

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.08.2005
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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL

on granting a derogation pursuant to Article 19(1) of the EC Treaty, presented under Article 12(4) of Directive 94/80/EC on the right to vote and stand as a candidate in municipal elections

1. PURPOSE OF THE REPORT

Council Directive 94/80/EC[1] lays down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections for citizens of the Union residing in a Member State of which they are not nationals[2].

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 in which it shall check whether the grant to the Member States concerned of a derogation pursuant to Article 19(1) of the Treaty establishing the European Community is still warranted and shall propose that any necessary adjustments be made.

2. RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT MUNICIPAL ELECTIONS

Every citizen of the Union has 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.[3]

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(1) provides that every non-national citizen of the Union has the right to vote and to stand as a candidate in municipal elections 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 to stand as a candidate at municipal elections were laid down in 1994 by the abovementioned Directive. Article 3 stipulates 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,

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1 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), as amended by Council Directive 96/30/EC of 13 May 1996 (OJ L 122, 22.5.1996, p. 14) and adapted by Act of Accession of 16 April 2003 (OJ L 236, 23.9.2003, p. 334), hereinafter referred to as "the Directive".

2 Hereafter referred to as "non-national citizens of the Union".

3 Article 40 of the Charter of Fundamental Rights of the European Union (OJ C 364, 18.12.2000, p. 1).

shall have the right to vote and to stand as a candidate in municipal elections in the Member State of residence in accordance with the Directive.

In general, the Directive does not allow the Member State of residence to require that non-national Union citizens must reside a certain minimum period in the territory of that Member State before being entitled to vote or stand as a candidate, if there is no similar requirement for their own nationals. In addition, non-national citizens of the Union are in such a case deemed to have fulfilled a condition of residence for a minimum period in the territory of the Member State of residence where they have resided for an equivalent period in other Member States, c.f. Article 4(1).

3. DEROGATIONS UNDER ARTICLE 12 OF THE DIRECTIVE

The Directive permits derogations from the general rules. The derogations must be justified by virtue of problems specific to a Member State. Article 12(1) provides that 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 the Directive:

(a) restrict the right to vote to voters within the scope of Article 3 of the Directive 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;

(b) restrict the right to stand as a candidate to persons entitled to stand as a candidate within the scope of Article 3 of the Directive 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.

Article 12(2) provides that the Kingdom of Belgium may, by way of derogation from provisions of the Directive, apply the provisions of Article 12(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.

Article 12(3) 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 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 11 in respect of such nationals.

4. DEROGATION APPLIED

Luxembourg is the only Member State that has availed itself of a derogation on the basis of Article 12(1). Luxembourg restricts the right to vote to non-national citizens

of the Union who have had their legal domicile in the territory of Luxembourg and have resided in its territory at least five years before registration.[4] Regarding the right to stand as a candidate, Luxembourg requires non-national citizens of the Union to have resided there also at least five years before submitting the application.[5]

Members of the municipal council are elected for a term of six years.[6] Thus the minimum period of residence required for entitlement to vote is shorter than the term for which the representative council of municipality is elected, and complies with the Directive. The same applies to the minimum period for residence as regards the right to stand as a candidate: it is shorter than "twice the term for which the representative council of the municipality is elected".

As regards Article 12(2), Belgium has never communicated any local government units for which it would apply a derogation.

5. EVALUATION OF THE CIRCUMSTANCES FOR GRANTING A DEROGATION

The circumstances described in Article 12(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 12(4) provides that Member States which invoke derogations under paragraph 1 must furnish the Commission with all the necessary background information. The Commission requested[7] 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.

According to data provided by the Luxembourg authorities, the number of non-national citizens of the Union residing in Luxembourg was 133 831. The total number of citizens of the Union of voting age residing in Luxembourg was 356 274.

It follows that the proportion of non-national citizens of the Union of voting age residing in Luxembourg was 37.6% of the total number of citizens of the Union of voting age residing there. The proportion is clearly higher that the threshold laid down in the Directive, i.e. 20%.

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4 Article 2, Loi électoral du 18 février 2003.
5 Article 192, Loi électoral du 18 février 2003.
6 Article 186, Loi électoral du 18 février 2003.
7 Letter of 30 August 2004.

As far as the derogation pursuant to Article 19(1) of the Treaty and to Article 12(2) of the Directive is concerned, the situation in Belgium – although it never has invoked the derogation yet – connected with specific features and balances linked to the fact that its Constitution provide for three official languages and a territorial division into regions and communities, has not changed.

6. CONCLUSIONS

The Commission concludes that the circumstances warranting the granting to Luxembourg of a derogation pursuant to Article 19(1) of the Treaty and to Article 12(1) of the Directive still apply as the grounds for justifying the derogation are still valid.

The Commission concludes that the circumstances warranting the granting to Belgium of a derogation pursuant to Article 19(1) of the Treaty and to Article 12(2) of the Directive still apply as the grounds for justifying the derogation are still valid.

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