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COM(2021) 732 final

2021/0372 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for Union citizens residing in a Member State of which they are not nationals (recast)**

{SEC(2021) 576 final} - {SWD(2021) 357 final} - {SWD(2021) 358 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

It is important to ensure that mobile EU citizens can fully exercise their EU citizenship rights in the context of the next elections to the European Parliament.

Democracy is one of the values on which the European Union is founded. Every citizen has the right to participate in the EU's democratic life and decisions are to be taken as openly and as closely as possible to the citizen. EU citizens are directly represented in the European Parliament.

EU citizenship entails specific democratic rights. EU citizens who have exercised their right to live, work or study in a Member State of which they are not a national ('mobile EU citizens') have the right to vote and stand as a candidate in elections to the European Parliament in their Member State of residence.

Council Directive 93/109/EC lays down the detailed arrangements for the exercise of their electoral rights in elections to the European Parliament in their Member States of residence.

In the EU Citizenship Report 2020<sup>1</sup>, the Commission expressed its intention to propose an update of Council Directive 93/109/EC on the right of mobile EU citizens to vote and stand as candidate in elections to the European Parliament. The aim is to facilitate the provision of information to citizens and improve the exchange of relevant information among Member States, including to prevent multiple voting. The Commission Work Programme for 2021 announced a legislative initiative to improve the electoral rights of mobile EU citizens.

Despite the measures currently in place, mobile EU citizens still face difficulties in exercising their electoral rights in elections to the European Parliament. Problems include difficulties in obtaining correct information on how to vote and stand as candidate, burdensome registration processes, and the effect of deregistration from elections in the Member State of origin. Specifically, the information exchange between Member States on registered voters and candidates in order to prevent multiple voting in elections to the European Parliament is being hindered by an inconsistent scope and deadlines for data exchange and collection.

This initiative updates, clarifies and strengthens the existing rules to address the difficulties faced by mobile EU citizens, with the aim to ensure broad and inclusive participation in the 2024 elections to the European Parliament, support mobile EU citizens in the exercise of their rights and protect the integrity of elections.

This proposal builds on long-standing and regular exchanges with Member State's competent authorities through the Commission's dedicated implementation group for the directives, the expert group on electoral matters, and two further dedicated joint meetings of the multidisciplinary European Cooperation Network on Elections and the expert group on electoral matters.

This is an initiative under the regulatory fitness and performance programme (REFIT).

#### **• Consistency with existing policy provisions in the policy area**

A New Push for European Democracy is a priority of the Commission as announced by President von der Leyen in the Political guidelines of the Commission 2019-2024<sup>2</sup>.

The European Democracy Action Plan<sup>3</sup> presented by the Commission on 3 December 2020 announced the Commission's intention to reinforce the protection of electoral processes and

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<sup>1</sup> COM/2020/730 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0730>.

<sup>2</sup> [political-guidelines-next-commission\\_en\\_0.pdf \(europa.eu\)](#).

propose a new EU operational mechanism to strengthen cooperation between Member States and regulatory authorities. All measures proposed are coherent with the objectives inspiring Council Decision 2018/994 on the revision of EU electoral law.

This initiative is also closely related to the proposal to recast Council Directive 94/80/EC of 19 December 1994<sup>4</sup> and to the work being done on the other initiatives in the transparency and democracy package of the Commission Work Programme 2021. This initiative will also be accompanied by a Communication in which one aim is to support electoral participation of mobile EU citizens.

- **Consistency with other Union policies**

The proposal ensures consistency with the EU Single Digital Gateway Regulation<sup>5</sup> regarding access to high-quality information with regard to Union and national rules applicable to citizens exercising or intending to exercise their rights derived from Union law in the field of the internal market and with the ‘Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030’<sup>6</sup> which seeks to guarantee political rights of persons with disabilities on an equal basis with others<sup>7</sup>. It also complements other EU policies related to democracy and the digital world<sup>8</sup>. By seeking equal access to electronic or internet voting solutions for mobile EU citizens, the proposal aims at better protecting their fundamental rights, and enhances overall democratic participation.

The initiative is consistent with EU legislation on data protection.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 20 TFEU establishes Union citizenship. Articles 20(2)(b) and 22(2) TFEU and Article 39 of the EU Charter of Fundamental Rights, provide that citizens of the Union have the right to vote and stand as candidates in elections to the European Parliament in their Member State of residence, under the same conditions as national of that State. Article 22 TFEU provides that the exercise of this right is to be subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament.

Council Directive 93/109/EC sets down those detailed arrangements for the exercise of electoral rights for elections to the European Parliament.

- **Subsidiarity (for non-exclusive competence)**

The electoral rights of mobile EU citizens to participate in elections to the European Parliament are set down in the Treaty on the Functioning of European Union as part of their rights as Union citizens. The legal framework for the exercise of electoral rights by mobile EU citizens involves the interaction of EU and national rules. The Union acts to implement

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<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan, COM/2020/790 final.

<sup>4</sup> 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.

<sup>5</sup> [EUR-Lex - 32018R1724 - EN - EUR-Lex \(europa.eu\)](#).

<sup>6</sup> [EUR-Lex - 52021DC0101 - EN - EUR-Lex \(europa.eu\)](#).

<sup>7</sup> See also UN Convention on the Rights of Persons with Disabilities to which the EU and the Member States are party.

<sup>8</sup> See the European Democracy Action Plan, COM/2020/790 final.

the Treaty principle establishing the electoral rights of mobile EU citizens, in particular through Council Directive 93/109/EC.

Since cross-border matters are beyond the reach of individual Member States, identified problems cannot be addressed by Member States acting individually. Providing common standards and procedures for the right of mobile EU citizens to vote and stand as candidates in elections to the European Parliament and on the exchange of information about the relevant voters and candidates to prevent multiple voting can only be properly achieved at EU level.

- **Proportionality**

The targeted measures proposed do not go beyond what is necessary to achieve the long-term objective of developing and strengthening EU democracy. They improve and refine the framework governing the exercise by mobile EU citizens' electoral rights granted under the Treaties, and better address multiple voting in the context of the elections to the European Parliament by enhancing the current exchange of information system. The proposal therefore complies with the principle of proportionality.

- **Choice of the instrument**

The Council Directive already contains a robust set of norms on the standards and procedures for the exercise of electoral rights by mobile EU citizens. This proposal is intended to provide targeted changes to that Council Directive to address certain identified shortcomings and obstacles that Member States and citizens encounter. Given the necessity to update language, obsolete references and provisions, it is appropriate to recast the Council Directive. Since this proposal is to recast the Council Directive, the same type of legal instrument is the most appropriate.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

A derogation from the 'evaluate first' principle has been applied taking into account the existence of recent reports issued by the Commission. Evidence clearly shows the need for Directive 93/109/EC<sup>9</sup> to be updated, and this is considered sufficient for the evaluation step. Finally, the external study prepared in support of the impact assessment also includes elements of evaluation of the existing legal framework<sup>10</sup>.

- **Stakeholder consultations**

In preparing the current proposal, the Commission has been in close dialogue and consultation with the relevant stakeholders.

The proposal is based among others on an open public consultation<sup>11</sup> of citizens, non-governmental organisations and local and regional authorities, relevant studies including from

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<sup>9</sup> Report on the 2019 elections to the European Parliament and the 2020 Citizenship Report. The Directive has also been amended on one occasion (Council Directive 2013/1/EU of 20 December 2012).

