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DRAFT REPORT

on the reform of the European Electoral Act – hurdles to ratification and
implementation in the Member States
(2025/2028(INI))

Committee on Constitutional Affairs

Rapporteur: Borja Giménez Larraz

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

1. Introduction

On 15 January 2025, the rapporteur was entrusted with the task of preparing a report on the implementation of the Reform of the European Electoral law.

Since his appointment, the rapporteur has collected information on the topic by various means, including:

- A study on ‘Europeanising the elections of the European Parliament’, by the Policy Department for Citizens’ Rights and Constitutional Affairs, June 2021.
- A European Parliament Research Service document on the ‘Ratification status of the Council Decision (EU) 2018/994 modifying the 1976 European Electoral Act’, February 2025.
- On 19 and 20 May 2025, he took part in an official Committee on Constitutional Affairs (AFCO) mission to Madrid, Spain. The AFCO delegation held several exchanges of views with civil servants at the Ministry of Interior, the Chair and Spokespersons of the Constitutional Committee of the Congress of Deputies (lower house) and the Chair and Spokespersons of the Joint Committee on the European Union – composed of Members of the Congress of Deputies and the Spanish Senate (upper house) – as well as with the major Legal Counsels of both Chambers and some prominent Spanish academics and experts on Constitutional and Electoral Law.
- On 2 June 2025, he took part in an official mission to Berlin, Germany, in order to exchange views with Members of the Committee on Foreign Affairs and European Union affairs in the Bundestag and with civil servants and academics.

The research conducted has led to the following considerations, which constitute the basis for the conclusions and recommendations made in the draft implementation report presented by the rapporteur.

2. Historical overview of European Parliament elections

Since the 1960s, the European Parliament has repeatedly voiced its opinion on issues of electoral law and has put forward proposals in accordance with Article 138 of the EC Treaty (now Article 223 TFEU).

The founding Treaties stated that Members of the European Parliament (MEPs) would initially be appointed by the national parliaments, but made provision for election by direct universal suffrage. This provision was implemented by the Council before the first direct elections of 1979 through the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage (1976 Electoral Act).

The first direct European Parliament elections held in 1979 were a watershed moment, and they profoundly changed Parliament's institutional position, establishing a more democratic European Union.

In 1992, the Maastricht Treaty provided for the elections to be held in accordance with a uniform procedure and for the European Parliament to draw up a proposal to this effect, for unanimous adoption by the Council. However, since the Council was unable to agree on any of the proposals, the Treaty of Amsterdam introduced the possibility of adopting 'common principles'. Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 modified the 1976 Electoral Act accordingly, introducing the principle of proportional representation and a number of incompatibilities between national and European mandates.

Over the years, the European Parliament has grown in size and influence, with each enlargement of the EU bringing more members and greater diversity. Parliament's powers have also increased, particularly with the adoption of the Treaty of Lisbon in 2009, which expanded its legislative and budgetary roles.

However, notwithstanding the progress made to gradually expand Parliament's powers, harmonising national traditions remains a complex matter and Member States have been reluctant to adopt uniform procedures for the elections to the European Parliament.

On 11 November 2015, Parliament adopted a resolution on the reform of the electoral law of the European Union. The legislative initiative from the Committee on Constitutional Affairs (AFCO) proposed amendments to the 1976 Electoral Act with a view to making the European elections uniform and democratic and to increasing public participation in the election process. Parliament's proposed amendments were partly accepted and incorporated into Council Decision (EU, Euratom) 2018/994 of 13 July 2018, which is the last time the Electoral Act was amended.

3. Council Decision 2018/994

Council Decision 2018/994 is composed of two Articles. The first article replaces several Articles of the 1976 Electoral Act (Articles 1, 3 and 9) and introduces several new ones (3a, 3b, 4a, 9a and 9b). The second article establishes that the decision will be subject to approval by the Member States, in accordance with their respective constitutional requirements and that the decision will enter into force on the first day after the last notification has been received.

