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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the application of Directive 94/80/EC on 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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1. INTRODUCTION

Citizens are directly affected by the decisions taken on a daily basis by the local authorities in the economic, social and cultural areas. Local authorities represent the form of government that is closest to the citizens. Participating in municipal elections, either to vote or to stand as a candidate, is a fundamental right laid down by Article 40 of the Charter of fundamental rights of the European Union[1]; it enables citizens to be involved in the democratic life and to influence the decision-making process. Furthermore, such participation provides an opportunity for EU citizens who reside in Member State other than their own to become better integrated in the political and social life of their host society.

Under the same terms as in Article 40 of the Charter[2], Article 22(1) of the TFEU[3] grants to every citizen of the Union the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State. The detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections are laid down by Council Directive 94/80/EC (hereinafter "the Directive")[4].

In accordance with Article 13 of the Directive, the previous and first Report on the transposition and implementation of the Directive was adopted by the Commission in 2002. For the first time, the present Report touches upon the broader issue of participation in local democracy and assesses the state of transposition and implementation of the Directive in the Member States which were not yet members of the Union in 2002, when the first Report was adopted. Although all Member States have transposed the Directive, a number of obstacles hampering the full exercise of electoral rights need to be addressed by ensuring the correct implementation and transposition of its provisions.

The Report also assesses whether the grant of the derogation pursuant article 22(1) of the TFEU is still warranted. Article 12(4) of the Directive provides that, by 31 December 1998 and every six years thereafter, the Commission shall submit to the European Parliament and to the Council a Report on that. The last derogation Report was adopted in 2005[5].

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1 Charter of fundamental rights of the European Union (OJ C 83/389, 30.03.2010).

2 The Charter of Fundamental Rights of the European Union.

3 The Treaty on the Functioning of the European Union.

4 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 (OJ L 368, 31.12.1994, p. 38).

5 COM(2005)382.

The Union is founded on the value of the respect for democracy[6] and every citizen of the Union has the right to participate in the democratic life of the Union[7]. It is therefore important to guarantee the principles of a participatory democracy by, amongst others, ensuring participation of all citizens of the Union and deploying efforts to boost participation.

Guaranteeing the principles of participatory democracy is of primary importance especially at local level where the decisions taken directly affect citizens. Decreasing participation in democratic life in terms of a low turnout in the elections may have the undesired effect of weakening the status of representative democracy.

In most Member States, a turnout lower than 50% has been recorded in recent European elections[8]; the trend is similar in many Member States as regards recent local elections[9]. Pursuant to the founding principles of the Union, the Commission considers it essential to invert this trend in order to strengthen the link between voters and elected representatives and to enhance legitimacy of decisions taken by the latter.

In this line, strengthening electoral rights of citizens has been set out as one of the political priorities in the Stockholm Programme. The Stockholm Action Plan of 20 April 2010 underlines how *"Facilitating and encouraging citizens' participation in the democratic life of the Union is crucial for bringing the citizens closer to the European project. Increased turnout at European Parliament elections is a shared ambition. The right of citizens to vote and be elected for local and European elections where they reside should be further promoted and strengthened"*[10].

The present Report contributes to the implementation of Action 18 of the EU Citizenship Report 2010, in that its aim is to promote that Member States fully enforce the voting rights of EU citizens in the Member State of residence and that they duly inform EU citizens of their electoral rights[11]. To this end, the Report assesses the awareness and the use of the electoral rights of EU citizens in municipal elections and it focuses on the information measures put in place by the Member States in compliance with the provisions of the Directive. It also highlights best practices in the Member States in conducting information campaigns and initiatives to encourage EU citizens who are non-nationals to take part in institutional and political life at local level.

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6 Article 2 of the Treaty on European Union (TEU).

7 Article 10(3) of the Treaty on European Union (TEU).

8 Report on the European elections COM(2010)605.

9 Source: questionnaire sent to the Member States on 10 January 2011 (hereinafter: "questionnaire").

10 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Delivering an area of freedom, security and justice for Europe's citizens - Action Plan Implementing the Stockholm Programme - COM/2010/0171 final.

11 In the EU Citizenship Report 2010 "Dismantling the obstacles to EU citizens' rights" - COM(2010)603 final -, the Commission outlined 25 concrete actions to be taken with a view to removing persistent obstacles preventing citizens from effectively exercising their rights under EU law in various roles in their daily lives, including as political actors. According to action 18, the Commission asks Member States "*to ensure that voting rights of EU citizens in their Member State of residence are fully enforced, that EU citizens can be members of or found political parties in the Member State of residence and that Member States duly inform EU citizens of their electoral rights*".