<sup>10</sup> Study conducted in 2021 to support the preparation of an impact assessment on a potential EU policy initiative to support broad and inclusive participation of mobile EU citizens in European Parliament elections and in municipal elections in Europe <https://ec.europa.eu/info/files/study-preparation-impact-assessment-electoral-directives> and its Annexes <https://ec.europa.eu/info/files/annexes-study-preparation-impact-assessment-electoral-directives>.

<sup>11</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12684-Inclusive-EU-Parliament-elections-supporting-EU-citizens-right-to-vote-and-stand-as-candidates-in-another-EU-country/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12684-Inclusive-EU-Parliament-elections-supporting-EU-citizens-right-to-vote-and-stand-as-candidates-in-another-EU-country/public-consultation_en).

the Academic Network on EU Citizenship Rights<sup>12</sup>, and the findings of an external study prepared to support an impact assessment conducted prior to the proposal<sup>13</sup>. In addition, it takes into account feedback received from dedicated stakeholder consultations, including from mobile EU citizens<sup>14</sup>, the European Cooperation Network on Elections<sup>15</sup> and the expert group on electoral matters<sup>16</sup>. This was complemented by conclusions from relevant projects funded under the programmes Rights, Equality and Citizenship<sup>17</sup> and Europe for Citizens<sup>18</sup> and by direct feedback from EU citizens received by the Commission and the European Parliament.

- **Collection and use of expertise**

The proposal was informed by sources of expertise. These sources of information comprised expert consultations with the Commission's expert group on electoral matters and European cooperation network on elections.

Two joint meetings of the European cooperation network on elections and the expert group on electoral matters were hosted on 28 January 2021 and on 10 June 2021. Points discussed in these two joint meetings had already largely been debated in previous meetings and extensively analysed in the Commission's report on the 2019 elections to the European Parliament<sup>19</sup>.

- **Impact assessment**

The proposal is supported by an impact assessment (SWD(2021) 357). Given the similarities between Council Directive 93/109/EC and Council Directive 94/80/EC in terms of both the main beneficiaries (mobile EU citizens) and the rights granted and associated requirements for Member States, the possibilities to improve them and their functioning was assessed in one document. The Regulatory Scrutiny Board issued a positive opinion on the impact assessment (SEC(2021) 576).

The impact assessment examined two alternative policy options for tackling the problems identified. The policy options present a range of potential measures considered to improve the exercise of electoral rights, and to support a fair electoral process by addressing the issue of multiple voting. Specifically, these policy options range from soft, non-legislative measures in

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<sup>12</sup> "Political participation of Mobile EU Citizens-Insights from pilot studies on Austria, Belgium, Bulgaria, Germany, Greece, Hungary, Ireland and Poland".

<sup>13</sup> Study conducted in 2021 to support the preparation of an impact assessment on a potential EU policy initiative to support broad and inclusive participation of mobile EU citizens in European Parliament elections and in municipal elections in Europe <https://ec.europa.eu/info/files/study-preparation-impact-assessment-electoral-directives> and its Annexes <https://ec.europa.eu/info/files/annexes-study-preparation-impact-assessment-electoral-directives>

<sup>14</sup> In order to support the underlying study, a targeted online survey of mobile EU citizens was carried out to evaluate the experiences of mobile EU citizens in participating politically in their Member State of residence, as well as the variety of factors that influence their participation.

<sup>15</sup> The European Cooperation Network on Elections was inaugurated in 2019. It brings together representatives of Member States' authorities with competence in electoral matters, and allows for concrete and practical exchanges on a range of topics relevant to ensuring free and fair elections, including data protection, cyber-security, transparency and awareness raising. See more at [European cooperation network on elections | European Commission \(europa.eu\)](https://ec.europa.eu/elections/european-cooperation-network-on-elections/)

<sup>16</sup> The Expert group on electoral matters was established in 2005. Its mission is to: establish close cooperation between the institutions of the Member States and the Commission on issues relating to elections; to help the Commission by providing information and advice on the situation of electoral rights within the EU and its Member States; and to facilitate the exchange of information, experiences and good practices in this area. [Register of Commission expert groups and other similar entities \(europa.eu\)](https://ec.europa.eu/info/departments/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/previous-programmes-2014-2020/europe-citizens-efc_en)

<sup>17</sup> [https://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index\\_en.htm](https://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index_en.htm) .

<sup>18</sup> [https://ec.europa.eu/info/departments/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/previous-programmes-2014-2020/europe-citizens-efc\\_en](https://ec.europa.eu/info/departments/justice-and-consumers/justice-and-consumers-funding-tenders/funding-programmes/previous-programmes-2014-2020/europe-citizens-efc_en) .

<sup>19</sup> COM(2020) 252 final.

support of awareness raising and enhanced administrative cooperation, to setting common standards for procedures to register mobile EU citizens and the exchange of data to prevent multiple voting. Option 1 provides targeted legislative amendments and soft measures. The aim is to consolidate and clarify existing provisions of the Council Directive.

Option 2 provides for an extensive legislative intervention. While respecting the non-discrimination principle as the basis of the Directive, the second policy option aims to put in place an extensive reform of the Directive by, for example, setting legal requirements on the time-limits for registration. The options were scrutinised as to their effectiveness, efficiency, coherence with other EU policies and subsidiarity and proportionality. Option 2 is considered to be the most effective option in achieving all the envisaged objectives. However, Option 1 is the preferred option for reasons of efficiency, coherence and subsidiarity and proportionality.

- **Regulatory fitness and simplification**

The proposal entails some costs for Member States' and EU administrations arising from increased cooperation, but it is also expected to facilitate efficiencies for authorities due to harmonised processes. Moreover, some Member States already have systems in place that cover the obligations envisaged and would thus not face significant additional costs.

The proposal simplifies the process of registering to vote and to stand as candidates in European elections for mobile EU citizens. It would also reduce their costs compared with the status quo, in which no changes to current provisions would be made.

Under the proposal, no negative economic effects were identified arising from greater integration and democratic participation of mobile EU citizens in their host Member State. Simplifying registration requirements and improving information provision and awareness on voting for mobile EU citizens is expected to have only indirect wider economic impacts insofar as it supports free movement.

The proposal envisages that mobile EU citizens will have equal access to remote and electronic voting possibilities, under the same conditions as nationals of that Member State. Remote voting possibilities facilitate the electoral participation of mobile EU citizens.

The proposal supports optimisation of the technical tool for the exchange of data on registered voters between Member States. This would primarily include a formalised approach to the system supporting the exchange of data that has been operationalised via the encryption tool provided by the Commission, by introducing explicit references to it in Council Directive 93/109/EC. The whole transmission process facilitated by the encryption tool would be further strengthened through the secure transmission of data between Member States, including in case of doubts on individual cases. By doing so, the proposal facilitates the administrative tasks and ICT-related procedures for Member State administrations as main stakeholders.

The digital aspects of the proposal are therefore consistent with the “Digital Check<sup>20</sup>”.

- **Fundamental rights**

Article 2 of the Treaty on European Union (TEU) provides that ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

Article 10(1) and (2) TEU provide that ‘*The functioning of the Union shall be founded on representative democracy*’ and that ‘*Citizens are directly represented at Union level in the European Parliament*’.