It is important to note that Council Decision 2018/994 establishes several mandatory provisions while others are optional. In the first case, Member States are required to adopt such measures; in the latter, they are encouraged to do so.

(a) Mandatory measures

The mandatory measures for which Council Decision 2018/994 expresses an obligation (will implement), according to the order in which they appear in the Decision, are as follows:

- i. Members of the European Parliament elected based on **proportional representation, using the list system or the single transferable vote (STV)**, through free and secret

elections based on direct universal suffrage.

This provision is completely unproblematic and uncontroversial, as all Member States use proportional representation, be it closed-list proportional representation or STV.

- ii. **Minimum 2 % threshold** for constituencies comprising more than 35 seats (including nationwide, single constituencies) applies only to five Member States: Germany (96), France (81), Italy (76), Spain (61) and Poland (53).

Although Italy and Poland each have more than 35 total seats, they are not affected by this rule due to the structure of their electoral systems. Both countries use sub-national constituencies, meaning their seats are split across different regions. In Poland, there are 13 constituencies and each elects fewer than 35 seats. Similarly, Italy divides its seats among five constituencies, each with fewer than 35 seats. In addition to this, both countries have an explicit threshold (4 % and 5 %, respectively).

France has a nationwide, single constituency but its electoral system already provided for a threshold of 5 % before Council Decision 2018/994.

Spain and Germany, however, were not in line with this mandatory provision, as both countries elect more than 35 MEPs, have a single, nationwide constituency and have no threshold. Hence, both Spain and Germany need to amend their electoral law to comply with Council Decision 2018/994, which has not yet happened in either Member State.

- iii. **Deadline for submission of candidacies at least three weeks before the date** for holding European elections.

All Member States were already compliant with this article. There is, however, a wide range of variation, from Slovakia's three months and Germany's 11 weeks to Cyprus, France and Greece, which are close to the established limit of three weeks.

- iv. **Implementation of necessary measures to prevent double voting.**

Twenty four countries had such measures in place. Hungary, Latvia and Spain do not have specific measures on double voting but only some form of sanction for fraudulent behaviour in voting.

- v. **Designating a contact authority** responsible for exchanging data on mobile voters or candidates with its counterparts in other Member States.

All Member States have a designated authority. In most cases, it is the interior ministry or another ministry; in some cases, it is a dedicated authority for electoral matters.

(b) Optional measures

The optional measures suggested by Council Decision 2018/994, are as follows:

- i. **Preferential list system.**

This provision is unchanged from the 2002 Council Decision and therefore poses no questions. In any case, the article is uncontroversial not only because it is not compulsory, but also because most Member States already use preferential voting.

- ii. A **minimum threshold not exceeding 5 %** of votes for the allocation of seats.
The 5 % figure poses no problems either because no Member State has an electoral threshold above 5 %.
- iii. **Ballot papers displaying the name or logo of the European Political Party (EuPP)** with which the list or candidate is affiliated.

This provision has not been transposed in any national legislation and consequently the degree of Europeanisation of electoral ballots is still remarkably low. The mention of the EuPP remains discretionary and sometimes it depends more on the ballot design than on a concrete political choice.

- iv. The possibility of **advance, postal and electronic voting** and measures to allow citizens residing **countries outside the EU** to vote in European elections.

The situation is far from homogenous: 23 countries provide for one or more possibilities for absentee voting, with Embassy voting being the most widespread option. Some countries allow citizens to choose from other different methods to cast a ballot, such as postal, proxy or even internet voting.

Only four countries (Czechia, Ireland, Malta, and Slovakia) do not allow absentee voting. In addition to these, some countries do allow embassy voting, but only for citizens residing within the EU and not in non-EU countries.

4. Ratification process

Council Decision 2018/994 will enter into force only after all the Member States have approved it in accordance with their respective constitutional requirements (Article 223 TFEU). At present, all Member States except **Spain** have approved it and, therefore, the ratification process is still ongoing and Council Decision 2018/994 has not yet entered into force.

