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European elections 2004

Commission report on the participation of European Union citizens in the Member State of residence (Directive 93/109/EC) and on the electoral arrangements (Decision 76/787/EC as amended by Decision 2002/772/EC)

Impact Assessment SUMMARY

for a possible amendment of Council Directive 93/109/EC laying down detailed arrangements for exercising 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

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1. Policy Background

EU citizenship rights, which are enshrined in the EU Treaties (Articles 17-22), establish that in EP elections, EU citizens may choose to participate either in their Member State of origin or their Member State of residence, if these are different. Participation in the EP elections includes both the right to vote and to stand as a candidate. The principles for voting and standing as a candidate in a Member State of which an EU citizen is not a national are indicated in Directive 93/109/EC. No one may vote more than once or stand as a candidate in two countries in the same EP election (Article 4 of the Directive).

Directive 93/109/EC was adopted at a time when the EU consisted of only 12 Member States. The present Impact Assessment was launched to provide further information on the problems identified since adoption of the Directive and to propose possible solutions to address the challenges in view of the Enlargement of the Union to 27 Member States elections when the increasing diversity of Member States' electoral systems will accentuate the problems identified.

2. Policy objectives

Directive 93/109/EC includes the following policy objectives:

General objectives:

- **To ensure the participation** of all citizens of the Union in the elections to the EP.
- **To encourage the participation** of all citizens of the Union in the elections to the EP.
- **To ensure equal access to electoral rights** (non-discrimination principle) for EU citizens to have the same electoral rights in their Member State of residence as the nationals of that country.

The specific objectives:

- **To prevent double voting** in EP elections.
- **To prevent double candidature** in EP elections.
- **To reduce obstacles for EU citizens who wish to stand as a candidate** in EP elections in their Member State of residence.

3. Deficiencies in the current system to prevent double voting and double candidature

Electoral participation and double voting

At the time of the 2004 EP elections there were more than 5.5 million EU non-

nationals of voting age in the 25 EU Member States.

In the 2004 EP elections the average participation rate was 45.7%. The rate of participation of EU non-nationals was lower: for those six countries where figures (or estimated figures) on participation of these citizens were available, the average participation was 19.6%.

Practical problems with the current information exchange system

Directive 93/109/EC established two means to prevent double voting and double candidature: first, that EU non-nationals should 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; and, second, that Member States are obliged to exchange information on nationals of other Member States who have been entered electoral rolls or are standing as a candidate, and to take appropriate action to ensure that their nationals do not vote twice or stand as a candidate in more than one Member State. To this end, an information exchange system between the Member States was set up. This has been used in three EP elections: 1994, 1999 and 2004.

The main drawbacks of the information exchange system are: insufficient information is received to be able to identify the individual on existing national registers; problems with transliteration of names; data arriving too late to be processed; the formats in which information is transferred vary (e.g. paper form, diskettes, CD-ROM are used) which prevents automatic processing. Furthermore, the system has resulted in a small number of citizens being deprived of their right to vote. In addition, it is not possible to know if the system has reduced double voting. In 2004 instances of double voting were identified in two Member States: 4 cases in Luxembourg and approximately 120 in Germany.

Overall, Member States consider the system burdensome and inefficient.

Most of the problems originate in differences between Member States' non-harmonised electoral systems and on how national registers are processed in the Member States and what information is included on the registers. This is one of the key obstacles to exchanging information on EU non-national voters in a fast and efficient way.

Fifteen Member States provided estimates of the resources deployed on the information exchange system for the 2004 election. The estimated costs for these Member States alone were 981 000 euros. A large part of the costs for the system are due to the exchange of inadequate information. It is likely that costs would increase if the system remained as it is because of increases in the numbers of EU non-nationals and enlargement of the EU.

Amongst several options elaborated in the framework of the Impact assessment, the following ones were considered as the most relevant for dealing with double vote and double candidature:

Policy Option 1 – Status quo

No changes are made to the current situation, i.e. the following measures are

maintained:

- **The current information exchange system** between the Member States. Within the frame of this system, the Member State of residence is responsible for transferring information about EU non-national citizens who register to vote in the country (or stand as a candidate) to the Member State of origin, which then deletes the citizen from their electoral roll to prevent double voting. The Commission established guidelines together with the Member States on what and how information is to be exchanged.
- **The formal declaration by EU non-nationals**, made when they enrol to vote or submit an application to stand as a candidate in their Member State of residence; this declaration states that they will vote in their Member State of residence only and not in their Member State of origin (Articles 9 and 10 of Directive 93/109/EC) and register to stand as candidates in their Member State of residence only (Article 10).

