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2021/0373 (CNS)

Proposal for a

## **COUNCIL DIRECTIVE**

**laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by 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**

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 transparently and as closely as possible to the citizen.

EU citizenship entails specific democratic rights. EU citizens who have exercised their right to live, work, study or research 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 municipal elections in their Member State of residence.

Council Directive 94/80/EC sets down the detailed arrangements for the exercise of their electoral rights in municipal elections in the Member State of residence.

In the EU Citizenship Report 2020<sup>1</sup>, the Commission expressed its intention to propose an update of Council Directive 94/80/EC on the right of mobile EU citizens to vote and stand as a candidate in municipal elections. The main aim is to facilitate the provision of information to citizens and to update outdated and obsolete provisions in the Annex to the Council Directive. 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 municipal elections. Problems include difficulties for mobile EU citizens to obtain correct information on how to exercise their electoral rights, burdensome registration processes and the effect of deregistration from elections in the Member State of origin. It is necessary to revise the Directive's Annex due to changes in some Member State's 'basic local government units' and to the withdrawal of the United Kingdom from the European Union.

This initiative addresses the observed difficulties in the exercise of electoral rights by mobile EU citizens. It updates, clarifies and strengthens the rules in order to ensure that they support the broad and inclusive participation of mobile EU citizens in municipal elections in the Member State of residence.

This proposal builds on long-standing and regular exchanges with Member States' competent authorities through the Commission's dedicated implementation group for the directive, the expert group on electoral matters, and two further dedicated 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**

The proposal is closely related to the proposal for a recast of Council Directive 93/109/EC of 6 December 1993<sup>2</sup> and to the work being done on other initiatives in the transparency and democracy package of the Commission Work Programme<sup>3</sup>.

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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> 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.

<sup>3</sup> [https://ec.europa.eu/info/sites/info/files/2021\\_commission\\_work\\_programme\\_annexes\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2021_commission_work_programme_annexes_en.pdf)

- **Consistency with other Union policies**

The proposal ensures consistency with the EU Single Digital Gateway Regulation<sup>4</sup> regarding access to high-quality information for citizens 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>5</sup>, which seeks to guarantee political rights of persons with disabilities on an equal basis with others<sup>6</sup>. It also complements other EU policies related to democracy and the digital world<sup>7</sup>. By seeking equal access to electronic voting or internet-voting solutions for mobile EU citizens, the proposal aims to better protect their fundamental rights and enhances democratic participation for society at large. 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(1) TFEU, and Article 40 of the EU Charter of Fundamental Rights, provide that citizens of the Union have the right to vote and stand as candidates in municipal elections 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.

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

The right of mobile EU citizens to vote and stand as candidates in municipal elections in the Member State of their residence forms part of the rights attaching to the status of citizenship of the Union enshrined in Part Two of the Treaty on the Functioning of the European Union. Article 22(1) of the Treaty expressly provides for the laying down by the Council of detailed arrangements to ensure the effective exercise of that right throughout the Member States. Such arrangements were initially established at the adoption of Directive 94/80/EC.

The recast of Directive 94/80/EC, and the revision and updating of the common standards and procedures contained therein, implies the need for action at Union level.

- **Proportionality**

The targeted measures proposed do not go beyond what is necessary to achieve the long-term objective of developing and strengthening European democracy. They improve and refine the framework governing the exercise by mobile EU citizens of their electoral rights granted under the Treaties. The proposal therefore complies with the principle of proportionality.

- **Choice of the instrument**

The Council Directive already contains a robust set of norms on 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 shortcomings and obstacles that

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<sup>4</sup> [EUR-Lex - 32018R1724 - EN - EUR-Lex \(europa.eu\)](#).

<sup>5</sup> [EUR-Lex - 52021DC0101 - EN - EUR-Lex \(europa.eu\)](#).

<sup>6</sup> See also UN Convention on the Rights of Persons with Disabilities to which the EU and the Member States are party.

<sup>7</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.

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 94/80/EC<sup>8</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>9</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>10</sup> of citizens, non-governmental organisations and local and regional authorities, relevant studies including from the Academic Network on EU Citizenship Rights<sup>11</sup>, and the findings of an external study prepared to support the impact assessment conducted prior to the proposal<sup>12</sup>. In addition, mobile EU citizens<sup>13</sup>, the European cooperation network on elections<sup>14</sup>, and the expert group on electoral matters offered relevant feedback. This was complemented by conclusions from relevant projects funded under the Rights, Equality and Citizenship<sup>15</sup> and Europe for

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<sup>8</sup> Report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections (COM/2018/044 final); EU Citizenship Report 2017 (COM(2017) 30 final); Report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals (COM(2012) 99 final). The Directive has also been amended on four occasions (Council Directive 96/30/EC of 13 May 1996, Council Directive 2006/106/EC of 20 November 2006, Commission Implementing Decision of 19 July 2012, Council Directive 2013/19/EU of 13 May 2013) to implement changes necessary following an act of accession to the Union.

<sup>9</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>10</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12684-Inclusive-EUParliament-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-EUParliament-elections-supporting-EU-citizens-right-to-vote-and-stand-as-candidates-in-another-EU-country/public-consultation_en)

<sup>11</sup> Political participation of Mobile EU Citizens-Insights from pilot studies on Austria, Belgium, Bulgaria, Germany, Greece, Hungary, Ireland and Poland”.

<sup>12</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>13</sup> To support the 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>14</sup> [https://ec.europa.eu/info/files/terms-reference-european-cooperation-network-elections\\_en](https://ec.europa.eu/info/files/terms-reference-european-cooperation-network-elections_en).

<sup>15</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) .