Most of the Member States ratified the Decision by the end of 2019 and did not require parliamentary review or approval as no changes were necessary for national law to be made consistent with the Council Decision. Some Member States adopted consent for ratification bills in their national parliaments without controversy. There were a few exceptions, such as the act voted in Hungary, under which legislation was amended to introduce postal voting, making it possible for non-resident Hungarians to cast their votes in European elections.

For some countries, such as Cyprus and Germany, the ratification process was challenging and was only completed recently.

In Cyprus, the first attempt to approve Council Decision 2018/994 failed, as the President of the Republic referred the Electoral law back to the Cypriot parliament for reconsideration.

The law adopted by the Cypriot parliament on 1 February 2019 contained provisions that would automatically include more than 102 000 citizens on the electoral registry, many of whom would not normally vote as they might be living abroad, have incorrect addresses or even have

died, creating significant obstacles to the smooth conduct of the elections and distorting the abstention levels.

The government initially presented the draft of this law, but during parliamentary discussions, an amendment was introduced extending automatic registration to all citizens with an identity card and a recorded address in the state archives. Before this amendment, the automatic right to vote was limited to residents in the areas controlled by the republic.

Finally, Cyprus ratified Council Decision 2018/994 on 20 October 2023 with Law 97I(I) 2023 resolving the issues that had emerged in the previous law of 2019.

In Germany, the requirement to introduce an electoral threshold has been a key procedural obstacle. In fact, the German Constitutional Court has repeatedly ruled the electoral threshold in elections to the European Parliament to be unconstitutional, in 2011 rejecting a 5 % threshold and in 2014 a 3 % threshold. In these two instances, the Court justified the rejection based on the principle of equal opportunities before the law and equal opportunity for all political parties. Any limitation of these rights requires a profound justification and the Court did not acknowledge that the lack of a threshold hinders the proper functioning or leads to an excessive fragmentation of the European Parliament.

The situation radically changed with Council Decision 2018/994 establishing a mandatory threshold of 2 %. The 2 % threshold being obligatory under EU law, it is no longer subject to an assessment based on the principle of equal opportunities before the law and equal opportunities for all political parties under German law. Consequently, on 15 June and 7 July 2023, the German legislator approved Council Decision 2018/994, introducing an electoral threshold for the European elections, by a two-thirds majority in both the Bundestag and the Bundesrat, thus reaching the parliamentary majorities required to amend the Constitution.

Die PARTEI, a German political party that had entered the European Parliament benefiting from the lack of a threshold, and Member Martin Sonneborn brought a constitutional complaint against the introduction of the minimum 2 % threshold. On 6 February 2024, the German Constitutional Court dismissed the procedures challenging the approval of the Council Decision with the motivation that Council Decision 2018/994 is not an *ultra vires* act overstepping the EU's competences and it does not affect the fundamental principles of the German constitution. Moreover, the Court also acknowledged that the threshold is essential for maintaining the stability and proper functioning of the European Parliament.

While Germany has ratified Council Decision 2018/994, the German electoral law for the European Parliament election has not been amended because the Council Decision is not in force yet. As long as the 2 % threshold is not mandatory under European law, it cannot be introduced in German law.

In Spain, the crucial pending modification to the current Electoral Law also concerns the establishment of a minimum threshold for the allocation of seats. Since Spain has a single constituency, this requires Article 3 of Council Decision 2018/994 to be implemented to enforce a minimum threshold ranging from 2 to 5 % of the votes, thus, implying the modification of the *Ley Orgánica del Régimen Electoral General (LOREG)*.

From a legal point of view, no major obstacles are foreseen concerning the ratification of Council Decision 2018/994 in Spain. However, the process is more delicate from a political perspective. Establishing an electoral threshold implies the possibility that a few smaller political parties (especially regional political parties) may be prevented from having MEPs elected. Therefore, adopting a formal electoral threshold may be particularly problematic for a political system as fragmented as Spain's. Although the electoral threshold will benefit the major political parties, which could facilitate its parliamentary approval, it can be argued that the absence of a clear majority in the Spanish *Cortes Generales*, the potential impacts of the threshold for the junior coalition partners, as well as the relative political instability could present obstacles to an expeditious process.