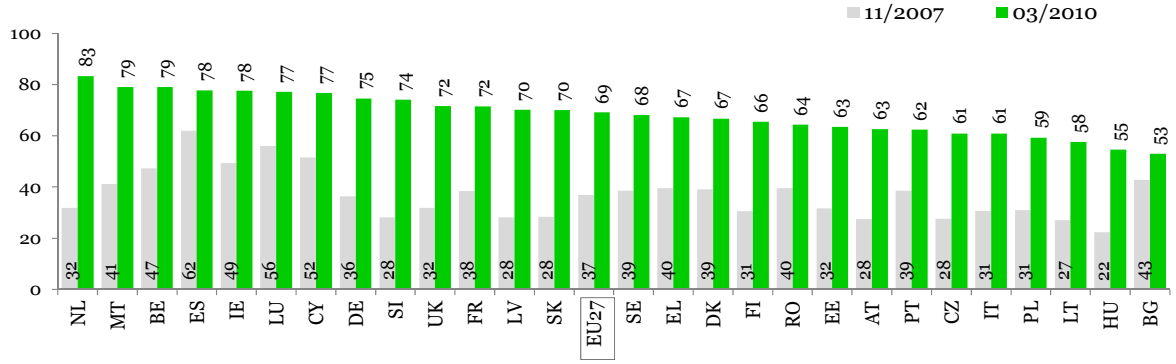
2. AWARENESS AND PARTICIPATION

2.1. The awareness of the electoral rights in the European Union

As indicated by the statistics of the latest Eurobarometer surveys conducted by the European Commission[12], the majority of the citizens in the Member States are aware of the right to vote and to stand as a candidate in municipal elections in their Member State of residence. The awareness of electoral rights at the local level has increased significantly in four years in all Member States. At EU level, the average percentage of the citizens who are aware of such rights has almost doubled from 37% (2007) to 69% (2010). The lowest average has increased from 22% (2007) to 53% (2010), the highest one from 62% (2007) to 83% (2010).

Awareness of electoral rights that a citizen of the EU has, 2007-2010

A citizen of the EU living in [OUR COUNTRY], has the right to vote or to stand as a candidate in municipal elections - True



Q1(2010). For each of the satements which I am going to read out, please tell me if this is true or false:
Q4(2007). In fact, all citizens of the EU Member States are "citizens of the European Union". In your opinion, what rights does a citizen of the European Union have?
Base: all respondents, % by country
Correct answers shown

Source: Flash Eurobarometer nr. 292.

In recent years, the European Commission has contributed to a large extent in informing EU citizens about their electoral rights and has encouraged them to participate actively in the democratic life of the Union. The Programme "Fundamental Rights and Citizenship" 2007-2013 has contributed to developing actions aimed at promoting information and civic education initiatives to increase turnout in elections. During the period 2007-2010, 12 projects concerning active participation in the democratic life of the Union have been financed and grants have been awarded for an amount of more than EUR 3,8 million[13]. This thematic priority continues to be included in the Work Programme of 2011[14].

Recently, the European Commission proposed to designate 2013 as the "European Year of Citizens"[15]. The European Year would contribute to raising the awareness of the EU citizens about their right to move and reside freely within the European Union and, more generally, of the broad range of rights available to them under Union law in a cross-border context, including electoral rights.

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12 Flash Eurobarometer No 292.

13 Information available on the link: http://ec.europa.eu/justice/fundamental-rights/programme/

14 Commission Decision of 3 December 2010 on adopting the 2011 work programme for the specific programme Fundamental Rights and Citizenship - C(2010)8378.

15 COM(2011) 489 final.

Several Member States adopted targeted measures to inform EU citizens of their electoral rights in municipal elections, albeit by different means[16]. In particular, Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Spain and Sweden have adopted the practice of sending polling cards or individual letters containing information on the electoral proceeding by post to the citizens concerned. As regards actions taken at national level, several Member States, such as Czech Republic, Denmark, Greece, Italy, Latvia, Lithuania, Poland and Slovakia, have provided information via the official website. Germany and United Kingdom activated a dedicated "helpline". In Cyprus, France, Ireland, Luxembourg, Portugal and Romania, information has been provided by printed publications or the local press.

2.2. Voter turnout in local elections

The participation of non-nationals EU citizens in the democratic life of their Member State of residence needs to be assessed in the broader context of the overall turnout.

As regards the last recent municipal elections held in the big cities, mainly the capitals, of the Member States, in seven Member States the turnout rate was between 50 and 60 percent[17]. The turnout was lower than 50% in ten of these municipalities[18]. Overall, there are twenty Member States where more than a third of eligible voters did not participate in the last local elections held in the capitals[19]. Participation in other cities than capitals, depending on size, is even lower[20]. While generally the turnout in the local elections is higher than in European elections, exceptions can be found in some cases such as Athens, Budapest, Copenhagen and Riga[21].

Generally, data on the turnout in local elections reveal a tendency for political disaffection of the citizens. Remedying the 'democratic deficit' remains a challenge for the Member States and the European institutions as well as for the elected local authorities across the Union.