Citizens<sup>16</sup> programme, as well as direct feedback from EU citizens received by the Commission and the European Parliament.

- **Collection and use of expertise**

Relevant information was obtained through expert consultations in particular in with the Commission's expert group on electoral matters<sup>17</sup> and the European cooperation network on elections<sup>18</sup>.

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 meetings had already largely been discussed in previous meetings.

- **Impact assessment**

The proposal was supported by an impact assessment (SWD(2021) 357). Given the similarities between Council Directive 94/80/EC and Council Directive 93/109/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 were 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. Specifically, these policy options range from soft, non-legislative measures in support of awareness raising and enhancing administrative cooperation, to setting common standards for procedures to register mobile EU citizens and for the prevention of de-registration practices.

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 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 different options were scrutinised with regard 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

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<sup>16</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>17</sup> The Expert group on electoral matters was established in 2005. Its mission is to: establish close cooperation between Member States bodies 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. See more at [Register of Commission expert groups and other similar entities \(europa.eu\)](#).

<sup>18</sup> The European cooperation network on elections was set up in 2019. It brings together representatives of Member States' authorities responsible for electoral matters, and is a forum 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 \(europa.eu\)](#)

harmonised processes. Moreover, some Member States already have systems in place that cover obligations envisaged in the preferred option and would thus not face significant additional costs.

The proposal simplifies the process of registering to vote and to stand as candidate in municipal elections for mobile EU citizens.

Under the proposal, no negative 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 supports free movement and integration.

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

- **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’.

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 the access of mobile EU citizens to voting procedures on terms that are equal with nationals of the host Member State. Furthermore, it enhances the right to stand as a candidate in municipal elections (Article 40 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 will be required to bring into force the laws, regulations and administrative provisions necessary to comply with the Council Directive within two years of its entry into force. Within three years of the entry into force and every four years thereafter, Member States must report to the Commission on the application of the Directive. The report is to contain relevant statistical data on the participation in municipal elections of voters and candidates and a summary of measures taken in that regard. Within five years of the entry into force and every five years thereafter, the Commission must submit a report to the European Parliament and the Council on the application of this Council Directive.



In order to ensure synergy and consistency of its policies on the participation in elections of mobile EU citizens, the Commission will conduct the evaluation of the application of this Directive at the same time with the evaluation of the application of the directive on the elections to the European Parliament. In addition, the evaluation will be informed on the reports of the Member States and on the meetings of the European cooperation network on elections. Therefore, within two years after the next two elections to the European Parliament, following the entry into force of this Directive, the Commission will assess its application and produce an evaluation report on the progress towards the achievement of its objectives.

- **Explanatory documents**

In its judgment of 8 July 2019<sup>19</sup> and in its further jurisprudence<sup>20</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 Directive that are proposed to be changed.

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 municipal elections, before and after their registration, either for electoral purposes or for the purpose set out in Directive 2004/38/EC. This could also entail 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 municipal elections, the same article provides for an obligation for the 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) once available, 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 are required to ensure that users have easy access on their national webpages to user-friendly, accurate, updated and sufficiently comprehensive information on participating in municipal elections. 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.

In addition to use the official language of the Member State of residence, information is also to be communicated in an official EU language that is broadly understood by the largest possible number of EU citizens residing on its territory. Member States will be able to rely on

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<sup>19</sup> Commission v Belgium, C-543/17.

<sup>20</sup> See judgments in Cases Commission v Romania, C-549/18 and Commission v Ireland, C-550/18.

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 the older citizens using as a source of inspiration the general comments of the United Nations Committee on the Rights of Persons with Disabilities regarding Article 21 and 29 of the United Nations Convention on the Rights of Persons with Disabilities.

2. With a view to reducing the administrative barriers faced by mobile EU citizens, the initiative (Articles 8 and 9) puts in place standardised templates for the formal declarations, set out in Annexes II and III that have to be produced by mobile EU citizens in order to register as voters and candidates. The data is supplemented with contact information, which allows Member States to deliver on their obligation to inform. As the annexes to the directive will be published in the Official Journal of the European Union, they will be available to citizens and national authorities alike in all the EU official languages.

3. The proposal (Article 8(5)) limits the scope of registration of mobile EU citizens on the electoral rolls of the host Member State, preventing de-registration from electoral rolls of the home Member State solely on this basis.

4. Article 14 requires regular monitoring and reporting of implementation by Member States. Reports will contain relevant statistical data on the participation in municipal elections of voters and candidates pursuant to Article 3 and a summary of measures taken in that regard. This will allow the Commission to assess the efficiency of the methods employed by Member States and offer alternatives for improvement. Article 16 provides for the evaluation of the application of the Directive within two years after the 2029 elections to the European Parliament.

5. Articles 2, 8 and 9 confer upon the Commission the power to adopt delegated acts to ensure that the list of basic local administrative units remains up-to-date and that the templates of the formal declarations submitted by mobile EU citizens at their registration as voters or candidates continue to comprise relevant data. Article 16 sets the limits of the delegation in accordance with Article 290 TFEU.

6. In line with the non-discrimination principle, Article 10 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 municipal elections.

7. The proposal deletes the term ‘automatically’ from Article 8(3) in line with the General Data Protection Regulation’s provisions on 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. Currently, host Member States have the possibility to require EU non-national candidates to produce, before or after the election, an attestation regarding their right to stand as candidates. This attestation may be requested if there is doubt regarding the content of the declaration that states they have not been deprived of this right in their home Member States or in every case, as long as it is laid down by national legislation.

