Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 8b (1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Having regard to the opinion of the Committee of the Regions[(3)],

Whereas the Treaty on European Union marks a new stage in the process of creating an ever-closer union among the peoples of Europe; whereas one of the Union's tasks is to organize, in a manner demonstrating consistency and solidarity, relations between the peoples of the Member States; whereas its fundamental objectives include a strengthening of the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

Whereas to that end Title II of the Treaty on European Union introduces a citizenship of the Union for all nationals of the Member States and confers on such nationals on that basis a number of rights;

Whereas the right to vote and to stand as a candidate in municipal elections in the Member State of residence, embodied in Article 8b (1) of the Treaty establishing the European Community, is an instance of the application of the principle of equality and non-discrimination between nationals and non-nationals and a corollary of the right to move and reside freely enshrined in Article 8a of that Treaty;

Whereas application of Article 8b (1) does not presuppose complete harmonization of Member States' electoral systems; whereas the aim of that provision is essentially to abolish the nationality requirement to which most Member States currently make the exercise of the right to vote and to stand as a candidate subject; whereas, moreover, to take account of the principle of proportionality set out in the third paragraph of Article 3b of the Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b (1) of the Treaty;

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Whereas the purpose of Article 8b (1) is to ensure that all citizens of the Union, whether or not they are nationals of the Member State in which they reside, can exercise in that State their right to vote and to stand as candidates in municipal elections under the same conditions; whereas the conditions applying to non-nationals, including those relating to period and proof of residence, should therefore be identical to those, if any, applying to nationals of the Member State concerned; whereas non-nationals must not be required to fulfil any special conditions unless, exceptionally, different treatment of nationals and non-nationals is justified by circumstances specific to the latter distinguishing them from the former;

Whereas Article 8b (1) of the Treaty recognizes the right to vote and to stand as a candidate in municipal elections in the Member State of residence, without actually substituting it for the right to vote and to stand as a candidate in the Member State of which the Union citizen is a national; whereas the freedom of Union citizens to choose whether or not to take part in municipal elections in the Member State in which they reside must be respected; whereas it is appropriate that those citizens may express their wish to exercise their right to vote there; whereas provision may be made for those citizens to be registered automatically on the electoral roll in those Member States where voting is not compulsory;

Whereas the way in which local government operates in the different Member States is a reflection of different political and legal traditions and is characterized by an abundance of structures; whereas the term ‘municipal election’ does not mean the same thing in every Member State; whereas the object of this Directive must therefore be clarified by defining the term; whereas municipal elections are elections by direct universal suffrage at the level of basic local government units and their subdivisions; whereas the term covers elections by direct universal suffrage both to representative councils of municipalities and of members of a municipal executive;

Whereas disqualification may be ordered by an individual decision of the authorities either of the Member State of residence or of the home Member State; whereas, in view of the political significance of the holding of elected municipal office, Member States should be entitled to take the steps necessary to ensure that a person who has been deprived of his right to stand as a candidate in his home Member State is not enabled to recover that right merely by virtue of his residence in another Member State; whereas this problem, which is specific to non-national candidates, is important enough to justify a provision under which those Member States which consider it necessary are allowed to make such candidates subject not only to the rules on disqualification of the Member State of residence but also to those of the home Member State; whereas, in view of the principle of proportionality, it will be sufficient if the right to vote is made subject only to the rules on disqualification from voting of the Member State of residence;

Whereas, since the duties of the leadership of basic local government units may involve taking part in the exercise of official authority and in the safeguarding of the general interest, Member States should be able to reserve these offices for their nationals; whereas Member States should also be able to take appropriate measures for that purpose; whereas such measures may not restrict more than is necessary for the achievement of that objective the possibility for other Member States' nationals to be elected;

Whereas, it should likewise be possible for participation by elected municipal officers in the election of a parliamentary assembly to be reserved for own nationals;

Whereas, where Member States' laws provide that the holding of elected municipal office is incompatible with holding other offices, Member States should be able to extend their scope to include equivalent offices held in other Member States;

Whereas any derogation from the general rules of this Directive must be warranted, pursuant to Article 8b (1) of the Treaty, by problems specific to a Member State; whereas any derogation must, by its very nature, be subject to review;

Whereas such specific problems may arise in a Member State in which the proportion of citizens of the Union of voting age, who reside in it but are not nationals of it, is very significantly above average; whereas derogations are warranted where such citizens form more than 20% of the total electorate; whereas such derogations must be based on the criterion of period of residence;

Whereas citizenship of the Union is intended to enable citizens of the Union to integrate better in their host country; whereas in this context it is in accordance with the intentions of the authors of the Treaty to avoid any polarization between lists of national and non-national candidates;