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[https://ec.europa.eu/info/sites/default/files/file\\_import/better-regulation-toolbox-27\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/file_import/better-regulation-toolbox-27_en_0.pdf)

Article 26 of the EU Charter of Fundamental Rights states that the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

This proposal pursues the objectives of these provisions, and is thus compatible with and gives effect to the fundamental rights guaranteed by the EU Charter of Fundamental Rights.

This proposal enhances the freedom of movement for EU citizens (Article 45 of the Charter). It also supports equality in their treatment and opportunities to vote compared with nationals in their Member State of residence. Furthermore, it enhances the right to vote and to stand as a candidate in elections to the European Parliament (Article 39 of the Charter) and their right to good administration (Article 41).

#### **4. BUDGETARY IMPLICATIONS**

This proposal does not impose any financial or administrative burden on the EU. Therefore, it has no impact on the EU budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States are to adopt and publish by 31 May 2023 the measures necessary to comply with this Directive. Six months after each election to the European Parliament, Member States are to send to the Commission a report on the application of this Directive. Within 1 year after each European Parliament election, the Commission is to submit to the European Parliament and the Council a report on the application of this Directive. The Commission may propose any amendments that it deems necessary. Within two years after the 2029 elections to the European Parliament, the Commission will also conduct its own evaluation of the performance of the Directive, in order to consolidate the information collected from the reports of the Member States and from the meetings of the European cooperation network on elections.

- **Explanatory documents**

In its judgment of 8 July 2019<sup>21</sup> and in its further jurisprudence<sup>22</sup> the Court of Justice clarified that, when notifying national transposition measures to the Commission, Member States must provide sufficiently clear and precise information, and identify, for each provision of the directive, the national provision(s) ensuring its transposition.

- **Detailed explanation of the specific provisions of the proposal**

Explanations are only given for the provisions of the Council Directive that are proposed to be changed by this proposal.

1. In order to facilitate access for mobile EU citizens to electoral information, Article 12 sets higher standards for providing electoral information to mobile EU citizens. The proposal requires Member States to appoint authorities that will proactively inform mobile EU citizens residing on their territory of the conditions and detailed rules for registration as a voter or candidate in elections to the European Parliament, before and after their registration, either for electoral purposes or for the purpose set out in Directive 2004/38/EC. This could also entail

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<sup>21</sup> Commission v Belgium, C-543/17.

<sup>22</sup> See judgments in Cases Commission v Romania, C-549/18 and Commission v Ireland, C-550/18.

the provision of information and the use of means of communication adapted to specific voter groups such as young voters.

With the aim to increase mobile EU citizens' awareness and understanding of procedures and practices to register and to participate in elections to the European Parliament, the same article provides for an obligation for authorities appointed by Member States to communicate to mobile EU citizens who were registered as voters or as candidates, specific and tailored information on the following:

- (a) the status of their registration;
- (b) the date of the election and how and where to vote;
- (c) the relevant rules on voter and candidate rights and obligations, including prohibitions and incompatibilities and applicable sanctions in the case of violation of electoral rules;
- (d) means of obtaining further information on the organisation of the election including the list of candidates.

Under Regulation (EU) 2018/1724, Member States have to ensure that users have easy access on their national webpages to user-friendly, accurate, updated and sufficiently comprehensive information on participating in elections to the European Parliament. Member States use different means and channels of communication. Therefore, in order to ensure consistency, the initiative envisages extending correspondingly the quality requirements set out in Regulation (EU) 2018/1724 to the direct and individual provision by Member States of official electoral information to mobile EU citizens.

To increase accessibility and improve information levels, Member States will be required to use the official language of the Member State of residence and an EU official language that is broadly understood by the largest possible number of EU citizens residing on its territory. Member States will also be able to rely on the Your Europe portal. Along with the contact information introduced by amendments to the data mobile EU citizens need to submit in order to register as voters and candidates, this will allow Member States to use electronic channels to communicate information directly. To ensure inclusive electoral participation, the initiative also sets accessibility requirements for the information provided to persons with disabilities and to older people using as a source of inspiration the general comments of the United Nations Committee on the Rights of Persons with Disabilities regarding Article 21 of the United Nations Convention on the Rights of Persons with Disabilities.

2. With the view to reducing the administrative barriers faced by mobile EU citizens, the proposal (Articles 9 and 10) introduces standardised templates for the formal declarations, set out in Annexes I and II, that have to be produced by mobile EU citizens in order to register as voters and candidates. In order to facilitate the identification of mobile EU citizens, in line with the accuracy principle set out in Article 5(1)(d) of the General Data Protection Regulation, current data are supplemented with the personal identification number issued by the home Member State (where applicable) or alternatively with the type of identity document or travel document issued by the home Member State and its serial number. The forms will also contain contact information, to allow Member States to deliver on their obligation to inform. As the annexes to the Directives will be published in the Official Journal of the European Union, they will be available to citizens and national authorities alike in all EU official languages.

3. Amendments to Article 13 aim at streamlining the current information exchange system on the electoral rights of mobile EU citizens. Measures taken to that end include the establishment of a unique set of data, set out in Annex III, which, in addition to the data currently exchanged, will include, the personal identification number issued by the home Member State (where applicable) or the type of identity document or travel document, and the registration date. In addition, the amendments expressly reference the electronic means offered by the Commission to Member States to support the security of the data exchange. The same article limits the scope for registering mobile EU citizens on electoral rolls and on



the list of candidates of the host Member State only to European Parliament elections, preventing de-registration from other elections. The Commission will be empowered to adopt implementing acts for the purpose of defining the responsibilities and obligations for the operation of the secure tool set, in accordance with the examination procedure referred to in Article 19.

4. Article 17 introduces regular monitoring and reporting of implementation by Member States. Reports are to contain relevant statistical data on the participation, either as voters or as candidates, of mobile EU citizens in European Parliament elections. In order to better assess the implementation of measures envisaged by the Directive, Member States will be expected to improve their collection of data on the number of mobile EU citizens registered as voters and candidates, where applicable, and on the number of mobile EU citizens who voted. Article 18 provides for the evaluation of the application of the Directive within two years after the 2029 elections to the European Parliament.

5. Articles 9, 10 and 13 confer on the Commission the power to adopt delegated acts to ensure that the templates of formal declarations submitted by mobile EU citizens at their registration as voters or candidates and data set that will be exchanged between Member States, continue to comprise relevant information. Article 20 sets the conditions of the delegation in accordance with Article 290 TFEU.

6. In line with the non-discrimination principle, Article 14 requires Member States to ensure access for mobile EU citizens to the same means of advance voting, postal voting, electronic voting and internet voting, that is available to their own nationals in elections to the European Parliament.

7. The proposal deletes the term “automatically” from Article 9(4) in line with the General Data Protection Regulation’s provisions on the restrictions to automated decision-making. In addition, to ensure access to information on equal terms with their nationals, Member States are required to notify mobile EU citizens of their removal from the electoral roll, if such an obligation regarding its own nationals is in place.

8. With the same aim of increasing awareness of mobile EU citizens and their access to electoral rights, amendments to Article 11 require Member States to inform mobile EU citizens, clearly and in a timely manner, of their registration and of their legal remedies if their application is rejected. It also clarifies the extent of the obligation of Member States by replacing the term ‘action’ with ‘decision’. Under a new paragraph in Article 11, it provides for the right of voters and candidates within the scope of Article 3 of the Directive to correct any inconsistencies or errors in the data contained in the electoral rolls or the lists of candidates under similar terms as for nationals of the host Member State.