As the obligation of such a declaration is, in itself, a deterrent to standing as a candidate without having the right to, this initiative aims at eliminating the possibility to impose a blanket obligation on all EU non-national candidates to produce the above-mentioned attestation. Meanwhile, the proposal provides Member States with the option to require such an attestation on a case-by-case evaluation of the credibility of the declaration.

9. With the same aim of increasing awareness of mobile EU citizens, the proposal also envisages the amendment of Article 11(1) by providing for the obligation of Member States to use clear and plain language when informing mobile EU citizens on their registration status. It



also clarifies the extent of the obligation on the Member States by replacing the term ‘measures’ with ‘decision’. Under a new paragraph in Article 11, it provides for the right of voters and candidates pursuant to 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.

10. The proposal also envisages adaptations of the outdated language and references (Article 3(a), Article 7(1), Article 8(2), Article 9(1) by replacing the Treaty establishing the European Community with the Treaty on the functioning of the European Union and by employing gender-neutral language.

11. Amendments to the list of basic local government units are in response to notifications received from Member States and to the withdrawal of the United Kingdom from the European Union.

12. Article 17 provides for transposition of the Directive.

Proposal for a

## COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~  on the functioning of the European Union  , and in particular Article ~~18~~  22  (1) 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 94/80/EC<sup>1</sup>. In the interests of clarity, that Directive should be recast.
- (2) Article 20(2) point (b) and Article 22(1) 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 a national the right to vote and to stand as a candidate in municipal elections 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 40 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), 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 municipal elections are set out in Council Directive 94/80/EC.
- (4) In the EU Citizenship Report 2020<sup>2</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

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<sup>1</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 (OJ L 368, 31.12.1994, p. 38).

<sup>2</sup> EU Citizenship Report 2020 Empowering citizens and protecting their rights, COM/2020/730 final.

candidate in municipal elections in order to ensure that they support the broad and inclusive participation of mobile Union citizens. Taking also into account the experience gained in its application to successive elections, and in order to take account of changes introduced by the amendments to the Treaties, several of the provisions of that Directive should be updated.

- (5) The electoral procedure related to municipal elections falls within the competences of the Member States that organise them reflecting their specific traditions and in accordance with international and European standards. In line with International Covenant on Civil and Political Rights as well as the law of the European Convention on Human Rights, Member States should not only recognise 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 their participation in elections as possible.
- (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 and to stand as candidates in municipal elections 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 municipal elections 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 as the proofs for demonstrating compliance with such a condition.
- (7) In addition, non-national Union citizens should not be required to fulfil any special conditions in order to exercise the right to vote or stand in municipal elections unless, exceptionally, a different treatment of nationals and non-nationals is justified by circumstances specific to the latter distinguishing them from the former.

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↓ 94/80/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 the Union's 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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↓ 94/80/EC recital 2 (adapted)

~~Whereas to that end Title II of the Treaty on European Union 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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↓ 94/80/EC recital 3 (adapted)

~~Whereas the right to vote and to stand as a candidate in municipal elections in the Member State of residence, embodied in Article 8b (1) of the Treaty establishing the European Community, is an instance of the application of the principle of equality and 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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↓ 94/80/EC recital 4 (adapted)

~~Whereas application of Article 8b (1) does not presuppose complete harmonization of Member States' electoral systems; whereas the aim of that provision is essentially to abolish the nationality requirement to which most Member States currently make the exercise of the right to vote and to stand as a candidate subject; whereas, moreover, to take account of the principle of proportionality set out in the third paragraph of Article 3b of the Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b (1) of the Treaty;~~

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↓ 94/80/EC recital 5 (adapted)

~~Whereas the purpose of Article 8b (1) 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 candidates in municipal elections 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; whereas non-nationals must not be required to fulfil any special conditions unless, exceptionally, different treatment of nationals and non-nationals is justified by circumstances specific to the latter distinguishing them from the former;~~

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↓ 94/80/EC recital 6 (adapted)

~~Whereas Article 8b (1) of the Treaty recognizes the right to vote and to stand as a candidate in municipal elections in the Member State of residence, without actually substituting it for the right to vote and to stand as a candidate in the Member State of which the Union citizen is a national; whereas the freedom of Union citizens to choose whether or not to take part in municipal elections in the Member State in which they reside must be respected; whereas it is appropriate that those citizens may express their wish to exercise their right to vote there; whereas provision may be made for those citizens to be registered automatically on the electoral roll in those Member States where voting is not compulsory;~~

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↓ 94/80/EC recital 7 (adapted)

~~Whereas the way in which local government operates in the different Member States is a reflection of different political and legal traditions and is characterized by an abundance of structures; whereas the term 'municipal election' does not mean the same thing in every Member State; whereas the object of this Directive must therefore be clarified by defining the term; whereas municipal elections are elections by direct universal suffrage at the level of basic local government units and their subdivisions; whereas the term covers elections by direct universal suffrage both to representative councils of municipalities and of members of a municipal executive;~~

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↓ new

(8) 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 include 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.

- (9) While Member States are competent to determine the right to vote or to stand as a candidate in municipal elections 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.

