



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 September 2012

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REV 1**

**FREMP 109
JAI 542
PE 366
INST 475**

NOTE

from: Presidency
to: COREPER

No. initiative: 5204/07 PE 6 JUR 16 INST 5
No. prev. doc.: 9353/12 FREMP 67 JAI 297 PE 182 INST 307

Subject: Proposal for a Directive amending Directive 93/109/EC of 6 December 1993 on the right to 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:
- Proposal for a compromise text

On 16 May 2012 COREPER examined the draft text of the Directive on the right to 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 on the basis of document 9353/12. At that meeting, some delegations expressed concerns as to the mechanism introduced by the Directive and declared that they were not in a position to accept the proposed text.

Subsequently, consultations took place among the Danish Presidency and those delegations which had voiced concerns. As a result, it was proposed to include in the Directive a new recital, recital (6b) addressing the concerns of those delegations.

In the Annex to the present note delegations will find a consolidated version of the text, including the compromise proposal for such recital (in **bold underlined**). As previously, changes with respect to the original Commission proposal are highlighted in **bold**.

This compromise proposal strikes the right balance between the necessary flexibility in dealing with the practical aspects of the implementation of the Directive, and the preservation of the overall objectives of the instrument.

Note on the revised version:

The Presidency would like to draw attention to the fact that the proposed modification of Article 6 (2), as contained in the current draft text, would entail a necessary change also to Article 6 (1) in order to align the texts of the 2 paragraphs. Indeed, in its current wording, Article 6 (2) states that

*"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 **judicial decision or an administrative decision provided that the latter can be subject to judicial remedies.**"*

The underlined words in bold, introduced at a late stage in the negotiations, should however be reflected also in Article 6 (1) of Directive 93/109/EC, which in its current version reads:

"Any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual criminal law or civil law decision, 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 in elections to the European Parliament."

The Presidency considers that this difference is not justified and is indeed due to an oversight in the course of the drafting of the text. It is therefore proposed to amend the text of Article 1 (1) of the draft Directive by inserting, before letter (a), the following:

"(aa) paragraph 1 is amended as follows:

*"1. Any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual **judicial decision or an administrative decision provided that the latter can be subject to judicial remedies**, 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 in elections to the European Parliament."*

In light of the above, it is suggested that Coreper:

- agrees to the attached text of the draft Directive;
- decides to re-consult the European Parliament on the basis of the agreed text; and
- invites the European Parliament to issue its opinion.

COUNCIL DIRECTIVE

amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to (...) ¹ 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty **on the Functioning of the European Union**, and in particular Article 22(2) thereof,

(...),

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

(1) The right of every citizen of the Union to vote and to stand as a candidate in elections to European parliament in his Member State of residence is recognised under Article 20(2)(b) of the Treaty on the Functioning of the European Union and under Article 39(1) of the Charter of Fundamental Rights of the European Union. 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 ⁴ provides for arrangements for the exercise of that right.

¹ The words "vote and" have been removed from the title of the Directive in order to align it to the present scope of the instrument.

² COM(2006)791, OJ C 2007, 181, p. 4.

³ European Parliament legislative resolution of 26 September 2007 (A6-0267/2007) OJ C E/2008, 219, p. 193.

⁴ OJ L 329, 30.12.1993, p. 34.

- (2) The Commission reports on the application to the 2004 **elections⁵** and to the 2009 **elections⁶** 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 nationals⁷ revealed the need to amend certain provisions of the Directive.
- (...)
- (3) The Directive 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 Union citizen**, 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 **Union citizens** standing as candidates at elections to the European Parliament in their Member State **of residence**.
- (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) Member States **of residence** should be placed under an obligation to notify the home Member State of this declaration in order to ensure that the **Union** candidate was not actually deprived of this right in the **home** Member State. **Upon receipt of such a notification, the home Member State should provide the Member State of residence with relevant information within a time-limit allowing for the admissibility of the candidacy to be effectively assessed. (...)**

⁵ COM(2006)790.

⁶ COM(2010)605.

⁷ OJ L 329, 30.12.1993, p. 34.

