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THE EUROPEAN UNION**

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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 January 2014
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION RECOMMENDATION of 29.1.2014 Addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement

Delegations will find attached Commission document C(2014)391 final.

Encl.: C(2014) 391 final



Brussels, 29.1.2014
C(2014) 391 final

COMMISSION RECOMMENDATION

of 29.1.2014

**Addressing the consequences of disenfranchisement of Union citizens exercising their
rights to free movement**

COMMISSION RECOMMENDATION

of 29.1.2014

Addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The Treaty of Lisbon enhances the role of European Union citizens as political actors by establishing a close link between citizens, the exercise of their political rights and the democratic life of the Union. Article 10(1) and (3) of the Treaty on European Union (TEU) states that the functioning of the Union shall be founded on representative democracy and that every citizen of the Union shall have the right to participate in the democratic life of the Union. Article 10(2) TEU, which constitutes an expression of such principles, establishes that citizens are directly represented at Union level in the European Parliament and that the Heads of State or Government and the Governments which represent the Member States in the European Council and in the Council are themselves democratically accountable either to their national Parliaments, or to their citizens.
- (2) According to Article 20 TFEU, the status of Union citizenship is additional to national citizenship.
- (3) Article 21 TFEU and Article 45 of the EU Charter of Fundamental rights confer on EU citizens the fundamental right to freely move and reside within the European Union.
- (4) The objective of the present Recommendation is to enhance the right to participate in the democratic life of the Union and the Member States of EU citizens who make use of their right to free movement within the Union.
- (5) As underlined in the EU Citizenship Report 2010¹, one of the problems Union citizens from certain Member States face as political actors within the Union, is that they lose the right to vote (they are "disenfranchised") in national elections of their home Member State once they have resided in another Member State for a given period of time.
- (6) Currently, no Member State has a general policy granting Union citizens from other Member States residing on its territory the right to vote in national elections. Consequently, disenfranchised Union citizens are usually left without the right to vote in national elections in any of the Member States.
- (7) The current situation may be perceived as out of keeping with the founding premise of Union citizenship, namely that it is additional to national citizenship and is designed to

¹ COM(2010) 603.

give additional rights to Union citizens, whereas in this case the exercise of the right of free movement may lead to losing a right of political participation.

- (8) Moreover, although Union citizens thus disenfranchised retain the right to elect members of the European Parliament, they do not have the right to participate in the national processes leading to the composition of national governments, the members of which compose the Council, the Union's other co-legislator.
- (9) This loss of the right to vote in national elections in the country of nationality because of the exercise of the right to move in another EU country is perceived by Union citizens as a gap in their political rights.
- (10) In the EU Citizenship Report 2013 'EU citizens: your rights, your future'² the Commission underlined that full participation of Union citizens in the democratic life of the Union at all levels is the very essence of Union citizenship. The Commission announced that it would propose constructive ways to enable EU citizens living in another Member State to fully participate in the democratic life of the EU by maintaining their right to vote in national elections in their country of origin.
- (11) The right to vote is a basic civil right. As acknowledged by the European Court of Human Rights, the right to vote is not a privilege. Any general, automatic and indiscriminate departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates.³ The presumption in a democratic State should thus be in favour of inclusion. This Court has further found that there is a clear trend in favour of allowing voting by non-resident nationals, even though no common European approach exists yet.
- (12) The rules currently applicable in certain Member States may lead to a situation where Union citizens residing in other Member States could lose their right to vote solely on the ground that they have been residing abroad for a certain period of time. This is based on the presumption that residence abroad of a given duration means that the connection with the political process in the home country is lost. This presumption is, however, not correct in every individual case. Therefore, it might be appropriate to give citizens who risk becoming disenfranchised the possibility to demonstrate their continuing interest in the political life in the Member State of which they are nationals.
- (13) Union citizens residing in another Member State can maintain lifelong and close ties with their country of origin and may continue to be directly affected by acts adopted by the legislature elected there. The widespread access to television broadcast across borders and the availability of internet and other web-based and mobile communication technologies make it easier than ever to follow closely and take part in social and political developments in the home Member State.
- (14) The rationale of policies that disenfranchise citizens should be re-assessed in the light of current socio-economic and technological realities, the current trend towards inclusive political participation and the present state of European integration, along with the prime importance of the right to participate in the democratic life of the Union and the right to free movement.
- (15) A more inclusive and proportionate approach would consist in ensuring that citizens who make use of their right to free movement and residence in the Union can retain

²

COM(2013)269.

³

Judgment of the European Court of Human Rights of 7 May 2013 in case Shindler.

their right to vote in national elections when they demonstrate a continuing interest in the political life in the Member State of which they are nationals.

- (16) A positive action on the part of the individuals such as their application to remain registered on the electoral roll of their Member State of origin should be considered as an appropriate criterion – and the simplest means - for the purposes of demonstrating a continuing interest in the national political life, without prejudice to the possibility for those Member States to request their citizens to renew such applications at appropriate intervals, so confirming the persistence of such an interest.
- (17) To minimise the burden for citizens abroad, the lodging of their applications to register or remain registered on the electoral roll should be possible through electronic means.
- (18) It would be important to ensure timely and appropriate information of citizens moving to or residing in another Member State about the conditions under which they can retain their voting rights and about the corresponding practical arrangements,

HAS ADOPTED THIS RECOMMENDATION:

- 1. Where Member States' policies limit the rights of nationals to vote in national elections based exclusively on a residence condition, Member States should enable their nationals who make use of their right to free movement and residence in the Union to demonstrate a continuing interest in the political life in the Member State of which they are nationals, including through an application to remain registered on the electoral roll, and by doing so, to retain their right to vote.
- 2. Where Member States allow their nationals residing in another Member State to retain their right to vote in national elections through an application to remain registered on the electoral roll, this should be without prejudice to the possibility for those Member States to put in place proportionate accompanying arrangements, such as reapplication at appropriate intervals.
- 3. Member States that allow their nationals residing in another Member State to retain their right to vote in national elections through an application or a reapplication to remain registered on the electoral roll should ensure that all relevant applications may be submitted electronically.
- 4. Member States providing for the loss of the right to vote in national elections by their nationals residing in another Member State should inform them by appropriate means and in a timely manner about the conditions and the practical arrangements for retaining their right to vote in national elections.

This recommendation is addressed to the Member States.

Done at Brussels, 29.1.2014

For the Commission
Viviane REDING
Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION