

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

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

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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.

4 Member States may also stipulate that citizens of the Union elected as members of a representative council shall take part in neither the designation of delegates who can vote in a parliamentary assembly nor the election of the members of that assembly.

Article 6

1 Persons entitled to stand as candidates within the scope of Article 3 shall be subject to the same conditions concerning incompatibility as apply, under the laws of the Member State of residence, to nationals of that State.

2 Member States may provide that the holding of elected municipal office in the Member State of residence is also incompatible with the holding of offices in other Member States which are equivalent to those which give rise to incompatibility in the Member State of residence.

CHAPTER II

Exercise of the right to vote and the right to stand as a candidate

Article 7

1 A voter within the scope of Article 3 shall exercise his right to vote in municipal elections 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, voters within the scope of Article 3 who have been entered on the electoral roll there shall also be obliged to vote.

3 Member States where voting is not compulsory may provide for the automatic registration of voters within the scope of Article 3 on the electoral roll.

Article 8

1 Member States shall take the necessary measures to enable a voter within the scope of Article 3 to be entered on the electoral roll sufficiently in advance of polling day.

2 In order to have his name entered on the electoral roll, a voter within the scope of Article 3 shall produce the same documents as a voter who is a national.

The Member State of residence may also require a voter within the scope of Article 3 to produce a valid identity document, along with a formal declaration stating his nationality, and his address in the Member State of residence.

3 Voters within the scope of Article 3 who have been entered on an electoral roll in the Member State of residence shall remain thereon, under the same conditions as voters who are nationals, until such time as they are removed automatically because they no longer satisfy the requirements for exercising the right to vote.

Voters who have been entered on the electoral roll at their request can also be removed from it if they so request.

If such voters move to another basic local government unit in the same Member State, they shall be entered on the electoral roll of that unit under the same conditions as voters who are nationals.

Article 9

1 When he submits his application to stand as a candidate, a person entitled to stand as a candidate within the scope of Article 3 shall produce the same supporting documents as a candidate who is a national. The Member State of residence may require him to produce a formal declaration stating his nationality and his address in the Member State of residence.

2 The Member State of residence may also require a person entitled to stand as a candidate within the scope of Article 3 to:

- a state in the formal declaration which he produces in accordance with paragraph 1 when submitting his application to stand as a candidate that he has not been deprived of the right to stand as a candidate in his home Member State;
- b in case of doubt regarding the content of the declaration pursuant to (a), or where required under the legal provisions of a Member State, to produce before or after the election an attestation from the competent administrative authorities in his home Member State certifying that he has not been deprived of the right to stand as a candidate in that State or that no such disqualification is known to those authorities;
- c produce a valid identity document;
- d state in the formal declaration he produces in accordance with paragraph 1 that he holds no office which is incompatible within the meaning of Article 6 (2);
- e indicate his last address in his home Member State, in so far as he has had one.

Article 10

1 The Member State of residence shall inform the person concerned in good time of the action taken on his application for entry on the electoral roll or of the decision concerning the admissibility of his application to stand as a candidate.

2 Should a person not be entered on the electoral roll or have his application form entry refused or have his application to stand as a candidate rejected, the person concerned shall be entitled to legal remedies on similar terms as the laws of the Member State of residence prescribe for voters and persons entitled to stand as candidates who are its nationals.

Article 11

The Member State of residence shall inform voters and persons entitled to stand as candidates within the scope of Article 3 in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections in that State.

CHAPTER III

Derogations and transitional provisions

Article 12

1 Where, on 1 January 1996, in a given Member State, the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20% of the total number of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from this Directive:

- a restrict the right to vote to voters within the scope of Article 3 who have resided in that Member State for a minimum period, which may not be longer than the term for which the representative council of the municipality is elected;

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- b restrict the right to stand as a candidate to persons entitled to stand as candidates within the scope of Article 3 who have resided in that Member State for a minimum period, which may not be longer than twice the term for which the representative council of the municipality is elected; and
- c take appropriate measures with regard to the composition of lists of candidates to encourage in particular the integration of citizens of the Union, who are nationals of another Member State.

2 The Kingdom of Belgium may, by way of derogation from the provisions of this Directive, apply the provisions of paragraph 1 (a) to a limited number of local government units, the list of which it shall communicate at least one year before the local government unit elections for which it intends to invoke the derogation.

3 Where, on 1 January 1996, the laws of a Member State prescribe that the nationals of another Member State who reside there have the right to vote for the national parliament of that State and, for that purpose, may be entered on the electoral roll of that State under exactly the same conditions as national voters, the first Member State may, by way of derogation from this Directive, refrain from applying Articles 6 to 11 in respect of such persons.

4 By 31 December 1998 and every six years thereafter, the Commission shall submit to the European Parliament and to the Council a report in which it shall check whether the grant to the Member States concerned of a derogation pursuant to Article 8b (1) of the Treaty is still warranted and shall propose that any necessary adjustments be made. Member States which invoke derogations under paragraphs 1 and 2 shall furnish the Commission with all the necessary background information.

CHAPTER IV

Final provisions

Article 13

The Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including any changes in the electorate which have taken place since its entry into force, within a year of the holding in all the Member States of the municipal elections organized on the basis of the above provisions, and shall, where appropriate, propose appropriate adjustments.

Article 14

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1996. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 15

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 16

This Directive is addressed to the Member States.