↓ 94/80/EC recital 8 (adapted)  
⇒ new

- (10) Disqualification ☒ from the right to stand as a candidate ☒ may be ordered by an individual decision of the authorities either of the Member State of residence or of the home Member State. In view of the political significance of the holding of elected municipal office, Member States should be entitled to ⇒ obtain information from the home Member State related to the deprivation of the right to stand as a candidate in the candidate's home Member State. ⇐ ~~take the steps necessary to ensure that a person who has been deprived of his right to stand as a candidate in his home Member State is not enabled to recover that right merely by virtue of his residence in another Member State; whereas this problem, which is specific to non-national candidates, is important enough to justify a provision under which those Member States which consider it necessary are allowed to make such candidates subject not only to the rules on disqualification of the Member State of residence but also to those of the home Member State; whereas, in view of the principle of proportionality, it will be sufficient if the right to vote is made subject only to the rules on disqualification from voting of the Member State of residence;~~

↓ 94/80/EC recital 9 (adapted)

- (11) Since the duties of the leadership of basic local government units may involve taking part in the exercise of official authority and in the safeguarding of the general interest, Member States should be able to reserve ~~these~~ ☒ those ☒ offices for their nationals ☒ in full respect of the principle of proportionality ☒. ~~Member States should also be able to take appropriate measures for that purpose; such measures may not restrict more than is necessary for the achievement of that objective the possibility for other Member States' nationals to be elected.~~

↓ 94/80/EC recital 10

- (12) It should likewise be possible for participation by elected municipal officers in the election of a parliamentary assembly to be reserved for own nationals.



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↓ 94/80/EC recital 11

- (13) Where Member States' laws provide that the holding of elected municipal office is incompatible with holding other offices, Member States should be able to extend their scope to include equivalent offices held in other Member States.
- 

↓ 94/80/EC recital 6 (adapted)

- (14) ~~Article 8b (1) of the Treaty recognizes~~ The right  conferred on non-national Union citizens  to vote and to stand as a candidate in municipal elections in the Member State of residence, ~~without actually substituting it~~  is not a substitute  for the right to vote and to stand as a candidate in the Member State of which the Union citizen is a national.  It is therefore necessary to ensure that  ~~the~~ freedom of Union citizens to choose whether or not to take part in municipal elections in the Member State in which they reside ~~must be~~  is  respected. ~~It is appropriate~~  and  that those citizens ~~may~~  are able to  express their wish to exercise their right to vote  in their Member State of residence  ~~there~~. Provision may  therefore  be made ~~for those citizens to be registered automatically on the electoral roll in those~~  by  Member States where voting is not compulsory  to automatically register those citizens on the electoral roll .
- 

↓ new

- (15) 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(1) TFEU.
- (16) 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 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(1) TFEU and the national rules and procedures regarding participation in and the organization of municipal elections. In order to ensure the effectiveness of communications, information should be provided in clear and comprehensible terms.
- (17) 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.
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↓ 94/80/EC recital 12 (adapted)

⇒ new

- (18) Any derogation from the general rules of this Directive  has to  ~~must~~ be warranted, pursuant to Article ~~8b~~  22  (1) ~~of the 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 the requirement that any limitations to the exercise of the right to vote and to stand as a candidate in municipal elections shall be provided by law and shall be subject to the principles of proportionality and necessity ~~□~~ .  
~~☒~~ Additionally, ~~☒~~ any derogation ~~☒~~ has ~~☒ must~~, by its very nature, ~~☒~~ to ~~☒~~ be subject to review ~~☒~~ as provided by Article 47 of the Charter ~~☒~~ .

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↓ 94/80/EC recital 13 (adapted)

- (19) 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. ~~whereas derogations are warranted~~ Where such citizens form more than 20% of the total electorate, ~~☒~~ derogations are warranted ~~☒~~ . Such derogations ~~☒~~ are to ~~☒ must~~ be based on the criterion of period of residence.
- 

↓ 94/80/EC recital 14

~~Whereas citizenship of the Union is intended to enable citizens of the Union to integrate better in their host country; whereas 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;~~

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↓ 94/80/EC recital 15 (adapted)

- (20) ~~Whereas this risk of polarization concerns in particular a Member State~~ ~~☒~~ Member States ~~☒~~ in which the proportion of non-national ~~☒~~ Union ~~☒~~ 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; ~~whereas it is important, therefore, that this Member State~~ ~~☒~~ should ~~☒~~ be able to lay down, in compliance with Article ~~8b of the Treaty~~ ~~☒~~ 22(1) TFEU ~~☒~~ , specific provisions concerning the composition of lists of candidates.
- 

↓ 94/80/EC recital 16 (adapted)

- (21) Account ~~☒~~ has to ~~☒ 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 ~~☒~~ consequently ~~☒~~ the formalities provided for in this Directive can ~~consequently~~ be eased.
- 

↓ 94/80/EC recital 17

- (22) The Kingdom of Belgium is characterized by specific features and balances linked to the fact that Articles 1 to 4 of its Constitution provide for three official languages and a territorial division into regions and communities, as a result of which full application of this Directive in certain communes might have effects such as to necessitate providing for the possibility of a derogation from the provisions of this Directive in order to take account of those specific features and balances;

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↓ 94/80/EC recital 18 (adapted)  
⇒ new

(23) ⇒ 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 municipal elections, it is necessary to introduce regular monitoring and reporting of implementation by Member States, which should include, besides statistical data, information on the measures taken to support participation in elections of non-national Union citizens. ⇐ The Commission ~~will~~ ☒ should ☒ assess the application of the Directive ~~in law and in fact~~, including any changes in the electorate ~~which~~ ☒ that ☒ have taken place since its entry into force, ~~whereas the Commission will~~ ☒ and ☒ submit a report in this connection to the European Parliament and to the Council.

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↓ new

(24) It is necessary that the Commission conduct its own evaluation of the application of this Directive within a reasonable timeframe from its entry into force, in close connection to the evaluation of the application of the Council Directive 93/109/EC<sup>3</sup> 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 Union citizens residing in a Member State of which they are not nationals.

(25) In order to ensure that the list of basic government units in Member States remains up to date and that the formal declarations to be submitted by non-national Union citizens seeking to vote or stand in municipal elections 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 the list of basic government units and the template for the formal declarations. 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 of 13 April 2016 on Better Law-Making<sup>4</sup>. 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.