Whereas this risk of polarization concerns in particular a Member State in which the proportion of non-national citizens of the Union of voting age exceeds 20% of the total number of citizens of the Union of voting age who reside there; whereas it is important, therefore, that this Member State be able to lay down, in compliance with Article 8b of the Treaty, specific provisions concerning the composition of lists of candidates;

Whereas account must be taken of the fact that in certain Member States residents who are nationals of other Member States have the right to vote in elections to the national parliament and whereas the formalities provided for in this Directive can consequently be eased;

Whereas the Kingdom of Belgium is characterized by specific features and balances linked to the fact that Articles 1 to 4 of its Constitution provide for three official languages and a territorial division into regions and communities, as a result of which full application of this Directive in certain communes might have effects such as to necessitate providing for the possibility of a derogation from the provisions of this Directive in order to take account of those specific features and balances;

Whereas the Commission will assess the application of the Directive in law and in fact, including any changes in the electorate which have taken place since its entry into force; whereas the Commission will submit a report in this connection to the European Parliament and to the Council,

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CHAPTER I

General provisions

Article 1

1 This Directive lays down the detailed arrangements whereby citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate there in municipal elections.

2 Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate either of its nationals who reside outside its territory or of third country nationals who reside in that State.

Article 2

1 For the purposes of this Directive:

a

‘basic local government unit’ means the administrative entities listed in the Annex which, in accordance with the laws of each Member State, contain bodies elected by direct universal suffrage and are empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility;

b ‘municipal elections’ means elections by direct universal suffrage to appoint the members of the representative council and, where appropriate, under the laws of each Member State, the head and members of the executive of a basic local government unit:

c ‘Member State of residence’ means the Member State in which a citizen of the Union resides but of which he is not a national;

d ‘home Member State’ means the Member State of which a citizen of the Union is a national;

e ‘electoral roll’ means the official register of all voters entitled to vote in a given basic local government unit or in one of its subdivisions, drawn up and kept up-to-date by the competent authority under the electoral law of the Member State of residence, or the population register if it indicates eligibility to vote;

f ‘reference date’ means the day or days on which citizens of the Union must satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;

g ‘formal declaration’ means a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable.

2 A Member State shall notify the Commission if any local government unit referred to in the Annex is, by virtue of a change in its domestic law, replaced by another unit having the functions referred to in paragraph 1 (a) of this Article or if, by virtue of such a change, any such unit is abolished or further such units are created.

Within three months of receipt of such a notification, together with a Member State's assurance that no person's rights under this Directive will be prejudiced, the Commission shall adapt the Annex by making appropriate substitutions, deletions or additions. The Annex so revised shall be published in the Official Journal.

Article 3

Any person who, on the reference date:

(a) is a citizen of the Union within the meaning of the second subparagraph of Article 8 (1) of the Treaty; and

(b) is not a national of the Member State of residence, but in any event satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals,

shall have the right to vote and to stand as a candidate in municipal elections in the Member State of residence in accordance with this Directive.

Article 4

1 If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the territory of that State, voters and persons entitled to stand as candidates within the scope of Article 3 shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States.

2 If, under the laws of the Member State of residence, its own nationals may vote or stand as candidates only in the basic local government unit in which they have their principal residence, voters and persons entitled to stand as candidates within the scope of Article 3 shall also be subject to this condition.

3 Paragraph 1 shall not affect the provisions of each Member State under which the exercise by any person of the right to vote and to stand as a candidate in a given basic local government unit is subject to his having spent a minimum period as a resident in that unit.

Nor shall paragraph 1 affect any national provision already in force on the date of adoption of this Directive, whereby the exercise by any person of such right to vote and to stand as a candidate is subject to his having spent a minimum period in the constituent part of the Member State of which the basic local government unit forms a part.

Article 5

1 Member States of residence may provide that any citizen of the Union who, through an individual decision under civil law or a criminal law decision, has been deprived of his right to stand as a candidate under the law of his home Member State, shall be precluded from exercising that right in municipal elections.

2 An application from any citizen of the Union to stand as a candidate in municipal elections in the Member State of residence may be declared inadmissible where that citizen is unable to produce the declaration referred to in Article 9 (2) (a) or the attestation referred to in Article 9 (2) (b).

3 Member States may provide that only their own nationals may hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit if elected to hold office for the duration of his mandate.

The Member States may also lay down that the temporary or interim performance of the functions of a head, deputy or member of the governing college of the executive of a basic local government unit may be restricted to own nationals.

Having regard to the Treaty and to general legal principles, Member States may take appropriate, necessary and proportional measures to ensure that the offices referred to in the first subparagraph can only be held and the interim functions referred to in the second subparagraph can be performed only by their own nationals.