

Commission proposal amending Directive 93/109/EC on the exercise of the right to vote and stand as a candidate for EU citizens (12 December 2006)

Caption: Proposal to amend Directive 93/109/EC of 6 December 1993 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, submitted by the Commission on 12 December 2006.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.12.2006
COM(2006) 791 final

2006/0277 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 93/109/EC of 6 December 1993 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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

According to EU citizenship rights enshrined in the EC Treaty every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. The principles for voting and standing as a candidate in a Member State of which an EU citizen is not a national are set out in Directive 93/109/EC¹. Voting is a fundamental right and duty of the citizen; however, no one may vote more than once in an EP election or stand as a candidate in two countries in the same election (Article 4).

Directive 93/109/EC establishes two means to prevent people from voting or standing as a candidate in more than one Member State in the same elections. First, that EU non-nationals must provide a formal declaration that he/she will exercise the right to vote or to stand as a candidate in their Member State of residence only (Articles 9 and 10). Second, that Member States are obliged to exchange information on nationals of other Member States who have been entered on electoral rolls or have stood as a candidate. On the basis of the information sent by the Member State of residence to the home Member State, the latter must take appropriate action to ensure that their nationals do not vote or stand as a candidate in more than one Member State (Article 13). To this end, an information exchange system between the Member States was set up. The Commission and the Member States have informally agreed on practical details for the exchange of information within the system; however, there is no legal obligation for the Member States to follow them. Several meetings were arranged between the Commission and the Member States to improve its operability and effectiveness. Despite these efforts, the system is too administratively burdensome for Member States and lacking operability and effectiveness, mainly because of the non-harmonised national legislations in electoral matters.

The Directive stipulates that citizens of the European Union who have been deprived of the right to stand as a candidate under either the law of the Member States of residence or the law of their home Member state, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament (Article 6.1). EU citizens who wish to stand as a candidate in EP elections in their country of residence instead of in their country of origin are obliged, under the Directive, to certify with an attestation delivered by the competent authorities in the Member State of origin, that they are not deprived of the right to stand as a candidate in that Member State (Article 10.2). An application form is declared inadmissible where that citizen is unable to provide this attestation (Article 6.2). This obligation results in a heavy administrative burden on EU non-nationals wishing to stand as a candidate in the Member State of residence and might be one reason for the low participation rate of these citizens.

¹ 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 national.

To facilitate the exercise of the electoral rights of EU citizens and thus to favour an increased participation, the Commission suggests several amendments to the Directive.

In order to remedy the deficiencies of the current mechanism on how to prevent double vote and double candidature, the objectives of this proposal are, first, to replace the obligation of the exchange of information by less burdensome measures, whilst introducing the necessary guaranties and deterrents.

Secondly, the objective is to abolish the obligation for EU citizens who wish to stand as a candidate in the Member State of residence to provide the attestation that they are not deprived of the right to stand as a candidate, and to replace it with a reference to that effect to be introduced in the formal declaration that candidates must submit under current Article 10.1.

1.2. Identified problems

1.2.1. Information exchange system

The main drawbacks are:

- In the framework of the current information exchange system, insufficient information is received by Member States of origin to be able to identify the individuals on their national registers and, thus, to take the necessary actions with a view to preventing double vote and double candidature;
- Through lack of a common deadline for sending information, data is received too late to be processed;
- The formats in which information is transferred vary (e.g. paper form, diskettes, CD-ROM are each used) which prevents automatic processing;
- Problems with transliteration of names in cases where the Member State of origin uses a different alphabet than the Member State of residence;
- Flaws of the system have led to citizens being deprived of their right to vote both in the Member State of residence and of origin.

Most of these problems originate in differences between Member States' non-harmonised electoral systems and how national registers are processed in the Member States and what information is included on the registers.

The propensity for mistakes increased disproportionately with the increased movement of EU citizens within the Union and with the increased number of exchanges that took place following enlargements of the EU intervened after adoption of the Directive in 1993. The next Enlargement of the EU to 27 Member States will accentuate this trend.

1.2.2. Attestation to stand as candidate

As regards rules that apply for EU citizens who wish to stand as a candidate in EP elections in their country of residence, the current obligation to provide an attestation has proved to have a negative influence in the participation of these citizens. Problems were identified related to

the delivery in due time of such an attestation. In some Member States it is not clearly identified or regulated what national authority is competent for its delivery.

1.3. Existing provisions in the area of the proposal

Article 19.2 of the EC Treaty and Directive 93/109/EC.

