

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL

on granting a derogation pursuant to Article 19(2) of the EC Treaty, presented under Article 14(3) of Directive 93/109/EC on the right to vote and to stand as a candidate in elections to the European Parliament

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1. PURPOSE OF THE REPORT

Council Directive 93/109/EC[1] lays down detailed arrangements for the exercise of the right to vote and 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 14(3) of the Directive provides that, 18 months prior to each election to the European Parliament, the Commission shall submit to the Parliament and to the Council a report verifying whether the granting to the Member States concerned of a derogation pursuant to Article 19(2) of the Treaty establishing the European Community is still warranted and shall propose if appropriate that any necessary adjustments be made.

The next elections to the European Parliament, to be held in the 27 Member States of the Union, will take place in June 2009. The Commission must therefore submit the aforementioned report in December 2007.

The only Member State that has requested a derogation pursuant to Article 19(2) of the Treaty is the Grand Duchy of Luxembourg. Neither of the two Member States that joined the European Union since the previous elections in 2004 have requested this derogation.

The reasons for granting the derogation to the Grand Duchy of Luxembourg were verified ahead of the 2004 elections by the Commission which concluded in its report of 27 January 2003[2] that the derogation was justified and that there was therefore no reason to propose any amendment.

The aim of this report is to establish whether the circumstances warranting the granting of the derogation to Luxembourg still exist and, if necessary, to propose that adjustments be made.

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1 Council Directive 93/109/EC of 6 December 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, OJ L 329, 31.12.1993, p. 34.

2 Report from the Commission to the European Parliament and to the Council on granting a derogation pursuant to Article 19(2) of the EC Treaty, presented under Article 14(3) of Directive 93/109/EC on the right to vote and to stand as a candidate in elections to the European Parliament (COM (2003) 31 final).

2. RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT ELECTIONS TO THE EUROPEAN PARLIAMENT

Article 19(2) of the Treaty establishing the European Community provides that every citizen of the Union residing in a Member State of which he/she is not a national[3] has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he/she resides, under the same conditions as nationals of that State. This right is to be exercised subject to detailed arrangements adopted by the Council. These arrangements may provide for derogations where this is justified because of problems specific to a Member State.

The detailed arrangements for exercising the right to vote and to stand as a candidate at elections to the European Parliament were laid down by the abovementioned Directive. It stipulates in Article 3 that any person who, on the reference date,

is a citizen of the Union within the meaning of Article 17 of the Treaty and;

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. Any such voter is called a "Community voter" and any such candidate a "Community national entitled to stand as a candidate".

3. DEROGATIONS UNDER ARTICLE 14 OF THE DIRECTIVE

The Directive permits the introduction of exceptions to the principle of equal treatment between national and non-national voters where this is justified by problems specific to a Member State. This is the case if the proportion of citizens of the Union of voting age resident in a Member State of which they are not a national is much greater than the average within the Union as a whole.

The first sub-paragraph of Article 14(1) states that if in a given Member State, the proportion of citizens of the Union of voting age who are residents but not nationals of it exceeds 20% of the total number of citizens of the Union residing there but who are of voting age, that Member State may, by way of derogation from Articles 3, 9 and 10:

a) restrict the right to vote to Community voters who have resided in that Member State for a minimum period, which may not exceed five years;

b) restrict the right to stand as a candidate to Community nationals who have resided in that Member State for a minimum period, which may not exceed 10 years.

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[3] Hereafter referred to as "non-national citizen of the Union".

However, Community voters and Community nationals entitled to stand as candidates who, owing to the fact that they have taken up residence outside their home Member State or by reason of the duration of such residence, do not have the right to vote or to stand as candidates in that home State shall not be subject to the conditions as to length of residence set out above.

4. DEROGATIONS APPLIED BY LUXEMBOURG

The Grand Duchy of Luxembourg is the only Member State that has requested a derogation on the basis of Article 14(1). Under Luxembourg law, non-national citizens of the Union wishing to vote in Luxembourg must be domiciled in the Grand Duchy and have resided there for at least five years before requesting registration on the electoral roll[4]. Regarding the right to stand as a candidate, Luxembourg requires non-national citizens of the Union to have their legal domicile in the territory of Luxembourg and to have resided there for five years before submitting their application as a candidate[5].

Luxembourg law also provides that Community voters and Community nationals entitled to stand as candidates who, owing to their residence outside their home Member State or by reason of the duration of such residence, do not have the right to vote or to stand as candidates in that home State shall not be subject to the conditions as to length of residence set out above.

5. EVALUATION OF THE CIRCUMSTANCES FOR GRANTING A DEROGATION

The circumstances described in Article 14(1) as a condition for granting a derogation are that "the proportion of citizens of the Union of voting age who reside in a given Member State but are not nationals of it exceeds 20% of the total number of citizens of the Union residing there who are of voting age".

The second sentence of Article 14(3) provides that Member States which invoke derogations under paragraph 1, shall furnish the Commission with all the necessary background information.

The Luxembourg authorities, by letter of 26 October, sent the Commission the necessary information, from which it has emerged that on 1 January 2007 135 400 EU citizens of voting age were resident in Luxembourg but were not of Luxembourg nationality, whereas the total number of EU citizens (including those of Luxembourg nationality) of voting age resident in Luxembourg was 357 500 people.

It follows that the proportion of non-national citizens of the Union of voting age residing in Luxembourg was 37.87% of the total number of citizens of the Union of voting age residing there at 1 January 2007. This proportion is significantly higher than the limit set in the Directive (20%) and there is no reason to assume that the situation has changed since.

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4 Article 3(5) of the Electoral Law, modified on 18 February 2003.

5 Article 285(4) of the Electoral Law, modified on 18 February 2003.

6. CONCLUSIONS

The Commission concludes that the circumstances warranting the granting to the Grand Duchy of Luxembourg of a derogation pursuant to Article 19(2) of the Treaty and to Article 14(1) of the Directive still apply. It does not therefore consider it necessary to suggest amendments to the provisions governing the Luxembourg legislation.