Some empirical factors depressing turnout are common to several Member States. A negative correlation between population size and turnout was found in local elections. In the very small towns the interest in local politics is bigger since the possibility to influence decision-making is perceived as stronger. This tendency seems to have as an exception the case of the big capitals, where a broader involvement of the population is noted in comparison to the other cities. It could be assumed that when local elections are held concomitantly with national elections, turnout can be boosted. Local presence of national parties incentives individuals who follow these parties to vote in local elections[22]. Lastly, in many cases non participation is

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16 Source: questionnaire.

17 Amsterdam: 51,38%; Lisbon: 53,44%; Copenaghen: 54,42%; Paris: 56,93%; Dublin: 57,77%; Helsinki: 58,87; Riga: 58,92; Berlin 60.2% (Berlin is a City-State, thus municipal elections are state elections at the same time. This explains the high turnout. Isolated municipal elections in Germany have turnouts as low as 25%, even in big cities).

18 Bucarest: 31,06%; Bratislava: 33,55%; Sofia: 37,85%; Vilnius: 42,28%; Athens: 43,04%; Budapest: 43,59%; Prague: 44,43%; Ljubljana: 44,79%; London: 45,30%; Warsaw: 48,27%.

19 Source: questionnaire.

20 Ostrava (Czech Republic): 35,39%; Lille (France): 48,83%; Stuttgart (Germany): 48,7%; Pecs (Hungary): 33,24%; Galway (Ireland): 49,89%; Rotterdam (the Netherlands): 47,9%; Krakow (Poland): 35,37%; Maribor (Slovenia): 43,38%; Trnava (Slovakia): 29,35%; Salford (United Kingdom): 33,50%.

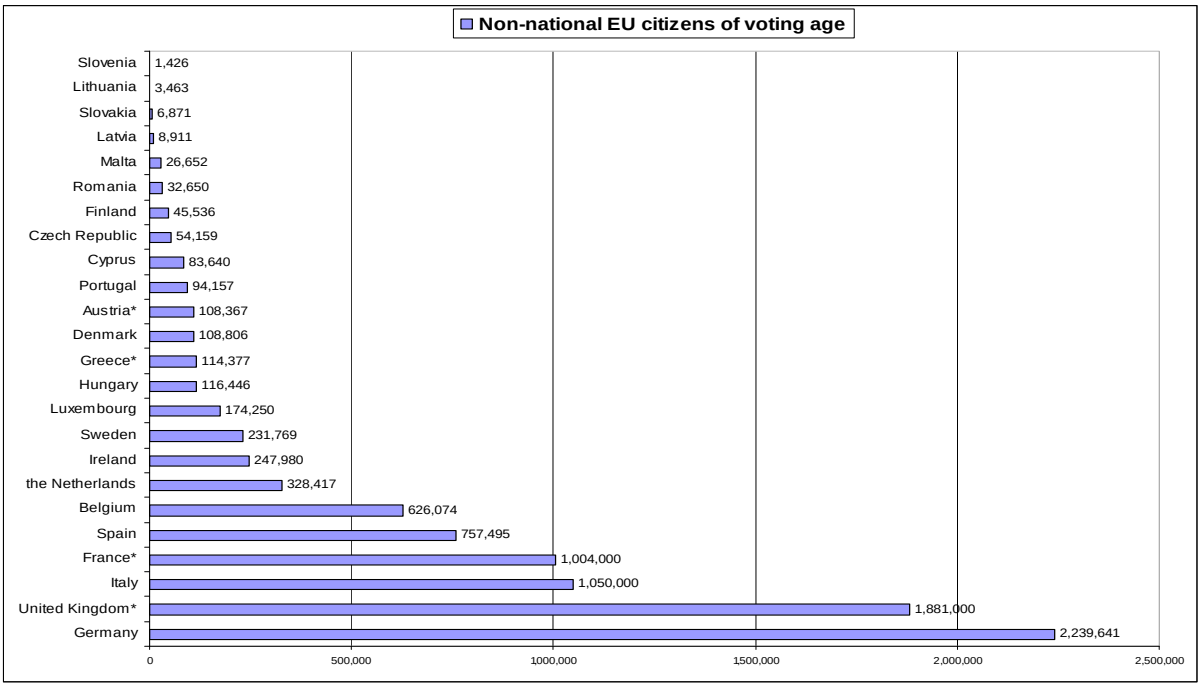
21 Hereinafter, turnout in the last local/European elections in the mentioned capital cities. Athens: 43,04%/45,6%; Budapest: 43,59%/44,91%; Copenhagen: 54,42%/61,1%; Riga: 58,92%/59,13%.

22 In UK, local elections turnout in 2009 was 39,1% and 39,9% in 2008; turnout in local elections of 2010, held jointly with general elections, was 62,2%. In Germany, mayoral elections turnout in Koblenz of 2002 was 51,3%; in 2009, when mayoral elections were held jointly with federal elections, turnout was

related to logistical circumstances such as the absence of alternative voting procedures (advance voting, postal voting etc.) which allow voters who may be unable to participate on the elections still to cast a ballot.

