



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 September 2011

14820/11

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

**FREMP 89
JAI 684
PE 391
INST 440**

NOTE

from:	Presidency
to:	Delegations
No. initiative:	5204/07 PE 6 JUR 16 INST 5
No. prev. doc.:	6423/08 JAI 73 PE 41 INST 12
Subject:	Proposal for a Directive amending Directive 93/109/EC of 6 December 1993 on the right to participate in European elections for citizens of the Union residing in a Member State of which they are not nationals: - Resuming of discussions

Directive 93/109/EC on the right of EU citizens to vote and stand as a candidate in European Parliament (EP) elections in their State of residence is based on article 22 TFEU (unanimity in the Council and consultation of the EP). The Directive focuses on conditions and procedures for candidates and voters to participate in elections in their Member States of residence.

In 2006, the Commission proposed to amend the Directive with a view to facilitate enrolment on the lists for candidates and to enhance efficiency of the mechanism for preventing double voting (COM/2006/791).

Within the Ad-hoc Council Working Group on Fundamental Rights and Citizenship, discussions have been held on the Commission's proposal during its meetings of 12/02, 19/03, 13/04, 1/06, 10/09 and 17/12/2007.

On 14 February 2008 the Ad-hoc Council Working Group on Fundamental Rights and Citizenship interrupted its examination of the Commission's proposal, given that consensus could not be reached on reforming the mechanism to prevent double voting and because the 2009 EP elections were approaching. Typically, any national legislation related to electoral arrangements needs to enter into force one year before the date of the elections.

Consensus had however been reached in the discussions on the element of the proposal concerning a less burdensome procedure for candidates to stand in elections¹, with a number of amendments to the Commission's initial proposal. The Council compromise wording can be found in Annex 1 to this note.

Pour memoire, the Commission's proposal of 2006 (COM (2006)791) aimed at addressing two problems identified with the implementation of Directive 93/109/EC:

(i) the heavy administrative burden on candidates who wish to stand in elections in their Member State of residence, seen as one reason for low participation, and

(ii) the lack of efficiency of the mechanism aimed at ensuring citizens cannot vote twice.

The assessment by the Commission of the implementation of Directive 93/109/EC in the 2009 elections confirmed² that deficiencies persisted and became even more relevant with an increased number of EU citizens making use of their right to free movement and thus being entitled to exercise their voting rights in the Member State where they reside³.

¹ Candidates would be no longer obliged to produce an attestation from their home Member States about the fact that they are not deprived in that Member State of their right to stand as candidates. Instead, the burden of the proof would be on the Member State of residence's electoral authority.

² COM(2010)605.

³ There were only 81 EU citizens who stood as candidates in the 2009 EP elections in their MS of residence.

The European Parliament is currently working on an ambitious reform of the EP elections procedures that would involve amendments to several EU law instruments¹.

In order to prepare for the 2014 elections, the Commission has asked Polish Presidency to propose to the FREMP Working Group to continue the discussions on the 2006 Commission proposal, but limiting the scope of it to the less burdensome procedure for standing as candidates, as agreed in the earlier Council discussions.

The aim is to reach a concrete improvement to be implemented as soon as the next EP elections. At the same time, such amendments would not prejudice in any way the outcome of the on-going electoral reform in the EP which, if adopted, will require more substantial reform of the Directive.

As regards the pending issue of the double voting mechanism, the Commission will address it through an operational and technical Guidelines to be adopted in view of the 2014 elections, and will elaborate them in consultation with the electoral experts of the Member States, in an effort to improve the efficiency of the information exchange between Member States. The overall double voting mechanism will have to be reassessed, in the light of the outcome of the current EP electoral reform.

With this note, the Presidency, following a request from the Commission, proposes to the FREMP Working Group to continue the discussions on the basis of the compromise text in Annex I. Differences compared to the original Commission proposal are highlighted by **bold underlined**; comments in relation to certain modifications are set out in square brackets. The Recitals have been updated by the Commission in 2011, to reflect what has and has not been agreed during discussions in the Council.

⁴ Report of MEP Andrew Duff, adopted in the AFCO Committee and discussed in the July 2011 Plenary Session of the EP (A7-0176/2011 (28 April 2011)).

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

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 Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The Commission reports on the application to the 2004 **elections**³ **and to the 2009 elections**⁴ 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 nationals⁵ revealed the need to amend certain provisions of the Directive.

(...)

¹ COM(2006)791, OJ C [...], [...], p. [...].

² European Parliament legislative resolution of 26 September 2007 (A6-0267/2007)

OJ C [...], [...], p. [...].

³ COM(2006)790

⁴ COM(2010)605

⁵ OJ L 329, 30.12.1993, p. 34.

- (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 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 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 **Union** candidate was not actually deprived of this right in the Member State of origin. **Upon reception of such notification, the home Member State shall provide the Member State of residence with relevant information within a time-limit allowing for the admissibility of the candidate to be effectively assessed. The absence of this information to be sent by the home Member State should not automatically result in the deprivation of a candidate in the Member State of residence. A safeguard ensures that citizens deprived in their Member State of origin who, due to lack of information from the Member State of origin, were not prevented from being registered on the rolls or have been already been elected shall be prevented from being elected or from exercising their mandate.**
- (...)

(7) To ensure a more efficient identification of candidates registered both on the lists of their Member State of residence and of origin, 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 of birth of such citizens.

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:

(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 "*[requirement for attestation deleted and replaced by control by Member States]*

(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 **within a time-limit of up to 3 working days upon reception of the notification** and in an appropriate **manner 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, the candidate shall nonetheless be admitted.** " *[procedure for notification and time limits]*

(c) **the following paragraph is added:**

"4. 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 or where this is not possible, to prevent this person either from being elected or from exercising his/her mandate."*[additional safeguard]*

(d) the following paragraph is added:

"**5.** The home Member State **shall** also, in good time and in an appropriate manner, submit to the Member State of residence any **additional** information necessary for the implementation of this Article."*[Additional exchange of information as further safeguard]*

(2) Article 10 is amended as follows:

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

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

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

"(d) that he has not been deprived **through an individual civil law or criminal law decision** of the right to stand as a candidate in the home Member State."
[ensures consistency in wording within the Article]

(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. The Member States shall implement the laws, regulations and administrative provisions needed in order to comply with this Directive by ...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 **in accordance with the Treaties**.

Done at Brussels,

For the Council

The President