(26) The Member States, by ratifying, and the Union, by concluding<sup>5</sup>, have committed themselves to ensure compliance with the United Nations Convention on the Rights of Persons with Disabilities including on Article 29 on Participation in political and public life. In order to support inclusive and equal electoral participation for persons with disabilities, arrangements for Union citizens residing in a Member State of which

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<sup>3</sup> Council Directive 93/109/EC<sup>3</sup> 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 Union citizens residing in a Member State of which they are not nationals (recast).

<sup>4</sup> OJ L 123, 12.5.2016, p. 1.

<sup>5</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).

they are not nationals to exercise the right to vote and to stand as a candidate there in municipal elections should have due regard to the needs of citizens with a disability and older citizens.

- (27) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>6</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>7</sup> applies to personal data processed when implementing this Directive.
- (28) This Directive respects fundamental rights and the principles recognised in particular by the Charter, in particular Article 21 and 40 thereof. Accordingly, it is essential that this Directive 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 municipal elections, the freedom of movement and of residence and the right to an effective remedy.
- (29) 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.
- (30) 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,

↓ 94/80/EC (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 municipal elections.

2. Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate either of its nationals who reside outside its territory or of third country nationals who reside in that State.

<sup>6</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>7</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 ⊠

1. For the purposes of this Directive ⊠ the following definitions apply ⊠ :

- (a) ‘basic local government unit’ means the administrative entities listed in ~~the~~ Annex I which, in accordance with the laws of each Member State, contain bodies elected by direct universal suffrage and are empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility;
- (b) ‘municipal elections’ means elections by direct universal suffrage to appoint the members of the representative council and, where appropriate, under the laws of each Member State, the head and members of the executive of a basic local government unit;
- (c) ‘Member State of residence’ means the Member State in which a ⊠ Union ⊠ citizen ~~of the Union~~ resides but of which ~~he~~ ⊠ the Union citizen ⊠ is not a national;
- (d) ‘home Member State’ means the Member State of which a ⊠ Union ⊠ citizen ~~of the Union~~ is a national;
- (e) ‘electoral roll’ means the official register of all voters entitled to vote in a given basic local government unit or in one of its subdivisions, 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;
- (f) ‘reference date’ means the day or days on which ⊠ Union ⊠ citizens ~~of the Union~~ must satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;
- (g) ‘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.

2. A Member State shall notify the Commission if any ⊠ basic ⊠ local government unit referred to in the Annex ⊠ I ⊠ is, by virtue of a change in its domestic law, replaced by another unit having the functions referred to in paragraph 1 (a) of this Article or if, by virtue of such a change, any such unit is abolished or further such units are created.

↓ new

The Commission is be empowered to adopt delegated acts in accordance with Article 16 concerning the amendment of Annex I in accordance with the notifications received pursuant to the first subparagraph of this paragraph.

↓ 94/80/EC (adapted)

⇒ new

~~Within three months of receipt of such a notification, together with a Member State's assurance that no person's rights under this Directive will be prejudiced, the Commission shall adapt the Annex by making appropriate substitutions, deletions or additions. The Annex so revised shall be published in the Official Journal.~~



### Article 3

#### ~~⊗~~ Conditions governing the right to vote and to 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 municipal elections in the Member State of residence: ⊗

- (a) ⊗ the person who on the reference date ⊗ is a ⊗ Union ⊗ citizen ~~of the Union~~ within the meaning of the second subparagraph of Article & ⊗ 20 ⊗ (1) ~~of the Treaty~~ ⊗ TFEU ⊗ ; and
- (b) ⊗ the person who on the reference date ⊗ is not a national of the Member State of residence, but in any event 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 municipal elections in the Member State of residence in accordance with this Directive.~~

### Article 4

#### ~~⊗~~ Residence period requirements ~~⊗~~

1. If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the territory of that State, voters and persons entitled to stand as candidates ⊗ pursuant to ⊗ ~~within the scope of~~ Article 3 shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States.

2. If, under the laws of the Member State of residence, its own nationals may vote or stand as candidates only in the basic local government unit in which they have their principal residence, voters and persons entitled to stand as candidates ⊗ pursuant to ⊗ ~~within the scope of~~ Article 3 shall also be subject to ~~this~~ ⊗ that ⊗ condition.

3. Paragraph 1 shall not affect the provisions of each Member State under which the exercise ~~by any person~~ of the right to vote and to stand as a candidate in a given basic local government unit is subject to ~~his having spent~~ a minimum ⊗ residence ⊗ period ~~as a resident~~ in that unit.

Nor shall paragraph 1 affect any national provision already in force on the date of adoption of this Directive, whereby the exercise by any ~~person~~ ⊗ persons ⊗ of such right to vote and to stand as a candidate is subject to ~~his~~ ⊗ their ⊗ having spent a minimum period in the constituent part of the Member State of which the basic local government unit forms a part.

### Article 5

#### ~~⊗~~ Ineligibility ~~⊗~~

1. Member States of residence may provide that ~~any~~ ⊗ Union citizens ⊗ ~~citizen of the Union~~ who, through an individual decision under civil law or a criminal law decision, ~~has~~ ⊗ have ⊗ been deprived of ~~his~~ ⊗ their ⊗ right to stand as a candidate under the law of ~~his~~ ⊗ their ⊗ home Member State~~;~~ shall be precluded from exercising that right in municipal elections.

2. An application from any  Union  citizen ~~of the Union~~ to stand as a candidate in municipal elections in the Member State of residence may be declared inadmissible where that citizen is unable to produce the declaration referred to in Article 9 (2)  point  (a) or the attestation referred to in Article 9 (2)  point  (b).