2.3. Participation of non-nationals EU citizens in municipal elections in their Member States of residence

At the end of 2010, more than 8 million EU citizens of voting age resided in a Member State other than their own. The largest number was recorded in Germany, United Kingdom and Italy, followed by France, Spain and Belgium. This means that 8 million of EU citizens could vote in municipal elections in their Member State of residence.



** Partial data. UK provided data on all non-national EU citizens resident. France: data available refer to the previous Report. Greece provided data on non-national EU citizens resident over 20 years old. Austria provided data only referring to the capital. Data on Bulgaria, Estonia and Poland are not available.*

In comparison with the data in the first Report issued in 2002[23], in several Member States there was a significant increase in the number of non-nationals EU citizens of voting age who reside in Member State other than their own. Specifically the figures were as follows: in Italy, from 56.000 to 1.050.000; in Germany, from 1.521.000 to 2.239.641; in Greece, from 16.000 to 114.377; in Ireland, from 76.000 to 247.980; in Denmark, from 32.000 to 108.806; and in Portugal, from 26.000 to 94.157[24].

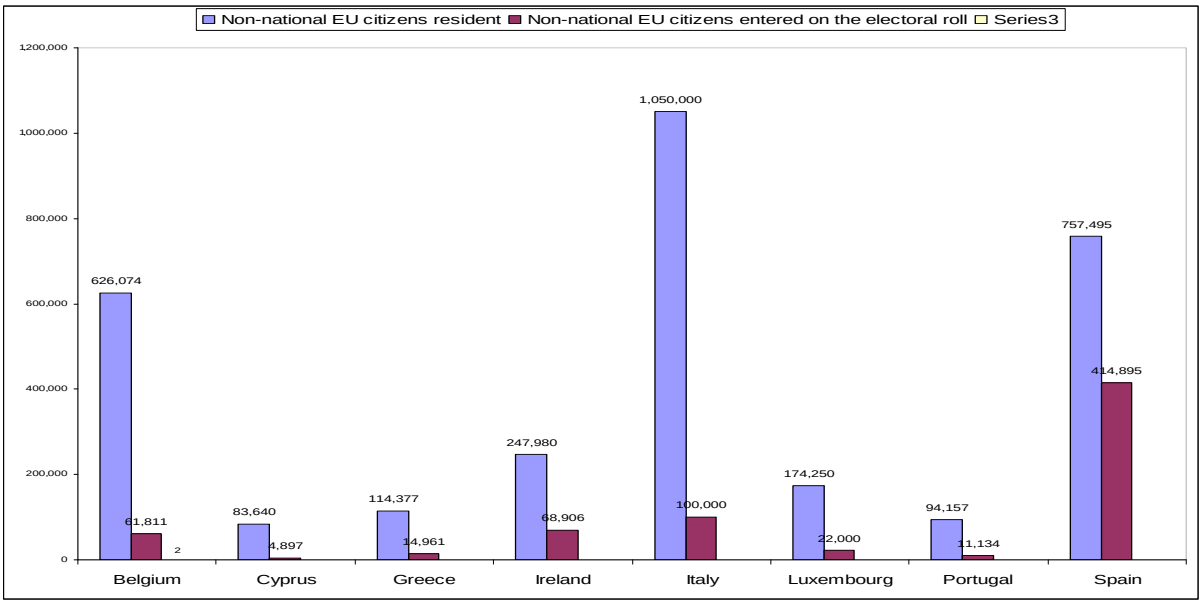
Despite this significant increase in the number of non-nationals EU citizens of voting age who reside in a Member State other than their own, only a relatively low number of these citizens actually exercised their electoral rights in the municipal elections that have been held in recent years in their State of residence.

66,7%. In Italy, turnout in local elections in Rome of 2006, was 65,98%; in 2008, when local elections were held jointly with general elections, turnout was 73,66%.

23 COM(2002)260.

24 Source: questionnaire.

In order to participate in municipal elections, the individual has to be registered on the electoral roll. The detailed procedures for registration vary from one Member State to another[25]. In those Member States where registration is not automatic, the data provided show that only an average of 10% of resident non-national EU citizens asked to be entered on the electoral rolls[26].



Member States with a non automatic system of registration
(data on Bulgaria, Czech Republic, France, Poland and UK are not available)

It can be noted that a clear dominance of a specific national community with respect to the total number of non-national EU citizens resident in a Member State corresponds in some cases to a high participation of this community in local elections. This is the case of Ireland, Spain and Sweden[27].

No data are available on the percentage of the resident non-national EU citizens who actually voted after being entered on the electoral rolls; once entered on the electoral roll, there is no distinction between national and non-national voters. Member States generally do not collect

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25 In Austria (except Burgenland), Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovakia, Slovenia and Sweden all residents, including non-national EU citizens, are entered automatically on the electoral rolls.

26 In the questionnaire, Member States have been requested to provide for: data concerning the last municipal elections where they are organised on one Election Day at national level; data available for recent municipal elections dating back to the last three years, in other cases.