Policy Option 2 – Abolish current information exchange system but maintain declaration of no double vote and candidature, introduce penalties and ex post checks

This policy option would include the following amendments to Directive 93/109/EC:

- Abolishing the current information exchange system whilst maintaining the declaration by EU non-national citizens to not double vote or stand as a candidate in two Member States in the same EP election;
- Introducing penalties for double voting;
- Introducing ex post checks for the occurrence of double voting.

Policy Option 3 – Improvements to the current information exchange system

In this policy option the current information exchange system could be improved in terms of administrative and operational procedures to ensure consistency across the EU, by:

- Establishing a single, harmonised deadline for exchanging information;
- Adapting the already established format for information to be exchanged so that it allows all Member States to have all information needed to identify their national citizens when they receive information;
- Establishing that all information needs to be transferred electronically by one specific means as to allow automatic processing of all information;
- Introducing the use of the Greek and Cyrillic alphabets; and,
- 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 from the Commission adopted under a comitology procedure.

Policy Option 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.

In addition to amendments to Directive 93/109/EC the policy option would also necessitate changes to the 1976 Act on elections (annexed to Decision 76/787/ECSC, EEE, Euratom).

The assessment of policy options

| The assessment of Policy Options to improve the system to prevent double voting and candidature | | | | |
|--|--|---|--|---|
| <i>Objective to be achieved/ problem addressed</i> | <i>Policy Options (Anticipated impacts rated from – (no contribution to objective) to √√√√ (full achievement of objective)</i> | | | |
| | PO 1: Status quo | PO 2 Abolish current information exchange system | PO 3 Improvements to the current system | PO 4 Developing an EP electoral roll |
| To prevent double voting in EP elections. | √√√ | √√√√ | √√√√ | √√√√ |
| To prevent double candidature in EP elections. | √√√ | √√√√ | √√√√ | √√√√ |
| To ensure participation of all citizens of the Union to the elections to the European Parliament. | √√ | √√√√ | √√√√ | √√√√ |
| To encourage participation of all citizens of the Union to the elections to the European Parliament. | √√ | √√ | √√ | √√√ |
| To ensure equal access to electoral rights (non-discrimination principles) for EU citizens to have the same electoral rights in their Member State of residence as the nationals of that country. | √√√√ | √√√√ | √√√√ | √√√√√ |
| Fundamental rights | | | | |
| ▪ Right to vote and to stand as a candidate at elections to the European Parliament (Art. 39) | √√√ | √√√ | √√√√ | √√√√√ |
| ▪ Protection of personal data (Art. 8) | √ | √√√ | √ | √√√ |
| Costs relative to status quo + Higher cost than status quo; 0 Unchanged costs; – Lower costs than status quo | 0 | – | 0 | + |

The preferred option

On the basis of the assessment and comparison of the policy options in terms of: meeting policy objectives; contributing to and respecting fundamental rights; Member States’ and stakeholder views; and, practicality and costs, the preferred policy option to address deficiencies in the system to prevent double voting and candidature, is 2 – Abolish the current information exchange system but maintain declaration of no double vote, introduce penalties and ex-post checks. As a result, the risk that citizens would be mistakenly deleted from an electoral roll or not be informed of having been

deleted from an electoral roll and therefore not being able to vote, would disappear. The costs of exchanging information between Member States would be saved. The penalty for double voting is likely to be a deterrent to double voting.

Checking of instances of double voting by EU non-nationals would be necessary. If the electronic records of the names and details of all voters were kept this process would be technically straightforward. However, not all Member States currently maintain such electronic records.

On the basis of the preliminary analysis it is unlikely that a cost effective audit system could be put in place before 2009. However, there is a reasonable likelihood that this would be possible in subsequent elections. In place of an audit system in 2009, preventive measures such as advertising the new penalty for double voting, 'light' systems of post hoc checking in situations where there would be a likelihood for double voting could be put in place. It should be stressed that there is no evidence of widespread double voting having taken place in previous EP elections.

4. The heavy administrative burden for non-national candidates in the EP elections

In 2004 there were in total 8 974 candidates to the EP elections. Of these, 8 917 stood as candidates in their country of origin and only 57 candidates were EU non-nationals.

There is evidence that the number of EU non-national candidates would have been higher, had there not been any obligation 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. Three countries have reported a number of difficulties relating to this obligation, where as a result, EU non-nationals were deemed ineligible to stand as a candidate in their country of residence. The current obligation to provide an attestation has therefore had a negative influence of the participation of EU non-national candidates in their country of residence.