3. Member States may provide that only their own nationals may hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit if elected to hold office for the duration of ~~his~~  their  mandate.

The Member States may also lay down that the temporary or interim performance of the functions of a head, deputy or member of the governing college of the executive of a basic local government unit may be restricted to own nationals.

Having regard to the Treaty and to general legal principles, Member States may take appropriate, necessary and proportional measures to ensure that the offices referred to in the first subparagraph can only be held and the interim functions referred to in the second subparagraph can be performed only by their own nationals.

4. Member States may also  provide  stipulate that  Union  citizens ~~of the Union~~ elected as members of a representative council shall take part in neither the designation of delegates who can vote in a parliamentary assembly nor the election of the members of that assembly.

#### Article 6

##### Incompatibility

1. Persons entitled to stand as candidates ~~within the scope of~~  pursuant to  Article 3 shall be subject to the same conditions concerning incompatibility as apply, under the laws of the Member State of residence, to nationals of that State.

2. Member States may provide that the holding of elected municipal office in the Member State of residence is also incompatible with the holding of offices in other Member States which are equivalent to those which give rise to incompatibility in the Member State of residence.

## CHAPTER II

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

#### Article 7

##### Freedom to choose to vote in the Member State of residence

1. ~~A voter~~  Voters fulfilling the conditions  ~~within the scope~~ of Article 3 shall exercise ~~his~~  their  right to vote in municipal elections 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, voters  pursuant to  ~~within the scope of~~ Article 3 who have been entered on the electoral roll there shall also be obliged to vote.

3. Member States where voting is not compulsory may provide for the automatic registration of voters ~~within the scope of~~  pursuant to  Article 3 on the electoral roll.

## Article 8

### Entry and removal from the electoral roll

1. Member States shall take the necessary measures to enable a voter pursuant to ~~within the scope of~~ Article 3 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 voter~~ voters pursuant to ~~within the scope of~~ Article 3 shall produce the same documents as ~~a voter~~ voters who ~~is a national~~ are nationals.

The Member State of residence may also require a voter pursuant to ~~within the scope of~~ Article 3 to produce a valid identity document, along with a formal declaration ~~stating his nationality, and his address in the Member State of residence~~ drawn up in accordance with the template set out in Annex II.

3. Voters pursuant to ~~within the scope of~~ Article 3 who have been entered on an electoral roll in the Member State of residence shall remain thereon, under the same conditions as voters who are nationals, until such a time as they are removed ~~automatically~~ because they no longer satisfy the requirements for exercising the right to vote. Where Member States provide for the notification of nationals of their removal from the electoral roll, those provisions shall apply equally to voters pursuant to Article 3.

Voters who have been entered on the electoral roll at their request can also be removed from it if they so request.

If such voters move to another basic local government unit in the same Member State, they shall be entered on the electoral roll of that unit under the same conditions as voters who are nationals.

↓ new

4. The Commission is empowered to adopt delegated acts in accordance with Article 16 concerning the amendment of the form and content of the template for the formal declaration referred to in paragraph 2 of this Article.

5. Without prejudice to the rules of any Member State concerning the right to vote or to stand as a candidate of nationals who reside outside its territory, the fact that voters pursuant to Article 3 have been entered on the electoral roll of their Member State of residence shall not result in their removal from the electoral roll of the home Member State.

↓ 94/80/EC (adapted)

⇒ new

## Article 9

### Registration as a candidate

1. When ~~he submits his~~ submitting an application to stand as ~~a~~ candidates ~~candidate, a person~~ persons entitled to stand as ~~a~~ candidates ~~candidate~~ pursuant to ~~within the scope of~~ Article 3 shall produce the same supporting documents as a candidate who is a national. The Member State of residence may require ~~him~~ the persons

concerned ~~the~~ to produce a formal declaration ~~stating his nationality and his address in the Member State of residence~~ ⇒ drawn up in accordance with the template set out in Annex III ⇐ .

2. The Member State of residence may also require ~~a~~ ~~persons~~ ~~person~~ entitled to stand as ~~a candidate~~ ~~candidates~~ ~~within the scope~~ ~~of~~ pursuant to ~~of~~ of Article 3 to:

(a) state in the formal declaration which ~~he~~ ~~they~~ produce ~~produces~~ in accordance with paragraph 1 when submitting ~~his~~ ~~their~~ ~~application~~ to stand as ~~a candidate~~ ~~candidates~~ ~~that~~ ~~he~~ ~~they~~ have ~~has~~ not been deprived of the right to stand as a candidate in ~~his~~ ~~their~~ ~~home~~ Member State;

(b) in case of doubt regarding the content of the declaration pursuant to ~~of~~ point ~~of~~ (a), ~~or where required under the legal provisions of a Member State,~~ to produce before or after the election an attestation from the competent administrative authorities in ~~his~~ ~~their~~ ~~home~~ Member State certifying that ~~he~~ ~~they~~ have ~~has~~ not been deprived of the right to stand as a candidate in that State or that no such disqualification is known to those authorities;

(c) produce a valid identity document;

(d) state in the formal declaration ~~he~~ ~~they~~ produce ~~produces~~ in accordance with paragraph 1 that ~~he~~ ~~they~~ hold ~~holds~~ no office which is incompatible within the meaning of Article 6 (2);

(e) indicate ~~his~~ ~~their~~ ~~last~~ address in ~~his~~ ~~their~~ ~~home~~ Member State, in so far as ~~he~~ ~~they~~ have ~~has~~ had one.

↓ new

3. The Commission is empowered to adopt delegated acts in accordance with Article 16 concerning the amendment of the form and content of the template for the formal declaration referred to in paragraph 1 of this Article.

## Article 10

### *Specific means of voting*

Member States that provide for the possibility for nationals to vote by means of advance voting, postal voting, and electronic and internet voting in municipal elections shall ensure that such means of voting are also available under the same conditions to voters pursuant to Article 3.

↓ 94/80/EC (adapted)  
⇒ new

## Article ~~11~~10

### *Decision on registration and legal remedies*

1. The Member State of residence shall inform the ~~person~~ concerned ~~persons~~ ~~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 ⊗ not be entered on the electoral roll or have ~~his~~ ⊗ their ⊗ application form entry refused or have ~~his~~ ⊗ their ⊗ application to stand as a candidate rejected, 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.

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↓ new

3. In case of errors in the electoral roll or in the list of candidates for municipal elections, 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.

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↓ 94/80/EC (adapted)

### *Article ~~124~~*

#### *⊗ Provision of information ⊗*

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↓ new

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 municipal elections.

2. The Member States shall ensure that the designated authority pursuant to paragraph 1, shall directly and individually communicate to voters and persons entitled to stand as candidates pursuant to Article 3, the following information:

- (a) the status of their registration,
- (b) once available, the date of the election and how and where to vote,
- (c) 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 municipal elections 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 European Union citizens residing on its territory, in accordance



with the quality requirements in Article 9 of Regulation (EU) 2018/1724 of the European Parliament and of the Council<sup>8</sup>.

4. Member States shall ensure that information on conditions and detailed rules for registration as a voter or candidate in municipal elections 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.

↓ 94/80/EC (adapted)  
⇒ new

~~The Member State of residence shall inform voters and persons entitled to stand as candidates within the scope of Article 3 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.~~

### CHAPTER III

#### DEROGATIONS AND TRANSITIONAL PROVISIONS

##### *Article ~~1312~~*

##### *⊠ Derogations ⊠*

1. Where, ~~on 1 January 1996,~~ 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 this Directive:

- (a) restrict the right to vote to voters ~~within the scope of~~ ⊠ pursuant to ⊠ Article 3 who have resided in that Member State for a minimum period, which may not be longer than the term for which the representative council of the municipality is elected;
- (b) restrict the right to stand as a candidate to persons entitled to stand as candidates ~~within the scope of~~ ⊠ pursuant to ⊠ Article 3 who have resided in that Member State for a minimum period, which may not be longer than twice the term for which the representative council of the municipality is elected; and
- (c) take appropriate measures with regard to the composition of lists of candidates to encourage in particular the integration of ⊠ Union ⊠ citizens ~~of the Union~~, who are nationals of another Member State.

<sup>8</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. 1–38)

2. The Kingdom of Belgium may, by way of derogation from the provisions of this Directive, apply the provisions of paragraph 1 ~~of~~ point ~~(a)~~ (a) to a limited number of local government units, the list of which it shall communicate at least one year before the local government unit elections for which it intends to invoke the derogation.

3. Where, ~~on 1 January 1996,~~ 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 11 in respect of such persons.

4. ~~By 31 December 1998 and~~ ~~Every six years thereafter~~ ~~after the entry into force of this Directive~~, 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 ~~of~~ ~~22~~ ~~(1)~~ ~~of the Treaty~~ ~~of~~ TFEU ~~is~~ is still warranted and shall propose that any necessary adjustments be made. Member States which invoke derogations under paragraphs 1 and 2 shall furnish the Commission with all the necessary background information.

## CHAPTER IV

### FINAL PROVISIONS

#### Article ~~1413~~

#### ~~of~~ Reporting ~~of~~

↓ new

1. Within three years of the entry into force of this Directive and every four years thereafter, the Member States shall report to the Commission on the application of this Directive in their territory, including on the application of Article 5(3) and (4). The report shall contain statistical data on the participation in municipal elections of voters and candidates pursuant to Article 3 and a summary of measures taken in that regard.

↓ 94/80/EC (adapted)

⇒ new

⇒ 2. Within five years of the entry into force of this Directive and every five years thereafter, ~~the~~ ~~Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including any changes in the electorate which have taken place since its entry into force, within a year of the holding in all the Member States of the municipal elections organized on the basis of the above provisions, and shall, where appropriate, propose appropriate adjustments~~ ~~including on the basis of the information provided by Member States pursuant to paragraph 1 of this Article.~~

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↓ new

### Article 15

#### Evaluation

Within two years after the 2029 elections to the European Parliament, the Commission shall assess the application of this Directive and produce an evaluation report on the progress towards achievement of the objectives contained herein.

### Article 16

#### 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 2, 8 and 9 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 2, 8 and 9 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 2, 8 and 9 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 European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

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↓ 94/80/EC (adapted)

⇒ new

### Article ~~17~~<sup>14</sup>

#### ☒ Transposition ☒

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ⇒ Articles 8 (2), (3) and (5), 9(1) and (2), 10, 11(1) and (3), 12, 14 and Annexes I, II and III by 31 December 2023 ⇐ ~~this Directive before 1 January 1996~~. They shall immediately ~~inform~~ ☒ communicate the text of those measures to ☒ the Commission ~~thereof~~.

When Member States adopt ~~those measures~~ ~~these provisions, these~~ they shall contain a reference to this Directive or shall be accompanied by such a reference ~~at the time~~ 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(s) repealed by this Directive shall be construed as references to this Directive. ~~The procedure for such reference shall be adopted 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 18*

#### *Repeal*

Directive 94/80/EC, as amended by the acts listed in Annex IV, Part A, is repealed with effect from 31 December 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 Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.

#### *Article 19*

#### *Entry into force and application*

This Directive shall enter into force on the ~~20th~~ twentieth day following that of its publication in the *Official Journal of the European Communities* Union .