27 In Ireland, the percentage of non-national EU citizens registered reached approximately 25%. British citizens represent 25% of the total number of non-national EU citizens and 74% of them registered to vote. They are particularly involved in Irish political life given that, on the basis of reciprocity, they can vote for the elections to the *Dáil Éireann* (Lower House of Parliament) in the same way as Irish citizens can vote in parliamentary elections in the UK. In Spain the percentage of non-national EU citizens registered is above 50%. The vast majority of British and German citizens, who represent together 18,5% of the total number of non-national EU citizens, registered to vote. Another possible reason for this relatively high proportion is that Spain is the only Member State, among those who have adopted a non automatic system of registration, to send an individual letter containing information on the electoral proceedings to all EU non-national citizens. Furthermore, in Ireland and Spain non-nationals EU citizens were already able to vote in municipal elections, under certain conditions, before the Directive entered into force. Lastly, in Sweden, Finnish citizens represent 27,5% of the total number of non-national EU citizens, turnout of whom in the last local elections has been estimated around 30%.

such data so as to avoid discrimination. Very few data are available on the number of non-national EU citizens who stand as candidates and who are elected. In particular, Austria, Czech Republic, Germany and Sweden have highlighted the difficulties encountered in gathering these data from the local authorities due to the absence of a single contact point, as already highlighted in the last Report on the European elections[28].

The highest percentage of non-national EU citizens elected in relation to those who stand as candidates was indicated by France (32,8%) and Sweden (17,1%). Austria, Luxembourg and Spain indicated a significant number of non-national EU citizens elected.

3. TRANSPOSITION AND IMPLEMENTATION

3.1. The state of play of the transposition of Directive 94/80/EC

The present Report assesses for the first time the national legislation adopted by the Member States which have joined the EU since 2004, as well as those national legislations in the other Member States which have entered into force since the 2002 Report.

It should be mentioned that the Report also covers the new legislation which has so far been communicated only via a questionnaire, but not yet formally notified to the Commission[29].

On the basis of the national transposition measures communicated by the Member States, the level of transposition of the Directive in the legislation of all the Member States can be considered satisfactory. Nevertheless, some issues of incorrect or incomplete transposition have to be addressed in order to avoid incorrect implementation, which would represent an obstacle to the full exercise of electoral rights.

In some Member States[30] the provisions of Article 3 and 4 of the Directive[31] seem to have been incorrectly transposed: in these Member States, EU non-national citizens are granted the right to vote or stand as a candidate in municipal elections only after a minimum period of residence, without such requirement being imposed on nationals. Furthermore, this legislation does not provide for the possibility that, if the right to vote is conditional upon a minimum period of residence, non-national EU citizens must be deemed to have fulfilled this requirement, including if they resided during such period in any other Member States, outside their Member State of residence.

One Member State provides that a voter must submit his/her application to be registered in the electoral roll within 30 days of the acquisition of the eligibility to vote. This appears to

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28 COM(2010)605.

29 Austria, Cyprus, Lithuania, Luxembourg and Slovenia.

30 The Commission is currently looking into the cases of Lithuania and Slovenia. The Slovenian authorities have recently informed the Commission they agree to amend their domestic legislation to ensure full compliance with Directive.

31 Article 3 of the Directive guarantees the right to vote and to stand as a candidate in municipal elections in the Member State of residence for non-national EU citizens who satisfy the same conditions in respect of such rights as that State imposes by law on its own nationals. Article 4 lays down that when the nationals of the Member State have been required to spend a certain minimum period as a resident in the territory of that State, voters and persons entitled to stand as candidates in municipal elections shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States.

constitute discrimination between nationals and non-nationals EU citizens. The *dies a quo* of the mentioned time-limit is different: for nationals it runs from the date of voting age acquisition; for non-national it runs from the date of registration as resident. The consequences of the concerned provision seem different for nationals and non-national EU citizens[32].

Article 7 provides that each EU citizen shall exercise his/her right to vote in municipal elections in the Member State of residence if he/she has requested that right. Most of the Member States (Austria, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovakia, Slovenia and Sweden) adopt a more favourable system of automatic registration on the electoral roll. This allows citizens to vote without having to submit an application to be registered within an imperative deadline.

Member States have to fulfil certain duties set out in the Directive which are aimed at facilitating the registration of EU citizens on the electoral roll[33]. Following individual complaints received from citizens, the Commission was in contact in 2010 with two Member States where EU citizens employed by international bodies located were confronted with obstacles in the exercise of their electoral rights. National law did not allow those residing citizens to be registered to vote in the elections. Following contacts with the Commission, these Member States have recently amended their legislation and removed the obstacles identified[34].

When an EU citizen entitled to stand as a candidate submits his/her application, he/she shall produce the same supporting documents as a candidate who is a national citizen. A limited number of optional documents may be required by the Member States other than a formal declaration stating his/her nationality and his/her address in the Member State of residence[35]. The Commission regards as not being in conformity with the Directive any national legislation according to which it is always required to submit a certificate from the home Member State attesting that the citizen has not been deprived of the right to stand as a candidate. According to the Directive, such a certificate can be requested only in case of doubts about the authenticity of the declaration. This constitutes an additional burden on non-national citizens with regard to the exercise of the right to vote. Furthermore, requiring the reference number of the residence certificate does not appear to be in compliance with the Directive[36].

The Directive requires that the Member State of residence must inform non-national EU citizens of the conditions and detailed arrangements for the exercise of his/her electoral rights in municipal elections "in good time and in an appropriate manner". In particular, a non-

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32 The Commission is currently looking into the case of Cyprus.

33 Under Article 8 of the Directive, a) Member States shall take the necessary measures to enable a voter to be entered sufficiently in advance in respect of the polling day; b) non-national citizens who request to be entered on the electoral roll shall produce the same documents as those requested for a national; c) the Member State may require a non-national citizen to produce a valid identity document, along with a formal declaration stating his/her nationality, and his/her address in the Member State of residence.

34 Law nr. 1545 of 21/12/2010 of Denmark and Law nr. 1843/2010 of Sweden.

35 Declaration that he/she has not been deprived of the right to stand as a candidate in his/her home Member State; in case of doubt, a certificate from the home Member State to the effect that he/she has not been deprived of the right to stand as a candidate; a valid identity document; formal declaration that he/she holds no office which is incompatible; declaration indicating the last address in the home Member State.

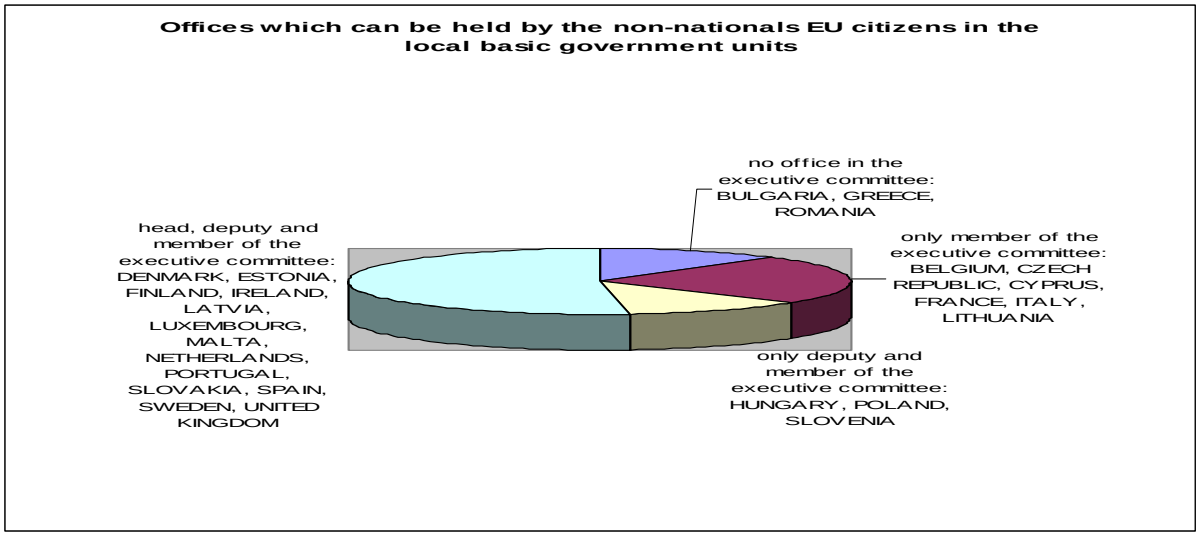
36 The Commission is currently looking into the case of Bulgaria.

national EU citizen has the right to be informed of the actions taken regarding his/her application for entry on the electoral roll or to stand as a candidate. In some Member States[37] no specific provision has been laid down by the transposing national law as regards the obligation to inform the citizens concerned of the actions taken. In the event that the request to be entered on the electoral roll is refused or the request to stand as a candidate is rejected by the Member State of residence, the Directive also lays down the right of the EU citizens to be informed about their entitlement to legal remedies as provided for national citizens. In some cases the national law does not include expressly this provision[38]. In several Member States[39] the national law of transposition does not include expressly the provision of the Directive concerning the obligation for the Member States to inform voters and persons entitled to stand as candidates in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the electoral rights. Nonetheless, all these Member States have communicated actions and institutional initiatives aimed at informing citizens of the exercise of their electoral rights carried out in the last municipal elections, thereby ensuring that those provisions of the Directive are implemented.

3.2. Analysis of provisions adopted by the Member States, pursuant to Article 5(3)(4) of Directive aimed at restricting some functions to national citizens

The outcome of the right to vote and the right to stand as a candidate in municipal elections in the Member State of residence, as provided by the Directive, is that an EU citizen can become an elected member of a municipal council and can become a mayor in a Member State of which he/she is not a national citizen.

