

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.01.2003
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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**

## 1. PURPOSE OF THE REPORT

Council Directive 93/109/EC[1] lays 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 first sentence of Article 14(3) of the Directive provides that, 18 months prior to each election to the European Parliament, 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 19(2) of the Treaty establishing the European Community is still warranted and shall propose that any necessary adjustments be made.

The next elections to the European Parliament will take place in June 2004. Therefore, the Commission must submit the abovementioned report in December 2002.

The only current Member State that has invoked a derogation pursuant to Article 19(2) of the Treaty is the Grand Duchy of Luxembourg. The objective in relation to enlargement is that ten new members - Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia - should accede to the European Union in time for the elections to the European Parliament scheduled for June 2004. The elections will thus take place in 25 Member States. None of the ten candidate countries has raised the question of a derogation pursuant to Article 19(2) of the Treaty in the accession negotiations.

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

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

Every citizen of the Union has the right to vote and stand as a candidate at elections to the European Parliament in the Member State in which he or she resides under the same conditions as nationals of that State.[2]

This is one of the rights that citizenship of the Union, introduced by the Maastricht Treaty in 1992, confers on citizens of the Union. The specific rights relating to taking part in political life in the Member State of residence are laid down in Article 19 of the Treaty establishing the European Community (hereinafter "the EC Treaty").

Article 19(2) 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 stand as a candidate in

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1 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 (OJ L 329, 31.12.1993, p. 34), hereinafter referred to as "the Directive".

2 Article 39(1) of the Charter of Fundamental Rights of the European Union (OJ C 364, 18.12.2000, p. 1).

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. The arrangements may provide for derogations where warranted by problems specific to a Member State.

The detailed arrangements for the exercise of the right to vote and stand as a candidate at elections to the European Parliament were laid down in 1993 by the abovementioned Directive. It stipulates in Article 3 that any person who, on the reference date,

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

(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. Any such voter is called a "Community voter" and any such candidate a "Community national entitled to stand as a candidate". Article 9 of the Directive lays down rules on entering Community voters on the electoral roll in the Member State of residence, and Article 10 governs applications by Community nationals 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. Article 14(1) provides that if, in a given Member State, the proportion of citizens of the Union of voting age who reside in 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 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 entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed 10 years.

However, Community voters and Community nationals entitled to stand as a 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 a candidates in that home State shall not be subject to the conditions as to length of residence set out above.

Article 14(2) of the Directive provides that, where the laws of a Member State prescribe that the nationals of another Member State who reside there have the right

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

to vote for the national parliament of that State under exactly the same conditions as national voters, the first Member State may, by way of derogation from the Directive, refrain from applying Articles 6 to 13 in respect of such nationals.

## 4. DEROGATION APPLIED BY LUXEMBOURG

The only Member State that has availed itself of a derogation is Luxembourg, on the basis of Article 14(1). Luxembourg restricts the right to vote to non-national citizens of the Union who have resided in its territory for five of the last six years before registration.[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 ten of the last twelve years before submitting the application.[5]

## 5. EVALUATION OF THE CIRCUMSTANCES FOR GRANTING THE 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".

Thus it must be established whether the proportion of non-national citizens of the Union of voting age who reside in Luxembourg exceeds 20% of the total number of citizens of the Union of voting age residing in Luxembourg.

The second sentence of Article 14(3) provides that Member States which invoke derogations under paragraph 1 must furnish the Commission with all the necessary background information. By letter of 5 June 2002, the Commission requested the Luxembourg authorities to submit the most recent information concerning:

– the number of citizens of the Union of voting age who reside in Luxembourg but are not nationals of it, and

– the total number of citizens of the Union of voting age who reside in Luxembourg.

The Luxembourg authorities replied by letter of 11 September 2002. According to data provided by the letter, the latest numbers of citizens are based on the population census carried out in February 2001 by STATEC (Service Central de la Statistique et des Etudes Economiques). According to the census, the number of citizens of the Union of voting age residing in Luxembourg but not nationals of it was 107 375. The

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4 Article 1, Act of 25 February 1979 on the direct election of the representatives of the Grand Duchy of Luxembourg to the European Parliament, amended by Act of 28 January 1994 laying down the arrangements for the election of the representatives of the Grand Duchy of Luxembourg to the European Parliament.

5 Article 98, Act of 25 February 1979 on the direct election of the representatives of the Grand Duchy of Luxembourg to the European Parliament, amended by Act of 28 January 1994 laying down the arrangements for the election of the representatives of the Grand Duchy of Luxembourg to the European Parliament.

total number of citizens of the Union of voting age residing in Luxembourg was 326 027.

It follows that the proportion of non-national citizens of the Union of voting age residing in Luxembourg was 32.93% of the total number of citizens of the Union of voting age residing there at the time of the 2001 population census. There is no reason to assume that the situation has changed since that time. The proportion is clearly higher that the threshold laid down in the Directive, i.e. 20%.

## 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. Consequently, the Commission does not find it necessary to propose any adjustments.