The situation is complicated by the fact that the PSOE and EAJ-PNV, the largest Basque nationalist party, signed an agreement to form a government on 10 November 2023, explicitly mentioning that one of the conditions for EAJ-PNV to vote in favour of the investiture of Pedro Sánchez as president of the government is that the PSOE does not promote any modification to the Electoral Law (LOREG), and if necessary in extraordinary circumstances, it will only do so with prior agreement with the EAJ-PNV. In view of the European elections of June 2024, it is clear the extent to which democratic representation is distorted: the CEUS coalition, of which the EAJ-PNV was a member, won one seat with only 1.63 % of the votes cast in Spain. This result, which represents less than 0.078 % of the European electoral roll, would not have met the minimum threshold required by the 2018 reform. Therefore, it would not be entitled to that seat.

It should be noted that, while the modification of the LOREG can be carried out at the initiative of the Spanish Government or either Chamber of the *Cortes Generales* (Congress of Deputies or Senate), Council Decision 2018/994 can only be approved on the initiative of the Government (the proposal for the Spanish Parliament to approve the Council Decision must be enacted from the *Consejo de Ministros*).

5. European Parliament proposal for a new Electoral Act

Although Council Decision 2018/994 has not yet entered into force, the European Parliament has put forward a new legislative initiative that seeks to repeal the current European Electoral Act and adopt a new regulation governing European elections.

The Constitutional Affairs Committee (AFCO) appointed Domènec Ruiz Devesa (S&D, Spain) as rapporteur. The report was adopted on 28 March 2022 in AFCO and it was adopted by Plenary on 3 May 2022. During the current legislative term, Juan Fernando López Aguilar (S&D, Spain) has been appointed as the new rapporteur for this legislative file.

The proposal introduces several key changes, including the following:

- A minimum common age of 18 years to stand as a candidate in European elections and a minimum common voting age of 16 years, except in Member States where the constitutional order establishes a minimum voting age of 17 or 18 years.
- An obligation for Member States to ensure the right to vote in European elections to EU citizens living in a country outside the EU, those without a permanent residence, those

living in closed residential settings, those experiencing homelessness or those serving a prison sentence.

- An obligation for Member States to ensure the accessibility of the relevant materials, voting facilities and polling stations, including for persons with disabilities.
- An obligation for Member States to provide for postal voting, including for EU citizens living abroad, and the possibility to allow advance physical voting, proxy voting, electronic and internet systems for voting.
- A fixed day for holding European elections across the whole of the EU (9 May, every five years).
- A common electoral campaign period starting eight weeks before the day of the elections and a common electoral reserve period commencing 48 hours before election day.
- The obligation for all political parties and other entities participating in European elections to observe ‘democratic procedures and transparency’ when electing their candidates and to ensure gender equality in their candidatures, either by using a zipper system or quotas.
- The creation of a Union-wide constituency, comprising the territory of all Member States, in which 28 Members of the European Parliament would be elected through transnational electoral lists.
- The creation of a European Electoral authority.

Parliament’s legislative initiative as conferred on it by Article 223 TFEU is blocked for various reasons and still needs to be approved unanimously by the Council, obtain Parliament’s consent (by a majority of its component members) and receive the approval of all the Member States by their respective constitutional requirements to enter into force.

6. Conclusions

In the light of the above considerations, the rapporteurs consider that this implementation report should emphasise, in particular, the following conclusions:

- Council Decision 2018/994 introduced few mandatory measures, of which only the establishment of the minimum threshold of 2 % was problematic for two Member States.
- While Germany has ratified Council Decision 2018/994, the 2 % threshold cannot be applied at the next European elections if the Council Decision is not in force.
- Council Decision 2018/994 can be considered as ‘minimal’ agreement, where many common criteria, aimed at reducing the fragmentation of voting procedures across the

EU, are only optional.