9. The proposal also envisages adaptations of the outdated language and references (Article 2(5) and (6), Article 3(a), Article 4(1) and Articles 5, 8, 9, 10, 11 and 16) by replacing the references to the Treaty establishing the European Community with references to the Treaty on the Functioning of the European Union and by employing gender-neutral language.

10. Amendments also delete Article 15 as this provision referred to the 1994 European Parliament elections.

11. Article 21 provides for the transposition of the Directive by 31 May 2023, in line with the guidance provided by the Venice Commission of the Council of Europe.

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↓ 93/109/EC (adapted)

2021/0372 (CNS)

Proposal for a

## COUNCIL DIRECTIVE

**laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for ~~the~~ Union ~~citizens of the Union~~ residing in a Member State of which they are not nationals (recast)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~on the functioning of the European Community~~ ~~on the functioning of the~~ Union, and in particular Article ~~17~~ 22 (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

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↓ new

(1) A number of amendments are to be made to Council Directive 93/109/EC<sup>23</sup>. In the interests of clarity, that Directive should be recast.

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↓ 93/109/EC recital 1 (adapted)

~~Whereas the Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe; whereas one of its tasks is to organize, in a manner demonstrating consistency and solidarity, relations between the peoples of the Member States; whereas its fundamental objectives include a strengthening of the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;~~

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↓ 93/109/EC recital 2 (adapted)

~~Whereas to that end Title II of the Treaty on European Union, amending the Treaty establishing the European Economic Community, with a view to establishing the European Community, introduces a citizenship of the Union for all nationals of the Member States and confers on such nationals on that basis a number of rights;~~

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<sup>23</sup> 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, 30.12.1993, p. 34).

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↓ new

- (2) Article 20(2), point (b) and Article 22(2) of the Treaty on the functioning of the European Union (TFEU) confers on Union citizens residing in a Member State of which they are not nationals the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence under the same conditions as nationals of the host Member State. The right, which is also affirmed in Article 39 of the Charter of Fundamental Rights of the European Union (Charter) gives specific expression to the principle of equality and non-discrimination on grounds of nationality set out in Article 21. It is also a corollary of the right to move and reside freely enshrined in Article 20(2) point (a) and Article 21 TFEU and Article 45 of the Charter.
- (3) The detailed arrangements governing the exercise of the right to vote and to stand as a candidate in elections to the European Parliament are set out in Council Directive 93/109/EC.
- (4) In its the EU Citizenship Report 2020<sup>24</sup>, the Commission stressed the need to update, clarify and strengthen the rules on the exercise of the right to vote and to stand as a candidate in elections to the European Parliament in order to ensure that they support the broad and inclusive participation of mobile EU citizens. Taking also into account the experience gained in the application of Council Directive 93/109/EC to successive elections and the changes introduced by the amendments to the Treaties, several of the provisions of that Directive should be updated.

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↓ 93/109/EC recital 3 (adapted)

~~Whereas the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, laid down in Article 8b (2) of the Treaty establishing the European Community, is an instance of the application of the principle of non-discrimination between nationals and non-nationals and a corollary of the right to move and reside freely enshrined in Article 8a of that Treaty;~~

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↓ 93/109/EC recital 4 (adapted)

- (5) ~~Article 8b (2) of the EC Treaty~~ TFEU is concerned only with the possibility of exercising the right of vote and to stand as a candidate in elections to the European Parliament, without prejudice to Article 138 (3) of the EC Treaty 223(1) TFEU, which provides for the establishment of a uniform procedure in all Member States in accordance with principles common to all Member States for those elections; ~~whereas it essentially seeks to abolish the nationality requirement which currently has to be satisfied in most Member States in order to exercise those rights.~~

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↓ new

- (6) In order to ensure that Union citizens who reside in a Member State of which they are not nationals (“non-national Union citizens”) are able to exercise their right to vote

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<sup>24</sup> [https://ec.europa.eu/info/files/eu-citizenship-report-2020-empowering-citizens-and-protecting-their-rights\\_en](https://ec.europa.eu/info/files/eu-citizenship-report-2020-empowering-citizens-and-protecting-their-rights_en)

and to stand as candidates in elections to the European Parliament under the same conditions as nationals of their host Member State, the conditions governing registration and participation in such elections should be clarified in order to ensure equal treatment between national and non-national Union citizens. In particular, Union citizens seeking to vote and to stand as candidates in elections to the European Parliament in their Member State of residence should be treated equally as regards any periods of residence that are to be fulfilled as a condition for the exercise of the right, as well the proofs for demonstrating compliance with such a condition.

↓ 93/109/EC recital 5 (adapted)

~~Whereas application of Article 8b (2) of the EC Treaty does not presuppose harmonization of Member States' electoral systems; whereas, moreover, to take account of the principle of proportionality set out in the third paragraph of Article 3b of the EC Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b (2) of the EC Treaty;~~

↓ 93/109/EC recital 6 (adapted)

~~Whereas the purpose of Article 8b (2) of the EC Treaty is to ensure that all citizens of the Union, whether or not they are nationals of the Member State in which they reside, can exercise in that State their right to vote and to stand as a candidate in elections to the European Parliament under the same conditions; whereas the conditions applying to non-nationals, including those relating to period and proof of residence, should therefore be identical to those, if any, applying to nationals of the Member State concerned;~~

↓ 93/109/EC recital 7 (adapted)  
⇒ new

(7) ~~Whereas Article 8b (2) of the EC Treaty provides for the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, without, nevertheless, substituting it for the right to vote and to stand as a candidate in the Member State of which the citizen is a national; whereas Tthe freedom of~~  Union  citizens of the Union to choose the Member State in which to take part in European elections  to the European Parliament  must be respected, while taking care to ensure that this freedom is not abused by people voting  the appropriate measures to ensure that no one may vote more than once  or standing  stand  as a candidate in more than one country.

↓ new

(8) In line with International and European standards, including, the requirements of International Covenant on Civil and Political Rights and the law of the European Convention on Human Rights, Member States should not only recognize and respect the right of Union citizens to vote and to stand as a candidate but also ensure easy access to their electoral rights by removing as many obstacles to participation in elections as possible.

(9) In order to facilitate the exercise by Union citizens of their right to vote and to stand as a candidate in their country of residence, such citizens should be entered on the electoral roll in sufficient time in advance of polling day. The formalities applicable to their registration should be as simple as possible. It should be sufficient for the Union

citizens concerned to produce a valid identity card and a formal declaration that includes elements evidencing their entitlement to participate in the elections. Once registered, non-national Union citizens should remain on the electoral roll under the same conditions as Union citizens who are nationals of the Member State concerned, for as long as they satisfy the conditions for exercising the right to vote. Additionally, Union citizens should provide the competent authorities with contact information, enabling those authorities to keep them informed on a regular basis.

