

Report by the Committee on Constitutional Affairs on the draft Council directive amending Directive 93/109/EC of 6 December 1993 (24 October 2012)

Caption: Report dated 24 October 2012, drafted by the European Parliament's Committee on Constitutional Affairs, on the draft Council directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

Source: European Parliament. Report on the draft Council directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals – Committee on Constitutional Affairs – Rapporteur : Carlo Casini , A7-0352/2012. Strasbourg: 24.10.2012. 8 p.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2012-0352+0+DOC+PDF+V0//EN>.

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REPORT

on the draft Council directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (13634/2012 – C7-0293/2012 – 2006/0277(CNS))

Committee on Constitutional Affairs

Rapporteur: Carlo Casini

(Renewed consultation – Rule 59(3) of the Rules of Procedure)

(Simplified procedure – Rule 46(1) of the Rules of Procedure)

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Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council directive amending Directive 93/109/EC of 6 December 1993 as regards certain detailed arrangements for the exercise of the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals (13634/2012 – C7-0293/2012 – 2006/0277(CNS))

(Special legislative procedure – renewed consultation)

The European Parliament,

- having regard to the Council draft (13634/2012),
 - having regard to the Commission proposal to the Council (COM(2006)0791),
 - having regard to its position of 26 September 2007¹,
 - having regard to Article 22(2) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament again (C7-0293/2012),
 - having regard to Rules 55, 59(3) and 46(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A7-0352/2012),
1. Approves the Council draft;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to substantially amend the text approved by Parliament;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 219 E, 28.8.2008, p. 193.

EXPLANATORY STATEMENT

1. On 12 September 2012 the Council adopted a text which it intends to adopt as the Directive amending Directive 93/109/EC on the right to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. It decided at the same time to re-consult Parliament (Rule 59(3) of the Rules of Procedure).

2. The legal base for this legislation is Article 22(2) TFEU which provides for a special law of the Council, decided by unanimity after consulting the Parliament. Parliament voted its legislative opinion on the matter on 26 September 2007 (Duff Report) (P6-TA(2007)0410).

3. Parliament's original intention was to open the way for candidates to stand in more than one constituency at the same election. This licence is permitted by the 1976 Act on Direct Elections but in practice not regulated for in EU secondary legislation (or in most national laws).

4. However, disagreements in Council on this matter, and on regulating the right to vote in states of residence, caused no action to be taken in time for the 2009 elections. Now the Council has dropped the more thorny matter of voters' rights and concentrates only on alleviating some of the burden placed on national authorities in verifying whether or not somebody has been disbarred from standing as a candidate in their own state. While the new draft does not meet the Parliament's more ambitious goals, it does make some modest improvements to the current situation in terms of administrative convenience for the prospective candidate and for the states concerned. It also appears to command agreement in the Council and, if swiftly agreed to by Parliament in the form of a positive opinion, can be made operational in time for the 2014 elections.

5. The European Commission agrees with the Council's new position and is ready to implement the revised procedures. Correlation tables are included.

6. The chief revisions to the earlier drafts are as follows:-

(a) The Directive no longer covers the rights both to vote and to stand as a candidate but only the latter. Consensus cannot be reached in the Council on reforming the mechanism to prevent double voting.

(b) A revised Article 6(1) would replace in the first phrase the words "who, through an individual criminal law or civil law decision, has been deprived..." with the words "who, through an individual judicial decision...". The intention is to cover decisions by other judicial bodies like administrative courts. The Council goes on: "...or an administrative decision provided that the latter can be subject to judicial remedies...". This caters for the needs of EU states where an administrative decision is enough to deprive citizens of the right to vote or stand, but not without recourse to a judicial procedure.

(c) The Council modifies the Commission's proposal to amend Article 6(2) in the same way as Article 6(1).

(d) The Council adds to the new Article 6(3) as proposed by the Commission a phrase intended to make sure that relevant information is given by the home state within 5 working days. Significantly, it adds further: "If the information is not received by the Member State of residence, the candidate shall nonetheless be admitted". This means that a candidate may stand in any case, and if elected and if found to be in error later, measures will be taken to prevent him or her taking up their seat.

(e) A new Article 6(4) explicates the "appropriate steps" that will in those circumstances be taken.

(f) A new Article 6(5) designates contact points to receive and transmit information.

(g) Article 10 as modified by the Council adds to the Commission's proposal the requirement for candidates to indicate in their application their last address in the home state.

7. In conclusion, Parliament should now take note of the Council's draft to ease the requirements for citizens of the Union residing in an EU state of which they are not nationals to stand as a candidate in the election of the European Parliament. Parliament recalls, nevertheless, its wish to open the way for candidates to stand in more than one constituency at the same election to the European Parliament regardless of residency qualifications as well as to improve the regulation of a general right to vote in states of residence. It will be our intention at the time of the next Convention to establish in secondary law what the primary law requires: notably, to allow double candidature (where the member states involved allow it); to leave checks to the discretion of the state of residence; and to allow the state of residence not to recognise disqualifications by the home state.

8. The Committee on Constitutional Affairs has decided to use the simplified procedure to issue a swift positive opinion on the Council's draft without amendment in the expectation that the modest but sensible reforms will be in place in time for 2014.

PROCEDURE

Title	Amendment of Directive 93/109/EC: right to vote and stand in elections to the European Parliament for EU citizens residing in another Member State	
References	13634/2012 – C7-0293/2012 – COM(2006)0791 – C6-0066/2007 – 2006/0277(CNS)	
Date of consulting Parliament	14.2.2007	
Committee responsible Date announced in plenary	AFCO 22.10.2012	
Committee(s) asked for opinion(s) Date announced in plenary	JURI 22.10.2012	LIBE 22.10.2012
Not delivering opinions Date of decision	JURI 23.10.2012	LIBE 5.11.2012
Rapporteur(s) Date appointed	Carlo Casini 9.10.2012	
Previous rapporteur(s)	Andrew Duff	
Simplified procedure - date of decision	9.10.2012	
Discussed in committee	9.10.2012	
Date adopted	9.10.2012	
Date tabled	24.10.2012	