1.4. Consistency with the other policies and objectives of the Union

This proposal aims to facilitate the exercise by the EU citizens of their electoral rights, which are a key element of the rights attached to citizenship of the European Union and a corollary of their right to free movement.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

Several meetings were held with Member States' electoral experts. The Commission also invited Member States to provide statistical and qualitative information on the elections of June 2004 and on the implementation of the Directive.

Summary of responses and how they have been taken into account

Almost all Member States concluded that the operability of the information exchange system is deficient and its effectiveness is impeded by a number of difficulties.

This proposal takes into account the responses formulated by the vast majority of the Member States by suggesting to delete the obligation of the Member States to exchange information previous to the elections.

The criticism, formulated in some Member States, of the heavy administrative burden that candidates have to face when submitting an application to stand as a candidate is also taken into account in this proposal.

Interviews that have been undertaken with EU non-national candidates in the framework of the impact assessment confirm that there are problems in relation to contacting and receiving the relevant attestation from the competent authority in their country of origin. It can be difficult for EU non-national candidates to obtain in due time the attestation that they are eligible to stand as a candidate in their country of origin.

2.2. Collection and use of expertise

Information for the impact assessment was gathered by an external consultant under a contract signed with GHK Consulting Ltd as a result of a call for proposal.

2.3. Impact assessment

2.3.1. Information exchange system

It is not possible to correctly establish how effective the current system of exchange of information has been in terms of preventing people from voting or standing twice as the system does not directly generate information on the amount of double voting that takes place. In surveys amongst Member States it has however been indicated that there is very little evidence that double voting occurs in EP elections.

Amongst several options elaborated in the framework of the Impact assessment, the following were considered to be the most appropriate for dealing with double vote:

2.3.1.1. Status quo

Maintaining the current exchange of information would perpetuate the existing deficiencies. Flaws in the system would continue to result in citizens being deprived of their right to vote both in the Member State of residence and of origin.

2.3.1.2. Abolishing the current information exchange system, but maintaining the declaration by EU non-national citizens not to vote or to stand as a candidate twice; introducing the obligation for Member States to impose appropriate penalties for double vote and double candidature and raising awareness about these penalties; introducing ex post checks undertaken by the Member States on the occurrence of double vote and double candidature.

The deterrent to double voting would be reinforced as EU citizens would be aware that they are committing an offence by voting twice in the same election. An additional benefit of introducing ex post checks would be the possibility to assess the extent of double voting and double candidature, which is currently not foreseen under the Directive.

2.3.1.3. *Improvements to the current information exchange system:* adapting the format for information to be exchanged so that it allows all Member States to have all the information needed to identify their nationals; establishing a single, harmonised deadline for exchanging information; establishing that all information need to be transferred electronically by one specific means; introducing the use of the Greek and Cyrillic alphabets; Member States would need to duly inform citizens that they have been deleted from an electoral roll.

The system would have to be implemented by the Member States probably on the basis of a decision of the Commission adopted under a comitology procedure.

2.3.1.4. *Developing an EP electoral roll:* this policy option would involve all electoral rolls of the Member States for EP elections being integrated into one common EP electoral roll for all Member States. A sub option to this would involve a full harmonisation of methods on how national registers are processed and what information is included on the registers; the information on the electoral roll would be shared between the Member States.

This policy option would necessitate the harmonisation of national electoral systems which would be disproportionate to the extent of the problem. This would also

require changes to the 1976 Act on EP elections (annexed to Decision 76/787/ECSC, EEE, Euratom) which leaves this aspect of the electoral arrangements up to the Member States.

On the basis of the assessment and comparison of the policy options, the most appropriate to solve the deficiencies described and to tackle the issue of double vote and double candidature is the second option in the list above.

2.3.2. *Attestation to stand as candidate*

As regards problems posed by the requirement for candidates to provide the attestation that they are not deprived of the right to stand as a candidate, amongst several options elaborated, the following were considered to be the most appropriate:

2.3.2.1. Status quo

It can be difficult for EU non-national candidates to obtain in due time the attestation that they are not deprived of the right to stand as a candidate in their country of origin. This obligation, as shown in the impact assessment, discourages participation.

2.3.2.2. Abolishing the obligation of candidates to present the attestation that they are not deprived of the right to stand as a candidate and to replace it with the inclusion of a mention to that effect into the formal declaration that candidates must submit under current Article 10.1.

This option would also include the introduction of the obligation for the Member State to check that the citizen concerned has not been deprived of his/her right to stand as a candidate.