Heavy administrative burden

In some Member States it is not clearly identified or regulated which national authority is competent to deliver the compulsory attestation EU citizens must currently provide from their Member State of origin to prove that they are eligible to stand as a candidate when they register as a candidate to the EP elections in their Member State of residence. Interviews with EU non-national candidates confirm that there are problems in relation to contacting and receiving in due time the relevant attestation from the competent authority in their country of origin.

Amongst several options elaborated in the framework of the Impact assessment, the following ones were considered as the most relevant for dealing with double vote and double candidature:

Policy Option 1 – Status quo

No changes are made: when submitting an application to stand as a candidate in their

Member State of residence in an EP election, EU citizens must provide the attestation supplied by their Member State of origin (Articles 6 and 10).

Policy Option 2 – Refine current system

This policy option would, for example, involve the development of an EU-wide information campaign to make public a comprehensive list of authorities which are competent to deliver proof of eligibility to citizens who wish to stand as a candidate in their Member State of residence.

Policy Option 3 – Abolishing the obligation of candidates 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 and to 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.

In addition to the inclusion of a new mention into the declaration that candidates have to provide, this policy option would also introduce the possibility for the Member States of residence to check that the citizen concerned has not effectively been deprived of his/her right to stand as a candidate by the notification of this declaration to the Member State of origin.

The assessment of policy options

| The assessment of Policy Options to address the heavy administrative burden for EU non-national candidates to the EP elections | | | |
|---|--|------------------------------------|--|
| Objective to be achieved/ problem addressed | Policy Options <i>(Anticipated impacts rated from – (no contribution to objective) to √√√√ (full achievement of objective)</i> | | |
| | PO 1: Status quo | PO 2: Refine current system | PO 3: Abolishing the obligation of candidates to present an attestation |
| To reduce obstacles for EU citizens who wish to stand as a candidate in EP elections in their Member State of residence. | √ | √√√ | √√√√ |
| To ensure participation of all citizens of the Union to the elections to the European Parliament. | √ | √√ | √√√ |
| To encourage participation of all citizens of the Union to the elections to the European Parliament. | √ | √√ | √√√ |
| To ensure equal access to electoral rights (non-discrimination principle) for EU citizens to have the same electoral rights in their Member State of residence as the nationals of that country. | √ | √ | √√ |
| Fundamental rights | | | |
| ▪ Right to vote and to stand as a candidate at elections to the European Parliament (Art. 39) | – | √√√ | √√√√ |
| ▪ Protection of personal data (Art. 8) | √√√√√ | √√√√√ | √√ |
| Costs relative to status quo + Higher cost than status quo; 0 Unchanged costs; – Lower costs than status quo | 0 | + | 0 |

The preferred option

The preferred policy option to address the heavy administrative burden for EU non-national candidates to the EP elections is 3 – Abolishing the obligation of candidates 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 and to

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.

As a result of this policy option, on a large extent obstacles for EU non-national candidates would be reduced as they would only have to provide a formal declaration (and not any attestation from an authority).

The Member States would have the possibility to check the accuracy of the formal declaration by notifying it to the Member State of origin. Overall the ‘cost to society’ of the preferred option would remain small.

5. Subsidiarity, proportionality and EU added value

The preferred policy option to address the deficiencies in the current information exchange system would not introduce any measures that harmonise Member States’ electoral systems, or common action that goes beyond what is necessary to achieve the objectives. Due to the transnational nature of the problem, i.e. that citizens are not allowed to vote or to stand as a candidate in more than one Member State in each EP election across the EU, co-operation between Member States is necessary.

The requirement that no measures that harmonise Member States’ electoral systems, or common action that goes beyond what is necessary to achieve the objectives, would be introduced is also valid for the preferred policy option to address the heavy bureaucratic burden on potential candidates. Introducing the possibility for checking declarations by EU non-nationals would be valuable to ensure that no one who has been deemed ineligible to stand as a candidate in one Member State is able to stand as a candidate in another Member State.

A lack of EU action would significantly damage the legitimate interests of EU citizens, who have valid expectations that no one is able to abuse the electoral system by voting more than once in the same EP election, or standing as a candidate in one Member State despite having lost this right in another Member State. The preferred policy options would therefore meet the EU obligation to safeguard and ensure the protection of citizens’ fundamental rights. Common action therefore respects the principle of subsidiarity articulated in Article 2 of the Treaty on European Union, and the proportionality principle in Article 5 of the Treaty establishing the European Community for both preferred policy options.