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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on granting a derogation under Article 22(2) on the Treaty on the Functioning of the
European Union, presented under Article 14(3) of Directive 93/109/EC on the right to
vote and to stand as a candidate in elections to the European Parliament**

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on granting a derogation under Article 22(2) on the Treaty on the Functioning of the European Union, presented under Article 14(3) of Directive 93/109/EC on the right to vote and to stand as a candidate in elections to the European Parliament

1. PURPOSE OF THE REPORT

Council Directive 93/109/EC¹ lays down detailed arrangements for exercising the right to vote and stand as a candidate in elections to the European Parliament for EU citizens who are resident in a Member State of which they are not nationals.

Article 14(3) of the Directive specifies that, prior to each election to the European Parliament, the Commission must (i) submit to the Parliament and the Council of the EU a report verifying whether the granting to the Member States concerned of a derogation under Article 22(2) of the Treaty on the Functioning of the European Union (TFEU) is still warranted and (ii) propose, if appropriate, that any necessary adjustments be made.

The next elections to the European Parliament, to be held in the 27 EU Member States, will take place between the 6 and 9 June 2024.

The only Member State that applies a derogation under the Directive is Luxembourg.

The aim of this report is to establish whether the circumstances warranting the granting of a derogation still exist and, if necessary, to propose that adjustments be made.

2. RIGHT TO VOTE AND STAND AS A CANDIDATE IN ELECTIONS TO THE EUROPEAN PARLIAMENT

Article 22(2) TFEU specifies that EU citizens resident in a Member State of which they are not nationals ('mobile EU citizens') have the right to both vote and stand as a candidate in elections to the European Parliament in that Member State, under the same conditions as nationals of that state.

This right is to be exercised subject to detailed arrangements adopted by the Council, after consulting the European Parliament. These arrangements may provide for derogations, where this is justified on account of problems specific to a Member State.

The detailed arrangements for exercising the right to vote and stand as a candidate in elections to the European Parliament were laid down by the above-mentioned Directive.

¹ Council Directive 93/109/EC of 6 December laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329, 30.12.1993, p. 34.

It stipulates in Article 3 that any person who, on the reference date,

- (a) is an EU citizen within the meaning of Article 20 TFEU and;
- (b) is not a national of the Member State of residence but satisfies the same conditions in respect of the right to vote and to stand as a candidate as that state imposes by law on its own nationals,

shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7 of the Directive.

Any such voter is referred to here as ‘mobile EU citizen voter’ and any such candidate a ‘mobile EU citizen entitled to stand as a candidate’.

3. **DEROGATIONS UNDER ARTICLE 14 OF THE DIRECTIVE**

The recitals of the Directive record the possibility for Member States to derogate from the general rules of this Directive, if warranted (as referred to in what is now Article 22 TFEU) by problems specific to a Member State.

The recitals further explain that such specific problems may arise in a Member State where the proportion of mobile EU citizens of voting age is very significantly greater than the average within the EU as a whole.

The first sub-paragraph of Article 14(1) states that if, in a given Member State, the proportion of mobile EU citizens of voting age exceeds 20% of the total number of EU citizens of voting age resident there, that Member State may, by way of derogation from Articles 3, 9 and 10:

- (a) restrict the right to vote to mobile EU citizens who have resided in that Member State for a minimum period (which may not exceed five years);
- (b) restrict the right to stand as a candidate to mobile EU citizen who have resided in that Member State for a minimum period (which may not exceed 10 years).

However, mobile EU citizens who, because they have taken up residence outside their home Member State or because of the duration of that residence, do not have the right to vote or stand as candidates in their home state will not be subject to the conditions regarding length of residence set out above.

The second sub-paragraph of Article 14(1) states that “these provisions are without prejudice to appropriate measures which this Member State may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union.”

4. **DEROGATIONS APPLIED BY LUXEMBOURG**

Luxembourg is the only Member State that applies a derogation on the basis of Article 14(1) of the Directive.

Under Luxembourg law a list for the elections to the European Parliament may not include more than six candidates; it must be composed of a majority of candidates of Luxembourgish nationality.² As confirmed by the authorities in Luxembourg, this law means that only two mobile EU citizens who are not nationals of Luxembourg can be included in a list.

Since 2013,³ Luxembourg does not make the right of mobile EU citizens to vote or stand as a candidate in elections to the European Parliament conditional on a minimum period of residency in Luxembourg.

5. **EVALUATION OF THE CIRCUMSTANCES FOR GRANTING A DEROGATION**

The circumstances described in Article 14(1) as a condition for derogating from the general rules laid down in the Directive are that “the proportion of citizens of the Union of voting age who reside in a given Member State but are not nationals of it exceeds 20% of the total number of citizens of the Union residing there who are of voting age”.

The second sentence of Article 14(3) specifies that Member States which invoke derogations under paragraph 1 must provide the Commission with all the necessary background information.

The Luxembourg authorities, in a letter dated 25 November 2022, sent the Commission the necessary information, from which it has emerged that on 16 November 2022, 201 524 mobile EU citizens of voting age were resident in Luxembourg, whereas the total number of EU citizens (including those of Luxembourg nationality) of voting age resident in Luxembourg was 481 184 people.

It follows that on the 16 November 2022 the proportion of mobile EU citizens of voting age residing in Luxembourg was 41.88% of the total number of EU citizens of voting age resident there. This proportion remains significantly higher than the limit set in the Directive (20%) and there is no reason to assume that the situation has changed since.

Luxembourg exercises a derogation on the basis of its large population of mobile EU citizens. According to the Luxembourgish authorities, the measure on the composition of lists is intended to avoid any polarisation between lists of national and non-national candidates.

² Article 291(5) of the Electoral Law.

³ Law of the 20 December 2013, modifying the Electoral Law.

In the 2014 elections to the European Parliament, out of 54 candidates in Luxembourg, 3 were non-national citizens. In 2019, out of 60 candidates, 2 were non-national citizens.

6. CONCLUSIONS

The Commission welcomes the fact that Luxembourg has stopped making mobile EU citizens' right to vote or stand as candidates in the elections to the European Parliament conditional on a minimum period of residence in Luxembourg.

Regarding the composition of lists of candidates, based on the fact that the proportion of mobile EU citizens of voting age resident in Luxembourg remains significantly higher than the threshold of 20% referred to in Article 14(1), the granting of a derogation is still warranted.

The Commission encourages Luxembourg to continue taking measures fostering the integration of mobile EU citizens, including as regards the composition of lists of candidates.