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OPINION OF THE LEGAL SERVICE¹

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| From: | Legal Service |
| To: | Working Party on General Affairs |
| Subject: | European Parliament's 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 - legal assessment |

I. INTRODUCTION

1. In November 2015, the European Parliament adopted a Resolution on the reform of the electoral law of the European Union which set out a 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 (electoral Act).²

¹ This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

² See 14743/15.

2. At its meeting on 13 January 2016 the General Affairs Group asked the Council Legal Service to give its opinion on the compatibility of the European Parliament's proposal with the Treaties. The present opinion assesses the main legal issues raised by the EP's proposal. The legal analysis will be limited to the content of the proposed Council Decision and not of the European Parliament's resolution to which it is annexed, which has a somewhat different scope.

II. LEGAL BASIS AND GENERAL REMARKS ON SUBSIDIARITY

3. The EP proposal is based on Article 223 TFEU, according to which:

1. The European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component Members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.

4. The provision was significantly modified by the Lisbon Treaty. Before Lisbon, former article 138 (and after Amsterdam art. 190) provided that the Council "*shall, acting unanimously (...), lay down the appropriate provisions which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.*"

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