(6a) Failure by the home Member State to provide this information on time should not [...] result in the deprivation of the right to stand as a candidate in the Member State of residence. In cases where the relevant information is provided at a later stage, the Member State of residence should ensure by appropriate measures in accordance with the procedures provided for by its national law that citizens deprived of the right to stand in their home Member State who [...] were not prevented from being registered on the rolls or have already been elected, are prevented from being elected or from exercising their mandate [...].

(6b) Considering that the admissibility procedure for a Union candidate necessarily entails additional steps than for own nationals, as set out in recital 6, Member States may fix in their national electoral arrangements a deadline for Union citizens to submit their application to stand as candidates which is different from the general deadline fixed for national candidates, to the extent that this is necessary and proportionate in order to allow for the notification of the information from the home Member State to be taken timely into account with a view to rejecting a candidacy before the nomination of the candidates. Establishing such a separate deadline should not affect the deadlines for obligations for other Member States to effect notifications pursuant to this Directive

(...)

(7) To facilitate the communication between national authorities, Member States should designate one contact point responsible for the notification of information on candidates. (...)

(8) To ensure a more efficient identification of candidates registered both on the lists of their home Member State and of the Member State of residence, the list of the data to be required from Union nationals when submitting an application for standing as a candidate in the Member State of residence shall be complemented with the date and place of birth of such citizens and the last address of residence in their home Member State.

- [(9) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.]⁸**

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

(...) [*Amendment to Article 2 (9) linked to double voting, not agreed in Council*]

- (1) Article 6 is amended as follows:

(aa) paragraph 1 is amended as follows:

"1. Any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual **judicial decision or an administrative decision provided that the latter can be subject to judicial remedies**, 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 in elections to the European Parliament." [*Ensuring consistency with the wording of new paragraph 2 of Article 6.*]

⁸ In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents, COM is asking the inclusion of this recital.

(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 **judicial decision or an administrative decision provided that the latter can be subject to judicial remedies.**" *[Requirement for attestation deleted. Checks by Member States introduced on validity of a self-declaration]*

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 (...) available from the home Member State shall be provided in **any appropriate manner within 5 working days from the reception of the notification or, where possible, within a shorter time-limit, if so requested by the Member State of residence.** Such information may include only details which are strictly necessary for the implementation of this Article and may be used only for that purpose.

[Procedure for notification and time limits]

If the information is not received by the Member State of residence, the candidate shall nonetheless be admitted. "

[This safeguard agreed in 2007 ensures that candidates are not unduly deprived by reason of a lack of timely action of the authorities of their home Member State.]

(b) the following paragraph is added:

"4. If the information provided invalidates the content of the declaration, the Member State of residence, irrespective of whether it receives the information within the time-limit or at a later stage, shall take the appropriate steps in accordance with its national law to prevent the person concerned from standing as a candidate or where this is not possible, to prevent this person either from being elected or from exercising his/her mandate."

[The wording ensures that the Member States shall take action at the appropriate stage of the electoral procedure according to their national provisions.]

(d) (...)

[Point d is deleted, since the new point (c) ensures that action in the MS of residence shall be taken to prevent the person from exercising his mandate, whenever the information is sent by the Member State of origin.]

(e) the following paragraph is added:

"5. Member States shall designate one contact point to receive and transmit the information necessary for the application of Article 6 (3) of this Directive. They shall communicate to the Commission the name and contact details of the contact point and any updated information or changes concerning them. The Commission shall keep a list of contact points and make it available to the Member States."

[For facilitating communication between national authorities]

(2) Article 10 is amended as follows:

(a) Paragraph 1, point (a) is replaced by the following:

"(a) his nationality, date and place of birth, last address in the home Member State and his address in the electoral territory of the Member State of residence;" *[Addition of date and place of birth for more efficient identification]*

(b) 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 through an individual **judicial decision or an administrative decision provided that the latter can be subject to judicial remedies."**

[Ensures consistency in wording with Article 6 of the Directive]

(c) paragraph 2 is deleted; *[Reference to attestation deleted]*

(d) paragraph 3 is renumbered paragraph 2.

(...) *[Amendment of Article 13 linked to double voting not agreed in Council]*

Article 2

1. Member States shall implement the laws, regulations and administrative provisions needed in order to comply with this Directive by **[12 months after entry into force of this Directive]** at the latest. They shall forthwith communicate to the Commission the text of those provisions. (...)

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 **in accordance with the Treaties**.

Done at Brussels,

For the Council

The President