The Directive provides the possibility for the Member State to restrict a number of offices in the local administration to its own nationals, namely those related to the executive of the municipality (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/her mandate or for the temporary or interim performance of the functions.



** Austria and Germany are federal Republic; provisions differ on the basis of the* land *of reference.*

37 Bulgaria, Cyprus, Czech Republic, France, Poland, Romania, Slovakia, Spain.

38 France, Slovakia, Spain.

39 Belgium, Bulgaria, Czech Republic, France, Italy, Latvia, Poland, Romania, Slovakia, Slovenia, Spain.

Denmark, Estonia, Finland, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Spain, Sweden and United Kingdom currently do not apply any restrictions, thus non-national EU citizens may be nominated as head, deputy or member of the executive committee of a basic local government unit. Three Member States[40] restricted to their nationals only the office of head of the local administration. In six other Member States[41] non-national EU citizens cannot even hold the office of deputy but they can hold the office of member of the executive committee. Lastly, other Member States[42] applied all restrictions under the Directive and therefore non-national EU citizens cannot even hold the office of member of the executive committee.

The Commission is analysing these aspects of the Directive for the first time in the present Report. The Commission considers that the less restrictive legislations can contribute more efficiently to the integration of the citizens and to their involvement in the democratic life of the Member State of residence.

3.3. Update concerning the annex to the Directive: "Basic local government units" in the Member States

The Directive contains an Annex with the list of denominations of "basic local government units" in each Member State, within the meaning of Article 2 (1) (a) thereof[43]. The list of "basic local government units" identifies the scope of the Directive, i.e. the application of the provisions thereof. In this respect, it is essential that this list is kept up-to-date.

This Annex was amended in 2003[44] (in view of the accession of 10 Member States in 2004) and in 2006[45] (in view of the accession of two Member States in 2007) in order to add the denomination of the "basic local government units" of these Member States.

Furthermore, a few Member States have recently notified the Commission of their new legislation changing the denomination of the basic local government units within the meaning of the Directive[46]. The Commission has invited all Member States to formally notify any new legislation communicated in this regard.

4. DEROGATION PURSUANT ARTICLE 22(1) OF THE TFEU

Article 22(1) of the TFEU provides that the Directive may provide for derogations from general rules where justified by a situation specific to a Member State.

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40 Hungary, Poland and Slovenia.

41 Belgium, Cyprus, Czech Republic, France, Italy and Lithuania.

42 Bulgaria, Greece and Romania.

43 Article 2(1)(a) of the Directive defines 'basic local government unit' as 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.

44 Act concerning the conditions of accession of Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 334).

45 Council Directive 2006/106/EC (O. J. L 363, 20/12/2006 p. 0409–0410).

46 Denmark, Greece and Latvia.

Article 12 of the Directive permits the introduction of exceptions to the principle of equal treatment where this is justified by problems specific to a Member State. A Member State where the proportion of EU citizens of voting age who reside in, but are not nationals of, that State exceeds 20% of the total number of EU citizens residing there who are of voting age may require a minimum period of residence, both from voters and from candidates, or take measures with regard to the composition of the lists of candidates, in order to facilitate the integration of non-nationals and to avoid polarisation between lists of "national" and "non-national" candidates.

Luxembourg is the only Member State that meets this specific condition and it has availed itself of this derogation by restricting the right to vote to non-national EU citizens who have had their legal domicile in the territory of Luxembourg and have resided in the territory for at least five years before registration[47]. Regarding the right to stand as a candidate, Luxembourg requires that non-national EU citizens must also have resided there at least five years before submitting the application[48].

The Commission requested[49] the Luxembourg authorities to submit the most recent information concerning the number of EU citizens of voting age who reside in Luxembourg but are not nationals of it, and the total number of EU citizens of voting age who reside in Luxembourg.

According to data provided by Luxembourg authorities, the number of non-national EU citizens of voting age residing in Luxembourg was 174.250. The total number of EU citizens of voting age residing there was 406.300. It follows that the proportion between the former and the latter was 42,9%, beyond the threshold of 20% set by Directive.

Thus, the grant of a derogation to Luxembourg is still warranted.

By the law of 13 February 2011, Luxembourg extended the right to stand as a candidate to the third country nationals who reside there. Following the entry into force of this law all non national citizens can hold the office of head or member of the executive committee of a basic local government unit.

Article 12(2) lays down that Belgium may apply restrictions provided by the Directive 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. Belgium has never invoked the derogation foreseen by Article 12(2) of the Directive.

Under Article 12(3) where 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 the Directive, refrain from applying Articles 6 to 11 in respect of such persons. No Member State has invoked the derogation foreseen by Article 12(3)[50].

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47 Article 2 of the law of 18/02/2003.