- (10) While Member States are competent to determine the right to vote or to stand as a candidate in elections to the European Parliament as regards nationals who reside outside their territory, the fact that non-national Union citizens have been entered on the electoral roll of their Member State of residence should not in itself constitute grounds for their removal from the electoral roll of their home Member State for other types of elections.
- (11) In order to ensure equal treatment of non-national Union citizens seeking to exercise the right to stand as candidates for election in their Member State of residence, such citizens should be required to produce the same supporting documents as those required from candidates who are nationals of the Member State concerned. However, in order to establish that such citizens are beneficiaries of the right laid down in Article 20(2)(b) and Article 22(2) TFEU, Member States should be able to require the production of a formal declaration that includes elements necessary to evidence their entitlement to stand in the elections in question.
- (12) In order to facilitate the accurate identification of voters and candidates registered both in their home Member State and in their Member State of residence, the list of data to be required from Union citizens, when submitting an application to enter the electoral rolls or to stand as candidates in the Member State of residence, should include the personal identification number or the serial number of a valid identity or travel document.
- (13) Union citizens who have been deprived of their right to vote and to stand as candidates, on the basis of an individual civil law or criminal law decision taken by the competent authority, should be precluded from exercising that right in the Member State of residence in elections to the European Parliament. When receiving an application for registration as a voter, Member States may require from the citizen concerned a formal declaration confirming that they have not been deprived of their right to vote. When standing as candidates in their country of residence, Union citizens should be required to produce a statement confirming that they have not been deprived of the right to stand in the elections to the European Parliament.
- (14) It should be possible for the Member State of residence to check that Union citizens who have expressed a desire to exercise their right to stand as candidates have not been deprived of that right in their home country. Where a Member State receives a request to that effect from the Member State of residence, it should provide the necessary confirmation within a time-limit allowing for the admissibility of the candidacy to be effectively assessed. The personal data being exchanged may only be processed for that purpose. Given the fundamental importance of electoral rights, failure by the home Member State to provide timely information on the status of a Union citizen should not result in the deprivation of the right to stand as a candidate in the Member State of residence. In cases where the relevant information is provided at a later stage, the Member State of residence should ensure, by appropriate measures and in accordance with the procedures provided for by its national law, that Union

citizens deprived of the right to stand in their home Member State who were registered as candidates or have already been elected, are prevented from being elected or from exercising their mandate.

- (15) Given that the admissibility procedure in a Member State necessarily entails additional administrative steps for a national of another Member State than for the nationals of that Member State, it should be possible for Member States to set a different deadline for the submission of applications to stand as a candidate by Union citizens who are not nationals than that set for national citizens. Any difference in the deadline should be limited to that which is necessary and proportionate in order to allow for the notification of the information from the home Member State to be taken into account in good time. Establishing such a separate deadline should not affect the deadlines for obligations for other Member States to make notifications pursuant to this Directive.
- (16) In order to prevent multiple voting or instances where the same person would stand as a candidate more than once at the same elections, Member States should exchange information gathered from the formal declarations produced by Union voters and Union citizens entitled to stand as candidates. As Member States rely on different data to identify citizens, a common set of data should be envisaged in order to accurately identify Union voters and Union citizens entitled to stand as candidates and stop them from voting or standing as a candidate more than once. The personal data exchanged should be limited to the minimum necessary to achieve these purposes.
- (17) The information exchange between Member States to prevent multiple voting or instances where the same person would stand as a candidate more than once at the same election should not prevent their nationals from voting or standing as candidates in other types of elections. To facilitate communication between national authorities, Member States should be required to designate one contact point for that information exchange. A secure tool was developed in the past by the Commission to be used by the Member States under their responsibility to exchange the necessary data. That secure tool should be incorporated in this Directive, to further support exchanges between Member States' competent authorities. Member States will act as separate controllers for their processing of personal data in this regard.
- (18) For defining responsibilities and obligations for the operation of the secure tool, in accordance with Chapter IV of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>25</sup>, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.<sup>26</sup>
- (19) The accessibility of information on electoral rights and procedures is a key component in ensuring the effective exercise of the right enshrined in Article 20(2), point (b) and Article 22(2) TFEU.
- (20) The lack of adequate information, in the context of electoral procedures, affects citizens in the exercise of their electoral rights as part of their rights as Union citizens. It also affects the capacity of competent authorities to exercise their rights and to

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<sup>25</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>26</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

deliver on their obligations. Member States should be required to designate authorities with special responsibilities for providing appropriate information to Union citizens on their rights under Article 20(2), point (b), and Article 22(2) TFEU and the national rules and procedures regarding participation in and the organization of elections to the European Parliament. In order to ensure the effectiveness of communications, information should be provided in clear and comprehensible terms.

- (21) In order to improve the accessibility of electoral information, such information should be made available in at least one other official language of the Union than that or those of the host Member State, broadly understood by the largest possible number of Union citizens residing on its territory. Member States may use different official languages of the Union in specific parts of their territory or their regions depending on the language understood by the largest group of Union citizens residing therein.

↓ 93/109/EC recital 8 (adapted)  
⇒ new

- (22) Any derogation from the general rules of this Directive ~~must~~ ☒ has to ☒ be warranted, pursuant to Article ~~8b~~ ☒ 22 ☒ (2) ~~of the EC Treaty~~ ☒ TFEU ☒, by problems specific to a Member State ⇒ and has to be in line with the requirements of Article 52 of the Charter, including that any limitations to the exercise of the right to vote and to stand as a candidate at elections to the European Parliament is to be provided for by law and be subject to the principles of proportionality and necessity ⇐. ☒ In addition, ☒ any derogation ~~must~~, ☒ has to ☒ ~~by its very nature,~~ be subject to review ☒ as provided by Article 47 of the Charter ☒.

↓ 93/109/EC recital 9 (adapted)

- (23) Such specific problems may arise in a Member State in which the proportion of ☒ Union ☒ citizens ~~of the Union~~ of voting age, who reside in it but are not nationals of it, is very significantly above average. Derogations ~~are~~ ☒ regarding the right to vote should be ☒ warranted where such citizens form more than 20 % of the total electorate; ~~whereas such derogations must be based~~ on the criterion of period of residence;

↓ 93/109/EC recital 10

~~Whereas citizenship of the Union is intended to enable citizens of the Union to integrate better in their host country and that in this context, it is in accordance with the intentions of the authors of the Treaty to avoid any polarization between lists of national and non-national candidates;~~

↓ 93/109/EC recital 11 (adapted)

- (24) ~~Whereas this risk of polarization concerns in particular a Member State~~ ☒ Member States ☒ in which the proportion of non-national citizens of the Union of voting age exceeds 20 % of the total number of ☒ Union ☒ citizens ~~of the Union~~ of voting age who reside there ~~and that, therefore, it is important that this Member State may~~ ☒ should have the possibility to ☒ lay down, in compliance with Article ~~8b of the Treaty~~ ☒ 22(2) TFEU ☒, specific provisions concerning the composition of lists of candidates.

- (25) Account must be taken of the fact that in certain Member States residents who are nationals of other Member States have the right to vote in elections to the national parliament and certain provisions of this Directive may consequently be dispensed with in those Member States.
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- (26) Data regarding the exercise of rights and the application of this Directive can be useful in the identification of measures necessary to ensure the effective exercise of Union citizens' electoral rights. In order to improve the collection of data for elections to the European Parliament, it is necessary to introduce regular monitoring and reporting of implementation by Member States. In parallel, the Commission should assess the application of this Directive, and submit a report including such an assessment to the European Parliament and to the Council, after each election to the European Parliament.
- (27) It is necessary that the Commission conduct its own evaluation of the application of this Directive within a reasonable timeframe after at least two elections to the European Parliament.
- (28) In order to ensure that the templates of the formal declarations to be submitted by non-national Union citizens seeking to vote or stand in elections to the European Parliament continue to contain relevant data in the context of the exercise of electoral rights by Union citizens, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission to amend those templates. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (29) The Member States, by ratifying, and the Union, by concluding<sup>27</sup>, the United Nations Convention on the Rights of Persons with Disabilities have committed themselves to ensure compliance with that Convention. In order to support inclusive and equal electoral participation for persons with disabilities, arrangements for Union citizens residing in a Member State of which they are not nationals to exercise the right to vote and to stand as a candidate there in elections to the European Parliament should have due regard to the needs of citizens with a disability and older citizens.

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<sup>27</sup> Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L 23, 27.1.2010, p. 35).



- (30) Regulation (EU) 2016/679 of the European Parliament and of the Council and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>28</sup> applies to personal data processed when implementing this Directive.
- (31) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on XX XX 2022
- (32) This Directive respects fundamental rights and the principles recognised in particular by the Charter, in particular Article 21 and 39 thereof. Accordingly, it is essential that this Directive shall be implemented in accordance with those rights and principles by ensuring full respect for, inter alia, the right to protection of personal data, the right to non-discrimination, the right to vote and to stand as a candidate at elections to the European Parliament, the freedom of movement and of residence and the right to an effective remedy.
- (33) The obligation to transpose this Directive into national law should be confined to those provisions, that represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions that are unchanged arises under the earlier Directives.
- (34) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law of the Directives set out in Annex IV, Part B,

↓ 93/109/EC recital 8 (adapted)

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### *GENERAL PROVISIONS*

#### *Article 1*

##### *☒ Subject matter and scope ☒*

1. This Directive lays down the detailed arrangements whereby ☒ Union ☒ 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 elections to the European Parliament.
2. Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory.

<sup>28</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98)

## Article 2

### ~~⊗~~ Definitions ~~⊗~~

For the purposes of this Directive:

- (1) ‘elections to the European Parliament’ means elections by direct universal suffrage to the European Parliament of representatives in accordance with the Act ~~⊗~~ concerning the election of the members of the European Parliament by direct universal suffrage ~~⊗~~ of 20 September 1976<sup>29</sup>;
- (2) ‘electoral territory’ means the territory of a Member State in which, in accordance with the above Act and, within that framework, in accordance with the electoral law of that Member State, members of the European Parliament are elected by the people of that Member State;
- (3) ‘Member State of residence’ means a Member State in which a ~~⊗~~ Union ~~⊗~~ citizen ~~of the Union~~ resides but of which ~~he~~ ~~⊗~~ the Union citizen ~~⊗~~ is not a national;
- (4) ‘home Member State’ means the Member State of which a ~~⊗~~ Union ~~⊗~~ citizen ~~of the Union~~ is a national;
- (5) ‘~~Community~~ ~~⊗~~ Union ~~⊗~~ voter’ means any ~~⊗~~ Union ~~⊗~~ citizen ~~of the Union~~ who is entitled to vote in elections to the European Parliament in ~~his~~ ~~⊗~~ the ~~⊗~~ Member State of residence in accordance with this Directive;
- (6) ‘~~Community national~~ ~~⊗~~ Union citizen ~~⊗~~ entitled to stand as a candidate’ means any ~~⊗~~ Union ~~⊗~~ citizen ~~of the Union~~ who has the right to stand as a candidate in elections to the European Parliament in ~~his~~ ~~⊗~~ the ~~⊗~~ Member State of residence in accordance with this Directive;
- (7) ‘electoral roll’ means the official register of all voters entitled to vote in a given constituency or locality, 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;
- (8) ‘reference date’ means the day or the days on which ~~⊗~~ Union ~~⊗~~ citizens ~~of the Union must~~ ~~⊗~~ have to ~~⊗~~ satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;
- (9) ‘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.

## Article 3

### ~~⊗~~ Conditions governing the right to vote and stand as a candidate ~~⊗~~

~~Any person who, on the reference date:~~ ~~⊗~~ The following persons 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: ~~⊗~~

<sup>29</sup> OJ No L 278, 8. 10. 1976, p. 5.

(a) ~~the person who, on the reference date is a Union citizen of the Union within the meaning of the second subparagraph of Article 8 (1) of the Treaty~~ ~~TFEU~~ ;

(b) ~~the person who, on the reference date 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.~~

Where, in order to stand as a candidate, nationals of the Member State of residence must have been nationals for a certain minimum period, ~~Union citizens of the Union~~ shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

#### Article 4

*~~Prohibition from voting more than once or standing as a candidate in more than one Member State~~*

- ~~Community~~ ~~Union~~ voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.
- No person may stand as a candidate in more than one Member State at the same election.

#### Article 5

*~~Residence requirements~~*

If, in order to vote or to stand as candidates, nationals of the Member State or residence must have spent a certain minimum period as a resident in the electoral territory of that State, ~~Community~~ ~~Union~~ voters and ~~Community nationals~~ ~~Union~~ citizens ~~entitled to stand as candidates~~ shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

#### Article 6

*~~Ineligibility~~*

↓ 2013/1/EU Art. 1.1(a) (adapted)

- ~~Any~~ ~~Union~~ citizens ~~citizen of the Union~~ who ~~resides~~ ~~reside~~ in a Member State of which ~~he~~ ~~they~~ are ~~is not a national~~ ~~nationals~~ and who, through an individual judicial decision or an administrative decision provided that the latter

can be subject to judicial remedies, ~~has~~  have  been deprived of ~~his~~  their  right to stand as a candidate under either the law of the Member State of residence or the law of ~~his~~  the  home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament.

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↓ 2013/1/EU Art. 1.1(b) (adapted)

2. The Member State of residence shall check whether the  Union  citizens ~~of the Union~~ who have expressed a desire to exercise their right to stand as a candidate there have not been deprived of that right in the home Member State through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies.

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↓ 2013/1/EU Art. 1.1(c)

3. For the purposes of paragraph 2 of this Article, the Member State of residence shall notify the home Member State of the declaration referred to in Article 10(1). To that end, the relevant information that is available from the home Member State shall be provided in any appropriate manner within five working days from the reception of the notification or, where possible, within a shorter time-limit, if so requested by the Member State of residence. Such information may include only details which are strictly necessary for the implementation of this Article and may be used only for that purpose.

If the information is not received by the Member State of residence within the time-limit, the candidate shall none the less be admitted.

4. If the information provided invalidates the content of the declaration, the Member State of residence, irrespective of whether it receives the information within the time-limit or at a later stage, shall take the appropriate steps in accordance with its national law to prevent the person concerned from standing as a candidate or, where this is not possible, to prevent this person either from being elected or from exercising the mandate.

5. Member States shall designate a contact point to receive and transmit the information necessary for the application of paragraph 3. They shall communicate to the Commission the name and contact details of the contact point and any updated information or changes concerning it. The Commission shall keep a list of contact points and make it available to the Member States.

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↓ 93/109/EC (adapted)

⇒ new

### Article 7

#### ⊗ Disqualification from voting ⊗

1. The Member State of residence may check whether the ⊗ Union ⊗ citizens ~~of the Union~~ who have expressed a desire to exercise their right to vote there have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.
2. For the purposes of paragraph 1 of this Article, the Member State of residence may notify the home Member State of the declaration referred to in Article 9 (2). To that end, the relevant and normally available information from the home Member State shall be provided in good time and in an appropriate manner; such information may only include details which are strictly necessary for the implementation of this Article and may only be used for that purpose. If the information provided invalidates the content of the declaration, the Member State of residence shall take the appropriate steps to prevent the person concerned from voting.
3. The home Member State may, in good time and in an appropriate manner, submit to the Member State of residence any information necessary for the implementation of this Article.

### Article 8

#### ⊗ Freedom to choose to vote in the Member state of residence ⊗

1. ~~A Community voter~~ ⊗ Union voters shall ⊗ exercise ~~his~~ ⊗ their ⊗ right to vote in the Member State of residence if ~~he has~~ ⊗ they have ⊗ expressed the wish to do so.
2. If voting is compulsory in the Member State of residence, ~~Community~~ ⊗ Union ⊗ voters who have expressed the wish to ⊗ vote in that Member State ⊗ ~~do so~~ shall be obliged to vote.

## CHAPTER II

### EXERCISE OF THE RIGHT TO VOTE AND THE RIGHT TO STAND AS A CANDIDATE

#### Article 9

##### ~~Entry and removal from the electoral roll~~

1. Member States shall take the necessary measures to enable a ~~Community~~ ~~Union~~ voter who has expressed the wish ~~for such~~ to be registered as a voter to be entered on the electoral roll sufficiently in advance of polling day.

2. In order to have ~~his~~ their name entered on the electoral roll, ~~a Community voter~~ ~~Union voters~~ shall produce the same documents as ~~a voter~~ voters who are nationals ~~is a national~~. ~~He~~ They shall also produce a formal declaration in accordance with the template set out in Annex I. ~~stating:~~

~~(a) his nationality and his address in the electoral territory of the Member State of residence;~~

~~(b) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and~~

~~(c) that he will exercise his right to vote in the Member State of residence only.~~

3. The Member State of residence may also require ~~Union voters~~ ~~a Community voter~~ to:

(a) state in ~~his~~ their declaration under paragraph 2 that ~~he has~~ they have not been deprived of the right to vote in ~~his~~ their home Member State;

(b) produce a valid identity document; ~~and~~

(c) indicate the date from which ~~he has~~ they have been resident in that State or in another Member State.

4. ~~Community~~ ~~Union~~ voters who have been entered on the electoral roll shall remain thereon, under the same conditions as voters who are nationals, until ~~such time as~~ they request to be removed or until ~~such time as~~ they are removed ~~automatically~~ because they no longer satisfy the requirements for exercising the right to vote. ~~Where provisions are in place to notify nationals of such a removal from the electoral roll, these provisions shall apply to Union voters in the same way.~~

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↓ new

5. The Commission is empowered to adopt delegated acts in accordance with Article 20 concerning the amendment of the form and content of the template for the formal declaration referred to in paragraph 2 of this Article.

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↓ 93/109/EC (adapted)

⇒ new

### Article 10

#### ⊗ Registration as a candidate ⊗

1. When ~~he submits his~~ ⊗ submitting an ⊗ application to stand as ⊗ candidates ⊗ ~~a candidate,~~ ⊗ Union citizens ⊗ ~~a Community national~~ shall produce the same supporting documents as ~~a candidate~~ ⊗ candidates ⊗ who ~~is a national~~ ⊗ are nationals ⊗ . ~~He~~ ⊗ They ⊗ shall also produce a formal declaration ⇒ in accordance with the template set out in Annex II. ⇐ ~~stating:~~

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↓ 2013/1/EU Art. 1.2(a)

~~(a) his nationality, date and place of birth, last address in the home Member State and his address in the electoral territory of the Member State of residence;~~

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↓ 93/109/EC

~~(b) that he is not standing as a candidate for election to the European Parliament in any other Member State;~~

~~(c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and~~

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↓ 2013/1/EU Art. 1.2(b)

~~(d) that he has not been deprived of the right to stand as a candidate in the home Member State through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies.~~

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↓ 93/109/EC (adapted)

~~23.~~ The Member State of residence may also require ~~a Community national~~ ☒ Union citizens ☒ entitled to stand as ~~a candidate~~ ☒ candidates ☒ to produce a valid identity document. It may also require ~~him~~ ☒ them ☒ to indicate the date from which ~~he~~ ☒ they have ☒ ~~has been a national~~ ☒ nationals ☒ of a Member State.

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↓ new

3. The Commission is empowered to adopt delegated acts in accordance with Article 20 concerning the amendment of the form and content of the template for the formal declaration referred to in paragraph 1 of this Article.

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↓ 93/109/EC (adapted)

⇒ new

#### Article 11

##### ☒ Decision on registration and legal remedies ☒

1. The Member State of residence shall inform the ~~person~~ ☒ persons ☒ concerned ⇒ in good time and in clear and plain language ⇐ of the ~~action~~ ⇒ decision ⇐ taken on ~~his~~ ☒ their ☒ application for entry on the electoral roll or of the decision concerning the admissibility of ~~his~~ ☒ their ☒ application to stand as a candidate.

2. Should ~~a person~~ ☒ Union citizens ☒ be refused entry on the electoral roll or ~~his~~ ☒ their ☒ application to stand as a candidate be rejected, the ~~person~~ ☒ persons ☒ concerned shall be entitled to legal remedies on the same terms as the legislation of the Member State of residence prescribes for voters and persons entitled to stand as candidates who are its nationals.

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↓ new

3. In case of errors in the electoral rolls or in the lists of candidates to the European Parliament, 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.

4. Member States shall inform clearly and in a timely manner, the person concerned of the decision referred to in paragraph 1 and of the legal remedies referred to in paragraphs 2 and 3.



Article 12

⊗ Provision of information ⊗

~~The Member State of residence shall inform Community voters and Community nationals entitled to stand as candidates 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.~~

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1. Member States shall designate a national authority with responsibility for taking the necessary measures to ensure that non-national Union citizens are informed in a timely manner of the conditions and detailed rules for registration as a voter or candidate in elections to the European Parliament.

2. The Member States shall ensure that the authorities designated pursuant to paragraph 1, shall directly and individually communicate to Union voters and Union nationals entitled to stand as candidates, the following information:

(a) the status of their registration;

(b) the date of the election and how and where to vote;

(c) the relevant rules on voter and candidate rights and obligations including interdictions and incompatibilities and sanctions for violating electoral rules, particularly those pertaining to multiple voting;

(d) means of obtaining further information relating to the organisation of the election including the list of candidates.

3. The information on conditions and detailed rules for registration as a voter or candidate in elections to the European Parliament and the information referred to in paragraph 2 shall be provided in clear and plain language.

The information referred to in the first subparagraph shall, in addition to being communicated in one or more of the official languages of the host Member State, also be accompanied by a translation in at least one other official language of the Union that is broadly understood by the largest possible number of Union citizens residing on its territory, in accordance with the

quality requirements of Article 9 of Regulation (EU) 2018/1724 of the European Parliament and of the Council<sup>30</sup>.