Articles 1 to 7, 8(1), 11(2) and 13 shall apply from 31 December 2023.

#### *Article 20*

#### *Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*



Brussels, 25.11.2021  
COM(2021) 733 final

ANNEXES 1 to 5

## ANNEXES

to the proposal for a

### COUNCIL DIRECTIVE

**laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by 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}

## ANNEX I

‘Basic local government unit’ within the meaning of Article 2(1) point (a) of this Directive means any of the following:

*in Belgium:*

commune/gemeente/Gemeinde,

*in Bulgaria:*

община/кметство/Общината е основната административно-териториална единица, в която се осъществява местното самоуправление,

*in the Czech Republic:*

obec, městský obvod nebo městská část územně členěného statutárního města, městská část hlavního města Prahy,

*in Denmark:*

kommune, region,

*in Germany:*

kreisfreie Stadt bzw. Stadtkreis; Kreis; Gemeinde, Bezirk in der Freien und Hansestadt Hamburg und im Land Berlin; Stadtgemeinde Bremen in der Freien Hansestadt Bremen, Stadt-, Gemeinde-, oder Ortsbezirke bzw. Ortschaften,

*in Estonia:*

vald, linn,

*in Ireland:*

⇒ counties, cities, and cities and counties, ⇐ ~~City Council, County Council, Borough Council, Town Council,~~

*in Greece:*

δήμος, ⇒ δημοτική κοινότητα, ⇐

*in Spain:*

municipio, entidad de ámbito territorial inferior al municipal,

*in France:*

commune, arrondissement dans les villes déterminées par la législation interne, section de commune,

*in Croatia:*

općina, grad, županija,

*in Italy:*

comune, circoscrizione,

*in Cyprus:*



δήμος, κοινότητα,

*in Latvia:*

novads, ~~republikas pilsēta,~~ valstspilsēta

*in Lithuania:*

Savivaldybė,

*in Luxembourg:*

commune,

*in Hungary:*

települési önkormányzat, ~~község, nagyközség, város, megyei jogú város, főváros, főváros kerületei,~~ területi önkormányzat, ~~⇒ fővárosi önkormányzat~~ megye,

*in Malta:*

Kunsill Lokali,

*in the Netherlands:*

gemeente, ~~deelgemeente,~~

*in Austria:*

Gemeinden, Bezirke in der Stadt Wien,

*in Poland:*

gmina,

*in Portugal:*

município, freguesia,

*in Romania:*

comuna, orașul, municipiul, sectorul (numai în municipiul București) și județul,

*in Slovenia:*

občina,

*in Slovakia:*

samospráva obce: obec, mesto, hlavné mesto Slovenskej republiky Bratislava, mesto Košice, mestská časť hlavného mesta Slovenskej republiky Bratislavy, mestská časť mesta Košice; samospráva vyššieho územného celku: samosprávny kraj,

*in Finland:*

kunta, kommun, kommun på Åland,

*in Sweden:*

kommuner, landsting,

~~*in the United Kingdom:*~~

~~counties in England; counties, county boroughs and communities in Wales; regions and Islands in Scotland; districts in England, Scotland and Northern Ireland; London boroughs; parishes in England; the City of London in relation to ward elections for common councilmen.~~

**ANNEX II**

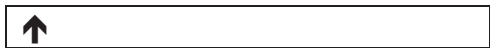
I ..... (Name) solemnly and sincerely declare that the following information is accurate:

Nationality	
Date of birth	
Address in Member State of residence	
Telephone/E-mail	
Place/date:	
Signature:	

**ANNEX III**

I ..... (Name) solemnly and sincerely declare that the following information is accurate:

Nationality	
Date of birth	
Address in Member State of residence	
Telephone/E-mail	
Place/date:	
Signature:	



## ANNEX IV

### **Part A**

Repealed Directive with list of the successive amendments thereto  
(referred to in Article 17)

Council Directive 94/80/EC	(OJ L 368, 31.12.1994, p. 38)
Council Directive 96/30/EC	(OJ L 122, 22.5.1996, p. 14)
Act of Accession of 2003, [Annex ..., point ...]	
Council Directive 2006/106/EC	(OJ L 363, 20.12.2006, p. 409)
Commission Implementing Decision 2012/412/EU	(OJ L 192, 20.7.2012, p. 29)
Council Directive 2013/19/EU	(OJ L 158, 10.6.2013, p. 231)

### **Part B**

Time-limits for transposition into national law  
(referred to in Article 17)

<b>Directive</b>	<b>Time-limit for transposition</b>
Directive 94/80/EC	1 January 1996
Directive 2006/106/EC	1 January 2007
Directive 2013/19/EU	1 July 2013

## ANNEX V

### **CORRELATION TABLE**

Directive 94/80/EC	This Directive
Article 1	Article 1

Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2), first subparagraph
-	Article 2(2), second subparagraph
Articles 3 to 7	Articles 3 to 7
Article 8(1), (2) and (3)	Article 8(1), (2) and (3)
-	Article 8(4) and (5)
Article 9(1)	Article 9(1)
Article 9(2)	Article 9(2)
-	Article 9(3)
-	Article 10
Article 10(1)	Article 11(1)
Article 10(2)	Article 11(2)
-	Article 11(3)
Article 11	Article 12(1)
-	Article 12(2)
-	Article 12(3)
-	Article 12(4)
Article 12	Article 13
Article 13	Article 14
-	Article 15
-	Article 16
Article 14	Article 17
-	Article 18
Article 15	Article 19
Article 16	Article 20
Annex	Annex 1
-	Annexes 2 to 5