On the basis of the assessment and comparison of the policy options, the most appropriate solution to this problem would be the second option in the list above, since obstacles for potential candidates would be largely reduced but would nevertheless require Member States to check accuracy of the declarations.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

3.1.1. Information exchange system

As regards the obligation to exchange information fixed in the Directive the Commission proposes to abolish it while maintaining the formal declaration of EU non-nationals that they will exercise the right to vote or stand as a candidate in one Member State only. The obligation of such a declaration is, in itself, a deterrent to voting or standing twice as a candidate. Article 2.9 defines the 'formal declaration' as 'a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable'. However, the dissuasive effect is limited because this provision refers back to national law on penalties.

Therefore, in order to reinforce the deterrent to voting or standing twice, the Commission proposes to introduce a new provision laying down explicitly the obligation for the Member

States to apply effective, proportionate and dissuasive penalties for inaccuracy in declarations produced under the Directive resulting in a violation of obligations posed therein. Furthermore, these penalties which should be at least equivalent to those applicable under relevant national measures, will be the subject of information measures by Member States, which they are currently obliged to undertake under Article 12.

The Commission also proposes to present a report, based on information received from the Member States, on the occurrence of double vote and double candidature after the first application of the amended Directive which would be a necessary and useful means to identify possible cases of double vote and double candidature in order to assess the extent of instances of such attempts. The Commission suggests that Member States undertake ex post checks in situations where there is a likelihood of double vote.

3.1.2. Attestation to stand as candidate

As regards problems posed by the requirement for candidates to provide the attestation, the Commission proposes the abolition of the obligation for candidates to present the attestation that they have not been deprived of the right to stand as a candidate (Articles 6.2 and 10.2) and to replace it with the inclusion of a mention to that effect into the formal declaration that candidates must submit under current Article 10.1. It also proposes to introduce the obligation for the Member State of residence to check with the Member States of origin that the citizen concerned has not been deprived of his/her right to stand as a candidate by the notification of his/her declaration to the Member State of origin.

The above mentioned new provision laying down the obligation for the Member States to apply penalties for inaccuracy in formal declarations will apply also to the declaration by candidates that they are not deprived of the right to stand as a candidate.

In order to guarantee to EU-non nationals the exercise of their electoral rights in accordance with the amended Directive in the next elections of June 2009, the Commission proposes that Member States bring into force the laws, regulations and administrative provisions necessary to comply with the amended Directive by 30 June 2008 at the latest.

3.2. Legal basis

Article 19.2 of the EC Treaty.

3.3. Subsidiarity principle

Due to the transnational nature of the problem, the difficulties identified in the implementation of the Directive can only be solved by an amendment to it.

3.4. Proportionality principle

The proposal does not go beyond what is necessary to achieve its objectives. Its provisions have been targeted and limited to the identified problems in the implementation of the Directive.

The suggested proposals do not imply harmonisation and will remove the existing burden of administrative procedures.

3.5. Choice of instruments

A Directive, given that the objective is to amend an existing Directive.

The scope of the proposal is limited to amendments to specific elements of Directive 93/109/EC.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

5.1. Simplification

The proposal provides for simplification of administrative procedures for public authorities (EU and national).

No more meetings with the Commission and Member States on the implementation of the information exchange system will be needed.

Abolishing the obligation of the Member States to exchange information would simplify administrative procedures and save the national administrations the costs related to this work.

The introduction of a mention of not being deprived of the right to stand as a candidate in the formal declaration that potential candidates must already provide would be much less burdensome than the current obligation to provide a separate attestation to that effect.

5.2. The proposal includes a revision clause.

5.3. Correlation table

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 19(2) thereof,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) The Commission report on the application to the 2004 elections 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 nationals⁴ revealed the need to amend certain provisions of the Directive.
- (2) The Directive provides that no person may vote more than once or stand as a candidate in more than one Member State at the same election.
- (3) The Directive further provides that any citizen of the Union who has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence. To that end, the Directive requires a Community national, when submitting his application, to produce an attestation from the competent administrative authorities of his home Member State certifying that he has not been deprived of the right to stand as a candidate in that Member State or that no such disqualification is known to those authorities.
- (4) The difficulties encountered by candidates in identifying the authorities empowered to issue this attestation and in obtaining it in good time act as a barrier to the exercise of the right to stand as a candidate and contribute to the low number of Community

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 329, 30.12.1993, p. 34.

