

European elections: exercise of the right to vote and stand as a candidate in elections to the European Parliament, preventing citizens from voting or standing twice

2006/0277(CNS) - 12/12/2006 - Legislative proposal

PURPOSE : to amend Directive 93/109/EC as regards the rules on double voting and double candidature for EU citizens standing in elections to the European Parliament and residing in a Member State of which they are not nationals.

PROPOSED ACT : Council Directive.

CONTENT : according to EU citizenship rights enshrined in the EC Treaty, every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. The principles for voting and standing as a candidate in a Member State of which an EU citizen is not a national are set out in Directive 93/109/EC. No one may vote more than once in an EP election or stand as a candidate in two countries in the same election (Article 4).

Directive 93/109/EC establishes two means to prevent people from voting or standing as a candidate in more than one Member State in the same elections:

- EU non-nationals must 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 (Articles 9 and 10);

- Member States are obliged to exchange information on nationals of other Member States who have been entered on electoral rolls or have stood as a candidate. On the basis of the information sent by the Member State of residence to the home Member State, the latter must take appropriate action to ensure that their nationals do not vote or stand as a candidate in more than one Member State (Article 13). To this end, an information exchange system between the Member States was set up. The Commission and the Member States have informally agreed on practical details for the exchange of information within the system. However, there is no legal obligation for the Member States to follow them. The system is too administratively burdensome for Member States and lacks operability and effectiveness, mainly because of the non-harmonised national legislations in electoral matters. The proposal discusses in detail the problems that have been identified with the system.

The Directive also stipulates that citizens of the EU who have been deprived of the right to stand as a candidate under either the law of the Member States of residence or the law of their home Member state, shall be precluded from exercising that right in the Member State of residence in elections to the EP (Article 6.1). EU citizens who wish to stand as a candidate in EP elections in their country of residence instead of in their country of origin are obliged, under the Directive, 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 in that Member State (Article 10.2). An application form is declared inadmissible where that citizen is unable to provide this attestation (Article 6.2). This obligation results in a heavy administrative burden on EU non-nationals wishing to stand as a candidate in the Member State of residence and might be one reason for the low participation rate of these citizens.

Proposed amendments to the Directive : in order to remedy the deficiencies of the current mechanism on how to prevent double vote and double candidature, the objectives of this proposal are:

- to **replace the obligation of the exchange of information** by less burdensome measures, whilst introducing the necessary guaranties and deterrents;
- to abolish the obligation for EU citizens who wish to stand as a candidate in the Member State of residence to provide the attestation that they are not deprived of the right to stand as a candidate, and to replace it with a reference to that effect to be introduced in the **formal declaration** that candidates must submit under current Article 10.1.

Information exchange system: the Commission proposes to abolish this while maintaining the formal declaration of EU non-nationals that they will exercise the right to vote or stand as a candidate in one Member State only. The obligation of such a declaration is, in itself, a deterrent to voting or standing twice as a candidate. Article 2.9 defines the 'formal declaration' as 'a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable'. However, the dissuasive effect is limited because this provision refers back to national law on penalties. Therefore, in order to reinforce the deterrent to voting or standing twice, the Commission proposes to introduce a new provision laying down explicitly the obligation for the Member States to apply effective, proportionate and dissuasive penalties for inaccuracy in declarations produced under the Directive resulting in a violation of obligations posed therein. Furthermore, these penalties which should be at least equivalent to those applicable under relevant national measures, will be the subject of information measures by Member States, which they are currently obliged to undertake under Article 12. The Commission also proposes to present a report, based on information received from the Member States, on the occurrence of double vote and double candidature after the first application of the amended Directive which would be a necessary and useful means to identify possible cases of double vote and double candidature in order to assess the extent of instances of such attempts. The Commission suggests that Member States undertake ex post checks in situations where there is a likelihood of double vote.

Attestation to stand as candidate: the Commission proposes the abolition of the obligation for candidates to present the attestation that they have not been deprived of the right to stand as a candidate, and to replace it with the inclusion of a mention to that effect into the formal declaration that candidates must submit. It also proposes to introduce the obligation for the Member State of residence to check with the Member States of origin that the citizen concerned has not been deprived of his/her right to stand as a candidate by the notification of his/her declaration to the Member State of origin.

The new provision laying down the obligation for the Member States to apply penalties for inaccuracy in formal declarations will apply also to the declaration by candidates that they are not deprived of the right to stand as a candidate.

In order to guarantee to EU-non nationals the exercise of their electoral rights in accordance with the amended Directive in the next elections of June 2009, the Commission proposes that Member States transpose the provisions necessary to comply with the amended Directive by 30 June 2008 at the latest.

Simplification:

- no more meetings with the Commission and Member States on the implementation of the information exchange system will be needed;
- abolishing the obligation of the Member States to exchange information would simplify administrative procedures and save the national administrations the costs related to this work;
- the introduction of a mention of not being deprived of the right to stand as a candidate in the formal declaration that potential candidates must already provide would be much less burdensome than the current obligation to provide a separate attestation to that effect.