- Most countries already had the mandatory measures in force, and they did not change their national legislation to introduce the optional measures. Therefore, Council Decision 2018/994 had a somewhat limited impact.
- Council Decision 2018/994, while not a perfect fit, would have contributed to greater uniformity in the 2024 EU elections.
- Council Decision 2018/994 is not in force yet as the ratification process is still ongoing in Spain, due to the political obstacles to introducing a minimum threshold.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the reform of the European Electoral Act – hurdles to ratification and implementation in the Member States (2025/2028(INI))

The European Parliament,

- having regard to the Treaties and in particular to Articles 9, 10, 14 and 17(7) of the Treaty on European Union (TEU) and to Articles 22, 223(1) and 225 of the Treaty on the Functioning of the European Union (TFEU),
 - having regard to the Act concerning the election of the members of the European Parliament by direct universal suffrage¹ ('the Electoral Act') annexed to the Council decision of 20 September 1976² as amended,
 - having regard to the Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission³,
 - having regard to its resolution of 11 November 2015 on the reform of the electoral law of the European Union⁴,
 - having regard to its position of 3 May 2022 on the 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 (2020/2220(INL) — 2022/0902(APP))⁵,
 - having regard to Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976⁶,
 - having regard to Rule 55 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the report of the Committee on Constitutional Affairs (A10-0000/2025),
- A. whereas Article 223 TFEU gives Parliament the right to initiate the reform of its own electoral procedure, with the aim of drawing up a uniform procedure which applies throughout the EU or a procedure that is based on principles common to all the Member

¹ OJ L 278, 8.10.1976, p. 5., ELI: [http://data.europa.eu/eli/dec/1976/787\(2\)/oj](http://data.europa.eu/eli/dec/1976/787(2)/oj).

² 76/787/ECSC, EEC, Euratom: Decision of the representatives of the Member States meeting in the council relating to the Act concerning the election of the representatives of the Assembly by direct universal suffrage (OJ L 278, 8.10.1976, p. 1., ELI: [http://data.europa.eu/eli/dec/1976/787\(1\)/oj](http://data.europa.eu/eli/dec/1976/787(1)/oj)).

³ OJ L 304, 20.11.2010, p. 47., ELI: http://data.europa.eu/eli/agree_interinst/2010/1120/oj.

⁴ OJ C 366, 27.10.2017, p. 7.

⁵ OJ C 465, 6.12.2022, p. 171.

⁶ OJ L 178, 16.7.2018, p. 1., ELI: <http://data.europa.eu/eli/dec/2018/994/oj>.

States, and to give its consent thereto;

- B. whereas the possibility of developing a uniform electoral procedure based on direct universal suffrage has been enshrined in the Treaties since 1957;
- C. whereas the reform of the European Parliament's electoral procedure should aim to enhance the democratic dimension of European elections and the legitimacy of the EU's decision-making process, reinforce the concept of EU citizenship, improve the functioning of Parliament and EU governance, while also strengthening the principles of electoral equality and equal opportunities;
- D. whereas a comprehensive agreement on a truly uniform electoral procedure has not yet been achieved, though some convergence of electoral systems has taken place gradually;
- E. whereas despite several reforms, European elections are still mostly governed by national laws, electoral campaigning remains national, and European political parties cannot sufficiently fulfil their constitutional mandate and 'contribute to forming European political awareness and to expressing the will of citizens of the Union' as required by Article 10(4) TEU;
- F. whereas an electoral threshold for the allocation of seats is the minimum percentage of votes that a political party or a coalition is required to collect in order to gain a seat in the legislative assembly;
- G. whereas Council Decision 2018/994 establishes a threshold between 2 % and 5 % for Member States with constituencies of more than 35 seats;
- H. whereas one of the most sensitive proposals in the 2022 Parliament proposal concerns the creation of EU-wide transnational electoral lists;
- I. whereas the reform of the electoral procedure must respect the principles of subsidiarity and proportionality;

