



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 27 November 2012
(OR. en)**

16066/12

**Interinstitutional File:
2006/0277 (CNS)**

**FREMP 137
JAI 793
PE 502
INST 647
OC 635**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of 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

COMMON GUIDELINES

Consultation deadline for Croatia: 5.12.2012

COUNCIL DIRECTIVE ...

of...

**amending Directive 93/109/EC as regards certain detailed arrangements
for the exercise of 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**

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 European Commission,

Having regard to the opinion of the European Parliament¹,

Acting in accordance with a special legislative procedure,

¹ European Parliament legislative resolutions of 26 September 2007 (OJ C 219 E, 28.8.2008, p. 193) and of 20 November 2012 (not yet published in the Official Journal).

Whereas:

- (1) The right of every citizen of the Union to vote and to stand as a candidate in elections to the 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 nationals¹ provides for arrangements for the exercise of that right.
- (2) The Commission reports of 12 December 2006 and of 27 October 2010 on the application of Directive 93/109/EC to the 2004 elections and the 2009 elections, respectively, revealed the need to amend certain provisions of Directive 93/109/EC.
- (3) Directive 93/109/EC 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 in elections to the European Parliament. To that end, Directive 93/109/EC requires a citizen of the Union, when submitting his application to stand as a candidate in a Member State other than the home Member State, to produce an attestation from the competent administrative authorities of the home Member State certifying that the person concerned has not been deprived of the right to stand as a candidate in the home Member State or that no such disqualification is known to them.

¹ OJ L 329, 30.12.1993, p. 34.

- (4) The difficulties encountered by such citizens in identifying the authorities empowered to issue that 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 citizens of the Union standing as candidates in elections to the European Parliament in their Member State of residence.
- (5) The requirement for those citizens to submit such an attestation should accordingly be abolished and replaced by a statement confirming that the person concerned has not been deprived of the right to stand in the elections to the European Parliament, to be included in the formal declaration that those citizens are required to produce as part of their application.
- (6) The Member State of residence should be required to notify the home Member State of such declarations, in order to verify whether the citizen of the Union has in fact been deprived of the right to stand in elections to the European Parliament in the home Member State. Upon receipt of that 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.

- (7) Failure by the home Member State to provide that 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 and in accordance with the procedures provided for by its national law, that citizens of the Union deprived of the right to stand in their home Member State who were registered on the roll or have already been elected, are prevented from being elected or from exercising their mandate.
- (8) Given that the admissibility procedure in a Member State necessarily entails additional administrative steps for a national of another Member State than for the nationals of that Member State, it should be possible for Member States to set a different deadline for the submission of applications to stand as a candidate by citizens of the Union who are not nationals than that set for national citizens. Any difference in the deadline should be limited to that which is necessary and proportionate in order to allow for the notification of the information from the home Member State to be taken into account in good time, with a view to rejecting an application 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 Directive 93/109/EC.
- (9) To facilitate communication between national authorities, Member States should designate one contact point to be responsible for the notification of information concerning such candidates.

- (10) To ensure a more efficient identification of candidates registered both on the list of their home Member State and that of the Member State of residence, the list of data to be required from citizens of the Union when submitting an application to stand as candidates in the Member State of residence should include their date and place of birth and the last address of residence in their home Member State.
- (11) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, 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.
- (12) Directive 93/109/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

(1) Article 6 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"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."

(b) 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."

(c) The following paragraphs are 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.

If the information is not received by the Member State of residence within the time-limit, the candidate shall nonetheless be admitted.

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 the mandate.

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

(2) Article 10 is amended as follows:

(a) In 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;"

(b) The following point 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."

(c) Paragraph 2 is deleted.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by...*. They shall immediately inform the Commission thereof.

When Member States adopt those 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 measures 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,

For the Council

The President

* OJ: insert date: 12 months from the date of entry into force of this Directive.