# Council Directive 93/109/EC of 6 December 1993 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 nationals

## COUNCIL DIRECTIVE 93/109/EC

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## 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 nationals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 8b (2) thereof,

Having regard to the proposal from the Commission,

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

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 its 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, amending the Treaty establishing the European Economic Community, with a view to establishing the European Community, 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 elections to the European Parliament in the Member State of residence, laid down in Article 8b (2) of the Treaty establishing the European Community, is an instance of the application of the principle of 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 Article 8b (2) of the EC Treaty is concerned only with the possibility of exercising the right of vote and to stand as a candidate in elections to the European Parliament, without prejudice to Article 138 (3) of the EC Treaty, which provides for the establishment of a uniform procedure in all Member States for those elections; whereas it essentially seeks to abolish the nationality requirement which currently has to be satisfied in most Member States in order to exercise those rights;

Whereas application of Article 8b (2) of the EC Treaty does not presuppose harmonization of Member States' electoral systems; whereas, moreover, to take account of the principle of

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proportionality set out in the third paragraph of Article 3b of the EC Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b (2) of the EC Treaty;

Whereas the purpose of Article 8b (2) of the EC Treaty 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 a candidate in elections to the European Parliament 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 Article 8b (2) of the EC Treaty provides for the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, without, nevertheless, substituting it for the right to vote and to stand as a candidate in the Member State of which the citizen is a national; whereas the freedom of citizens of the Union to choose the Member State in which to take part in European elections must be respected, while taking care to ensure that this freedom is not abused by people voting or standing as a candidate in more than one country;

Whereas any derogation from the general rules of this Directive must be warranted, pursuant to Article 8b (2) of the EC 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 and that 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 and that, therefore, it is important that this Member State may 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 certain provisions of this Directive may consequently be dispensed with in those Member States,

HAS ADOPTED THIS DIRECTIVE:

## 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 elections to the European Parliament.

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

*Article 2*

For the purposes of this Directive:

1. ‘elections to the European Parliament’ means elections by direct universal suffrage to the European Parliament of representatives in accordance with the Act of 20 September 1976[(2)];

2. ‘electoral territory’ means the territory of a Member State in which, in accordance with the above Act and, within that framework, in accordance with the electoral law of that Member State, members of the European Parliament are elected by the people of that Member State;

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

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

5. ‘Community voter’ means any citizen of the Union who is entitled to vote in elections to the European Parliament in his Member State of residence in accordance with this Directive;

6. ‘Community national entitled to stand as a candidate’ means any citizen of the Union who has the right to stand as a candidate in elections to the European Parliament in his Member State of residence in accordance with this Directive;

7. ‘electoral roll’ means the official register of all voters entitled to vote in a given constituency or locality, 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;

8. ‘reference date’ means the day or the 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;

9. ‘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.

*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;

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(b) is not a national of the Member State of residence, but 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 elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7.

Where, in order to stand as a candidate, nationals of the Member State of residence must have been nationals for a certain minimum period, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

*Article 4*

1 Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.

2 No person may stand as a candidate in more than one Member State at the same election.

*Article 5*

If, in order to vote or to stand as candidates, nationals of the Member State or residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

*Article 6*

**[**[F1]1 Any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies, 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 in elections to the European Parliament.**]**

**[**[F1]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 judicial decision or an administrative decision provided that the latter can be subject to judicial remedies.**]**

**[**[F2]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 available from the home Member State shall be provided in any appropriate manner within five working days from the reception of the notification 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 within the time-limit, the candidate shall none the less be admitted.

4 If the information provided invalidates the content of the declaration, the Member State of residence, irrespective of whether it receives the information within the time-limit or at a later stage, shall take the appropriate steps in accordance with its national law 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 the mandate.

5 Member States shall designate a contact point to receive and transmit the information necessary for the application of paragraph 3. They shall communicate to the Commission the name and contact details of the contact point and any updated information or changes concerning it. The Commission shall keep a list of contact points and make it available to the Member States.**]**

**Textual Amendments**

**F1** Substituted by Council Directive 2013/1/EU of 20 December 2012 amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to 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.

**F2** Inserted by Council Directive 2013/1/EU of 20 December 2012 amending Directive 93/109/EC as regards certain detailed arrangements for the exercise of the right to 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.

*Article 7*

1 The Member State of residence may check whether the citizens of the Union who have expressed a desire to exercise their right to vote there have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.

2 For the purposes of paragraph 1 of this Article, the Member State of residence may notify the home Member State of the declaration referred to in Article 9 (2). To that end, the relevant and normally available information from the home Member State shall be provided in good time and in an appropriate manner; such information may only include details which are strictly necessary for the implementation of this Article and may only be used for that purpose. 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 voting.

3 The home Member State may, in good time and in an appropriate manner, submit to the Member State of residence any information necessary for the implementation of this Article.

*Article 8*

1 A Community voter exercises his right to vote in the Member State of residence if he has expressed the wish to do so.

2 If voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote.