted.

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10. Article 10 shall be amended as follows:

- (a) in paragraph 1, the words 'period referred to in Article 9(1)' shall be replaced by 'electoral period';
- (b) in the second subparagraph of paragraph 2, the words 'determine another period which shall not be more than one month before' shall be replaced by 'determine, at least one month before the end of the five-year term referred to in Article 3, another electoral period which shall not be more than two months before';
- (c) in paragraph 3 the words 'to Article 22 of the Treaty establishing the European Coal and Steel Community' shall be deleted, the words 'European Economic Community' shall be replaced by 'European Community', and the words 'period referred to in Article 9(1)' shall be replaced by 'electoral period'.

11. In Article 11, the words 'Pending the entry into force of the uniform electoral procedure referred to in Article 7(1)' shall be deleted.

12. Article 12 shall be replaced by the following:

*'Article 12*

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 3 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.'

13. Article 14 shall be repealed.

14. Article 15 shall be replaced by the following:

*'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 II and III shall form an integral part of this Act.'

15. Annex I shall be repealed.

16. In Annex III, the declaration by the Government of the Federal Republic of Germany shall be deleted.

*Article 2*

1. The articles of and Annexes to the 1976 Act, as amended by this Decision, shall be renumbered in accordance with the table of equivalence set out in the Annex to this Decision, which shall form an integral part thereof.

2. Cross-references to the articles of and Annexes to the 1976 Act shall be adapted in consequence. The same shall apply as regards references to those articles and to their subdivisions contained in the Community Treaties.

3. References to articles of the 1976 Act contained in other instruments or acts shall be understood as references to the articles of the 1976 Act as renumbered pursuant to paragraph 1 and, respectively, the paragraphs of those articles, as renumbered by this Decision.

*Article 3*

1. The amendments referred to in Articles 1 and 2 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.

2. The Member States shall notify the General Secretariat of the Council of the completion of their national procedures.

*Article 4*

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Luxembourg, 25 June 2002.

*For the Council*

*The President*

J. MATAS I PALOU

Done at Brussels, 23 September 2002.

*For the Council*

*The President*

M. FISCHER BOEL

## ANNEX

**Table of equivalence referred to in Article 2 of the Council Decision 2002/772/EC, Euratom of 25 June and of 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom**

Previous numbering	New numbering
Article 1	Article 1
Article 2	Article 2
Article 2A	Article 3
Article 2B	Article 4
Article 3	Article 5
Article 4	Article 6
Article 5 (repealed)	—
Article 6	Article 7
Article 7	Article 8
Article 8	Article 9
Article 9	Article 10
Article 10	Article 11
Article 11	Article 12
Article 12	Article 13
Article 13	Article 14
Article 14 (repealed)	—
Article 15	Article 15
Annex I (repealed)	—
Annex II	Annex I
Annex III	Annex II