Main conclusions

1. Recalls that the path to Europeanisation of national electoral rules concerning the elections to the European Parliament is generally quite advanced; recalls, in particular, that many existing provisions in the current European Electoral Act have been implemented in all Member States, namely a proportional representation system, a maximum electoral threshold of 5 % and a bar on MEPs holding a dual mandate in national parliaments and the European Parliament;
2. Recalls that Council Decision 2018/994 contains a number of provisions that Member States are either obliged or invited to implement; points out that optional measures have not been implemented by some Member States and that some mandatory measures have been implemented differently by Member States, such as in the case of prevention of double voting;
3. Recalls that the deadlines for finalising electoral lists ahead of European elections vary

greatly among Member States, currently ranging from 21 days to 90 days, putting candidates and voters across the EU in an unequal position when it comes to the time available to campaign or to reflect on their voting choice;

4. Considers that the visibility of European political parties should be enhanced by placing their names and logos on national ballot papers, and that they should have proper visibility on television and radio campaign broadcasts, posters and other material used in European election campaigns; believes that these measures would render European elections more transparent, and enable citizens to consciously cast their vote for a political party that belongs to their preferred political group in the European Parliament; deplores the fact that this optional measure under Council Decision 2018/994 has not been transposed into any national legislation to date;
5. Points out that some Member States national rules do not allow voters with disabilities to change their assigned polling station to another that better accommodates their needs; emphasises that any barriers to the right to vote and stand as a candidate for persons with disabilities should be removed in order to guarantee accessibility to all throughout the election process;
6. Recalls that the situation of dual EU citizens has not yet been resolved, as it is possible that a dual EU citizen is included on the electoral roll of more than one Member State automatically and with no means to deregister; notes that a dual EU citizen who is automatically registered on more than one electoral roll, but who votes only in one Member State, as required, may be considered not to have voted in the other Member State and could face a penalty as a result;
7. Emphasises that Council Decision 2018/994 is not yet in force as the ratification process is still ongoing in Spain; notes that, while Germany has ratified Council Decision 2018/994, the German electoral law for the European Parliament election has not been amended because as long as the 2 % threshold is not mandatory under European law, it cannot be introduced in German law; recalls that, in Spanish national elections, there is de facto a minimum threshold as well as in the elections held at the regional level and that the Spanish Constitutional Court has repeatedly backed the possibility of introducing thresholds in elections;
8. Notes the Commission's role as the facilitator in the institutional talks between Parliament and the Council on the new proposal to reform the European Electoral Law; considers it essential to engage in a constructive and realistic dialogue with the Council to evaluate Parliament's 2022 proposal and make progress;

Recommendations

9. Considers the transparency of the electoral process and access to reliable information to be essential factors in raising European political awareness and securing an election turnout that is high enough to constitute a mandate from the electorate; highlights that citizens should be informed well in advance about the candidates standing in the European elections;
10. Emphasises that it is essential to facilitate access to voting in European elections and to guarantee that all those who have the right to vote are able to exercise this right through

postal voting or other complementary means; calls on the Member States to ensure access to information and voting on an equal basis for all citizens, including for persons with disabilities especially when public structures are not adapted;

11. Calls on all Member States to implement all the optional measures included in Council Decision 2018/994 and especially to enhance the visibility of European political parties, European associations of voters and other European electoral entities through media campaigns and on ballot papers and all electoral materials; considers that national parties and associations of voters should indicate, where applicable, their affiliation to the European political parties, or other European electoral entities during the electoral campaign;
12. Deeply regrets the political agreement between the Spanish Government and nationalist parties that hinders any changes to the Spanish Electoral Law (LOREG) and ultimately prevents the ratification of Council Decision 2018/994; urges Spain to initiate formal legislative proceedings as soon as possible to approve Council Decision 2018/994, including the introduction of electoral thresholds, as this would help mitigate fragmentation within the European Parliament and contribute to ensuring a more stable and functional institution better able to represent citizens effectively;
13. Considers it necessary, should Spain not initiate legislative proceedings as soon as possible, that Parliament invoke the urgent necessity of approving Council Decision 2018/994, by sending a formal letter to the Council, on the basis of the principle of sincere cooperation enshrined in Article 4(3) TEU;
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14. Instructs its President to forward this resolution to the Council and the Commission.