- nationals standing as candidates at elections to the European Parliament in their host Member State.
- (5) The requirement for candidates to submit this attestation should accordingly be abolished and replaced by an item to that effect in the formal declaration that candidates must produce.
 - (6) Host Member States should be placed under an obligation to notify the home Member State of this declaration in order to ensure that the Community candidate was not actually deprived of this right in the Member State of origin.
 - (7) Member States have informed the Commission of the difficulties that they encounter in the pre-election exchange of information on nationals entered on the electoral rolls or having stood as candidates in the Member State of residence enabling the home Member State to take measures to ensure that its nationals do not vote or stand as candidates twice. Given the differences between national systems, the list of the data collected with a view to entering Community voters on national lists varies widely from one Member State to another; as a result, the data transmitted by the host Member State may be found inadequate to identify the Community voter or candidate in the home Member State; similarly, as there is no uniform date for closing national electoral rolls, the data are often transferred on a date when measures to ensure that nobody votes or stands as a candidate twice can no longer be taken in the home Member State; lastly, since the Member States do not all use the same alphabet, it is not possible to exchange information when the information sent by the host Member State is in a different alphabet from the one used in the Member State of origin.
 - (8) These difficulties, which jeopardise the operability and efficiency of the information-exchange arrangements, could be overcome only by harmonising of the rules on entry in the national electoral rolls, which would be disproportionate in relation to the objective pursued.
 - (9) The exchange of information should accordingly be abolished but the obligation for the voter or candidate to produce a declaration undertaking to exercise his right to vote or to stand as a candidate only in the Member State of residence should be maintained.
 - (10) Moreover, as a deterrent to voting or standing as a candidate twice and to exercising the right to vote or stand despite being deprived of these rights, Member States of residence should take measures to ensure that violations of the obligations provided for by the Directive are subject to proper penalties.
 - (11) In the report that it is required to prepare on the application of the amended Directive to the elections to the European Parliament in 2009, the Commission, on the basis of the information provided by the Member States, should base its analysis in particular on the results of checks and inspections conducted by the Member States after the elections with a view to measuring the frequency of double voting and double candidacies, if any.
 - (12) A routine check of all the votes and of all the candidacies would be disproportionate to the problems identified, and there would be problems of feasibility since there are in the Member States no uniform electronic methods of recording and storing data on the actual turnout at the poll and on the candidacies deposited; Member States should

accordingly target their checks on the situations where there is a greater probability of double voting or double candidacies,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 93/109/EC is hereby amended as follows:

(1) Article 2(9) is replaced by the following:

"9. 'formal declaration' means a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with Article 13(1)."

(2) Article 6 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The Member State of residence shall check whether the citizens of the Union who have expressed a desire to exercise their right to stand as a candidate there have not been deprived of that right in the home Member State through an individual civil law or criminal law decision."

(b) the following paragraph is added:

"3. For the purposes of paragraph 2 of this Article, the Member State of residence shall notify the home Member State of the declaration referred to in Article 10(1). To that end, the relevant information that is normally available from the home Member State shall be provided in good time and in an appropriate manner; such information may include only details which are strictly necessary for the implementation of this Article and may be used only for that purpose. If the information provided invalidates the content of the declaration, the Member State of residence shall take the appropriate steps to prevent the person concerned from standing as a candidate."

(c) the following paragraph is added:

"4. The home Member State may also, in good time and in an appropriate manner, submit to the Member State of residence any information necessary for the implementation of this Article."

(3) Article 10 is amended as follows:

(a) the following point (d) is added to paragraph 1:

"(d) that he has not been deprived of the right to stand as a candidate in the home Member State."

(b) paragraph 2 is deleted;

(c) paragraph 3 is renumbered paragraph 2.

- (4) Article 13 is replaced by the following:

"Article 13

1. The Member State of residence shall take the necessary measures to ensure that such inaccuracies in the formal declarations provided for by Articles 9(2) and 10(1) as have the effect of a violation of the obligations imposed by this Directive are subject to effective, proportional and dissuasive penalties.

2. When exercising the information obligation imposed by Article 12, the Member State of residence shall inform voters and candidates of the penalties provided for by paragraph 1 of this Article."

- (5) Article 16 is replaced by the following:

"Article 16

The Commission, on the basis of the information provided by the Member States, shall report to the European Parliament and the Council on the application of this Directive to the 2009 elections to the European Parliament, together if appropriate with a proposal for amendment of this Directive. The said report shall analyse in particular the application of Articles 4 and 13.

For the purposes of the first subparagraph, Member States shall cooperate among themselves to carry out post-election checks on the possible occurrence of double voting and double candidacies; these checks and inspections may concentrate on situations where there is a greater probability of double voting or double candidacies."

Article 2

1. The Member States shall implement the laws, regulations and administrative provisions needed in order to comply with this Directive by 30 June 2008 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*