48 Article 192 of the law of 18/02/2003.

49 Letter of 11 February 2011.

50 Under Article 12(3) where 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

5. FURTHER EFFORTS TO ENFORCE THE ELECTORAL RIGHTS AND THE INVOLVEMENT OF CITIZENS IN THE DEMOCRATIC LIFE

5.1. Right to become member or to found political parties in the State of residence

In accordance with the principle of non-discrimination, EU citizens should enjoy electoral rights under the same conditions as nationals of the Member State where they reside. This means that EU citizens must be able to take part fully in the political life of the Member State of residence, with particular reference to affiliation to existing political parties or even the founding of new ones.

In line with the actions announced in the EU Citizenship Report 2010 aimed at ensuring that conditions for non-national EU citizens are the same as for national citizens, the Commission has recently been in contact with the Member States where the national legislation limits the possibility for non-national EU citizens to become members of a political party or to found one[51]. As already highlighted in its most recent Report on the European elections[52], the Commission considers that such restrictions in the national laws constitute an obstacle to the exercise of the electoral rights of EU citizens. In cases where such limitations are not removed, the Commission will make use of the powers conferred on it by the Treaties, in order to ensure compliance with the Directive.

5.2. Good practices in promoting participation of non-national EU citizens

The Commission stresses the importance of the actions and initiatives aimed to promoting and encouraging participation of the EU citizens in the democratic life of the State of residence.

Some good practice has already been put in place in some Member States which could be taken as an example. This is the case of Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Spain and Sweden which have adopted targeted measures to inform EU citizens of their right to vote and stand as candidates in municipal elections, which consist in sending by post individual letters or polling cards containing information on the electoral procedures.

In this context, the conducting of an awareness campaign specifically targeted at young people at school, as was done in Luxembourg, is to be regarded as an effective instrument for encouraging participation in municipal elections. The school is a central point of reference in the life of the local community, particularly for first time voters, as well as a key actor for integration and civic education.

The Directive stipulates that Member States where voting is not compulsory may adopt a system of automatic registration of voters. This already happens in Austria (except Burgenland), Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Romania, Slovakia, Slovenia and Sweden. The Commission considers favourably the practice of automatically recording non-national EU citizens on the electoral roll at the same time as their registration as a resident. This practice would avoid placing an

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voters, the first Member State may, by way of derogation from the Directive, refrain from applying Articles 6 to 11 in respect of such persons.

51 The Commission is currently looking into the cases of Czech Republic, Germany, Greece, Lithuania, Latvia, Poland, Slovakia and Spain. Finland has already announced that existing limitations in this respect shall be removed from its legislation.

52 COM(2010)605.

additional burden on citizens who want to exercise their right to vote, given that they are not required to submit a further application to be registered within a peremptory time-limit.

For the Member States which adopt a non automatic system of registration on the electoral rolls, the Commission considers good practice not to set a peremptory time-limit for applying for registration. This is the case of Italy. It is in the very final phase of the election campaign that citizens are more involved in political discussions and therefore decide to exercise the right to vote themselves. Consequently, to set a peremptory time-limit for registration on the electoral roll that expires well before the end of the electoral campaign could exclude those citizens who decide to vote at the last moment.

6. CONCLUSIONS

Comparing data provided in the first Report with data gathered via the questionnaire in 2011, the number of EU citizens of voting age residing in a Member State other than their own has increased from 4,7 million (2000) to 8 million (2010), mainly due to enlargement[53]. The number of non-national EU citizens who actively participate in the democratic life at local level does not seem to have grown in proportion as a result, at least in terms of their request to be registered on the electorall rolls.

Turnout in the different types of elections has become a challenge for European democracies. Legitimacy obtained through free and universal elections is the foundation of the democratic governance. The level of participation in the elections is a critical indicator of the quality of democracy. For these reasons, remedying political disaffection has to be mantained as a high priority on the agenda of the Union and the Member States. Renewed efforts must be made to provide citizens with targeted information about their electoral rights and the administrative procedures to be fulfilled to exercise them. All initiatives aimed at strengthening the awareness of electoral rights and at encouraging participation in local elections are to be considered as a useful and effective support, including participation in the programmes managed by the Commission, as above indicated in chapter 2.1.

The Commission will continue working in close cooperation with the Member States in order to monitor the correct transposition and implementation of the Directive and to help Member States adopt all the necessary measures to ensure the full exercise of electoral rights, while removing obstacles to the right to be informed in good time and in an appropriate manner of their electoral rights. The proposal for an European Year for Citizens in 2013 represents a real opportunity to enhance the efforts to encourage participation at elections, with the involvement of the interested national and local autorithies, as well as key stakeholders shaping the political life of the Member States and their citizens.

To this end, the Commission intends to make use of an informal platform of cooperation aimed at facilitating a direct dialogue between the Commission, the Committee of the Regions and national associations of local and regional authorities. This platform will allow the Commission to identify any ongoing difficulties encountered by local authorities in implementing EU citizens' electoral rights and to directly draw on the ideas and expertise of these authorities and the best practices they have developed, with a view to enhancing the effective exercise of these rights on the ground.

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[53] About 40% are nationals from Member States which have joined the EU since 2004.