4. Member States shall ensure that information on conditions and detailed rules for registration as a voter or candidate in elections to the European Parliament and information referred to in paragraph 2 is made accessible to persons with disabilities and older persons by using appropriate means, modes and formats of communication.

↓ 93/109/EC (adapted)

⇒ new

### Article 13

#### ⊗ Information exchange mechanism ⊗

1. Member States shall exchange the information required for the implementation of Article 4 ⇒, sufficiently in advance of polling day ⇐. To that end, the Member State of residence shall, ~~on the basis of the formal declaration referred to in Articles 9 and 10, supply~~ ⇒ begin supplying ⇐ the home Member State, ⇐ no later than six weeks before the first day of the electoral period referred to in Article 10(1) of the Act concerning the election of the members of the European Parliament by direct universal suffrage the set of information provided in Annex III ⇐ ~~sufficiently in advance of polling day, with information on the latter State's nationals entered on electoral rolls or standing as candidates.~~ The home Member State shall, in accordance with its national legislation, take appropriate measures to ensure that its nationals do not vote more than once or stand as candidates in more than one Member State.

↓ new

2. The home Member State shall ensure that measures referred to in paragraph 1 do not prevent its nationals from voting or standing as candidates in other types of elections.

3. The Commission shall provide a secure tool supporting the exchange by Member States of the set of information referred to in Annex III for the purposes of paragraph 1 of this Article. The tool shall allow Member States of residence to provide that information in an encrypted form to each home Member State whose citizens have provided formal declarations referred to in Articles 9 and 10.

4. The Commission is empowered to adopt delegated acts in accordance with Article 20 concerning the amendment of the set of information referred to in Annex III.

5. The Commission is empowered to adopt implementing acts for the purpose of defining the responsibilities and obligations for the operation of the secure tool set out in paragraph 3, in accordance with the requirements of Chapter IV of Regulation (EU) 2016/679. Those

<sup>30</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

#### Article 14

##### *Specific means of voting*

Member States that provide for the possibilities of advance voting, postal voting, and electronic and internet voting, in elections to the European Parliament shall ensure the availability of those voting methods to Union voters under similar conditions as the ones applicable to their own nationals.

#### Article 15

##### *Monitoring*

Member States shall designate an authority with responsibility for collecting and providing relevant statistical data to the public and the Commission, on the participation of Union citizens who are not nationals in elections to the European Parliament.

↓ 93/109/EC (adapted)

### CHAPTER III

#### ***DEROGATIONS AND TRANSITIONAL PROVISIONS***

##### Article ~~16~~14

##### ~~☒~~ Derogations ~~☒~~

1. If ~~on 1 January 1993~~, in a given Member State, the proportion of ~~☒~~ Union ~~☒~~ citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20 % of the total number of ~~☒~~ national and non-national Union ~~☒~~ 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~~ ~~☒~~ Union ~~☒~~ 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~~ ~~☒~~ Union citizens ~~☒~~ entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed 10 years.

These provisions are without prejudice to appropriate measures which ~~this~~ ~~☒~~ that ~~☒~~ Member State may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national ~~☒~~ Union ~~☒~~ citizens of the Union.

However, ~~Community~~ ☒ Union ☒ voters and ~~Community nationals~~ ☒ Union citizens ☒ 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.

2. Where, ~~on 1 February 1994,~~ 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 13 in respect of such nationals.

3. ~~By 31 December 1997 and thereafter~~ 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 ~~8b~~ ☒ 22 ☒ (2) ~~of the EC Treaty~~ ☒ TFEU ☒ is still warranted and shall propose that any necessary adjustments be made.

Member States which invoke derogations under paragraph 1 shall furnish the Commission with all the necessary background information.

#### *Article 15*

~~For the fourth direct elections to the European Parliament, the following special provisions shall apply:~~

~~(a) citizens of the Union who, on 15 February 1994, already have the right to vote in the Member State of residence and whose names appear on the electoral roll in the Member State of residence shall not be subject to the formalities laid down in Article 9;~~

~~(b) Member States in which the electoral rolls have been finalized before 15 February 1994 shall take the steps necessary to enable Community voters who wish to exercise their right to vote there to enter names on the electoral roll sufficiently in advance of polling day;~~

~~(c) Member States which do not draw up specific electoral rolls but indicate eligibility to vote in the population register and where voting is not compulsory may also apply this system to Community voters who appear on that register and who, having been informed individually of their rights, have not expressed a wish to exercise their right to vote in their home Member State. They shall forward to the home Member State the document showing the intention expressed by those voters to vote in the Member State of residence;~~

~~(d) Member States in which the internal procedure for the nomination of candidates for political parties and groups is governed by law may provide that any such procedures which, in accordance with that law, were opened before 1 February 1994 and the decisions taken within that framework shall remain valid.~~

## CHAPTER IV

### *FINAL PROVISIONS*

Article ~~17~~<sup>16</sup>

⊠ Reporting ⊠

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↓ new

1. Within six months after each election to the European Parliament Member States shall send information to the Commission on the application of this Directive in their territory. In addition to general observations, the report shall contain statistical data on the participation in elections to the European Parliament of Union voters and Union citizens entitled to stand as candidates and a summary of the measures taken to support it.

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↓ 93/109/EC (adapted)

⇒ new

⇒ 2. Within one year after each election to the European Parliament, ~~the~~ Commission shall submit a report to the European Parliament and the Council ~~by 31 December 1995 on the application of this Directive to the June 1994 elections to the European Parliament. On the basis of the said report the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions amending this Directive.~~

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↓ new

Article 18

*Evaluation*

Within two years after the 2029 elections to the European Parliament, the Commission shall assess its application and produce an evaluation report on the progress towards achievement of the objectives contained herein. The evaluation shall also include a review on the functioning of Article 13.

Article 19

*Committee procedure*

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

#### Article 20

##### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 9, 10 and 13 shall be conferred on the Commission for an indeterminate period of time from the entry into force of this Directive.

3. The delegation of power referred to in Articles 9, 10 and 13 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 9, 10 and 13 shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

↓ 93/109/EC (adapted)

⇒ new

#### Article ~~21~~<sup>17</sup>

##### ⊗ Transposition ⊗

Member States shall adopt ⊗ and publish, ⊗ ⇒ by 31 May 2023, ⇐ the laws, regulations and administrative provisions necessary to comply with ⇒ Articles 9(2) and (4), 10(1), 11(1), (3) and (4), 12, 13(1), (2) and (3), 14, 15, 17 and Annexes I, II and III ⇐ ~~this Directive~~ no

later than 1 February 1994. They shall ~~forthwith inform~~  immediately communicate the text of those measures to  the Commission ~~thereof~~.

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new

They shall apply those measures from 31 May 2023.

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93/109/EC (adapted)

When Member States adopt these measures, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such reference on the occasion of their official publication.  They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive.  ~~The methods of making such reference shall be laid down by~~ Member States  shall determine how such reference is to be made and how that statement is to be formulated .

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 22

Repeal

Directive 93/109/EC, as amended by the Directive listed in Annex IV, Part A, is repealed with effect from 31 May 2023, without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law of the Directives set out in Annex IV, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

Article ~~23~~<sup>18</sup>

Entry into force and application

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

Articles 1 to 8, 9(1) and (3), 10(2) and 11(2) shall apply from 31 May 2023.

*Article ~~2419~~*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*

*The President*