



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.12.2006
COM(2006) 790 final

COMMUNICATION FROM THE COMMISSION

European elections 2004

Commission report on the participation of European Union citizens in the Member State of residence (Directive 93/109/EC) and on the electoral arrangements (Decision 76/787/EC as amended by Decision 2002/772/EC, Euratom)

{SEC(2006) 1645}
{SEC(2006) 1646}
{SEC(2006) 1647}

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1. INTRODUCTION

The right to vote and stand as a candidate in elections to the European Parliament in the Member State of residence is an essential part of European Union citizenship. This right is enshrined in Article 19(2) of the EC Treaty and was put into effect by Council Directive 93/109/EC¹.

The 2004 elections were the sixth direct elections to the European Parliament. They were held in the 25 Member States of the enlarged European Union, with the number of seats increased to 735.

The 10 Member States which acceded to the European Union on 1 May 2004 notified their respective national transposition measures in time. At the moment there are no infringement procedures open².

In order to evaluate the participation of non-national citizens of the European Union in elections in the Member State of residence and to obtain a complete overview of the application of the Directive, the Commission invited Member States to provide both statistical and qualitative information on the elections, using a detailed and comprehensive questionnaire³.

The report is based principally on information provided by Member States in response to the questionnaire.

The purpose of this report is to assess the application of the Directive. In line with its assessment, the Commission proposes amendments to the Directive concerning the exchange of information between Member States, with a view to preventing people from voting twice or standing for election in two places and as regards the administrative formalities for standing as a candidate.

The Commission is fully aware that besides appropriate administrative arrangements, a number of other factors have a significant impact on the participation of citizens in

¹ OJ L 329, 30.12.1993, p. 34.

² The infringement procedure referred to in the previous report was closed in December 2000 following amendment of the German legislation.

³ The Commission sent the letter with the questionnaire to all Member States on 18 November 2004; answers reached the Commission between 8 December 2004 for the first and 25 January 2006 for the last Member State. For further details on the questionnaire see the Commission Staff Working Paper at Annex.

the EP elections, such as their awareness of the political process at the EU level, the mobilisations of political forces and communication policy.

The Commission intends to give consideration to these issues at a later stage and before the next round of European elections, in cooperation with the European Parliament, Member States and relevant stakeholders.

While the 1976 Act⁴ on the election of representatives of the European Parliament by direct universal suffrage as amended by Council Decision 2002/772/EC, Euratom⁵ does not require the Commission to report on its application, in this report the Commission draws the attention of the European Parliament and the Council to problems with the implementation of the Act raised by Member States.

2. PREPARING FOR THE 2004 ELECTIONS

2.1. Meetings with electoral experts from the Member States

The Commission organised two meetings in 2002 and 2003 with electoral experts from the Member States on the implementation of Article 13 of the Directive, which lays down arrangements for preventing people from voting or standing for election twice. The aim of the meetings was to improve the operability and effectiveness of the information exchange system set up between Member States under Article 13.

2.2. Communication from the Commission on measures to be taken by Member States to ensure participation of all EU citizens in the 2004 elections

Bearing in mind that the elections were to be held shortly after the date of accession of the 10 new Member States and wishing to ensure that all EU citizens would be able to participate in the elections, the Commission issued a Communication⁶ in April 2003. The Communication aimed to speed up the implementation of the relevant *acquis* and ensure registration of all citizens on the electoral rolls in good time, in both the current and the future Member States.

2.3. Luxembourg derogation

In January 2003, the Commission submitted a Report⁷ under Article 14(3) of the Directive, on granting derogation pursuant to Article 19(2) of the EC Treaty. Article 14 allows a Member State to restrict the right to vote to Community voters who have resided in that Member State for a minimum period, which may not exceed five years. The condition for granting the derogation is that the proportion of EU citizens of voting age who reside in that Member State but are not nationals of it exceeds 20% of the total number of EU citizens residing there who are of voting age. The Commission concluded in the Report that the circumstances warranting the granting

⁴ The Act is annexed to Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 - OJ L 278, 8.10.1976, p. 5.

⁵ OJ L 283, 21.10.2002.

⁶ COM(2003) 174.

⁷ COM(2003) 31.

of the derogation to Luxembourg still existed and there was therefore no need to propose any adjustment.

2.4. Cyprus decision 2004/511/EC of 10 June⁸

Pursuant to Protocol 10 on Cyprus of the Act of Accession of 2003⁹, which stipulates that application of the *acquis* shall be suspended in those areas of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control, elections for the 2004-2009 term were not held in those parts of Cyprus, although national legislation also allows Cypriot citizens living in the part of the isle where the Government of the Republic of Cyprus does not exercise effective control to participate in the elections.

Decision 2004/511/EC stipulates that in the event of the entry into force of a comprehensive settlement of the Cyprus problem, extraordinary elections of the representatives of the people of Cyprus in the European Parliament will be held in the whole of Cyprus for the remainder of the 2004-2009 term or any subsequent term of the European Parliament.

2.5. Measures taken to ensure a common interpretation of Article 9(2) of the 1976 Act concerning the election of representatives of the European Parliament as amended by Council Decision 2002/772/EC, Euratom – the date for making public the results of the elections

Council Decision 2002/772/EC, Euratom amending the 1976 Act on election of members of the European Parliament took effect on 1 April 2004. The 2004 EP elections were thus held under the amended provisions. The new Article 9(2) regulates the exact timing of publication of the results, stipulating that Member States may not officially make the results of their count public before close of polling in the Member State whose electors are the last to vote.

The Commission drew the attention of the Member States¹⁰ to its interpretation of Article 9(2), asking them not to publish the results of their count before 22.00 CET on 13 June at the earliest (when the polls were to close in the last Member States: Italy, Poland and Slovakia) and stressing that not even initial or partial counts should be made public by electoral authorities before that time.

⁸ Council Decision 2004/511/EC of 10 June 2004 concerning the representation of the people of Cyprus in the European Parliament in case of a settlement of the Cyprus problem - OJ L 211, 12.6.2004, p. 22.

⁹ OJ L 236, 23.9.2003, p. 955.

¹⁰ Two letters were sent to Member States on 4 May and 7 June 2004 by The Directorate-General for Justice, Freedom and Security.

2.6. First EP elections organised in Gibraltar and important developments in the case-law

In 2004 the United Kingdom held EP elections in Gibraltar for the first time, pursuant to the 1976 Act, having adopted national legislation enabling the Gibraltar electorate to take part in EP elections¹¹.

In its judgment of 12 September 2006¹² the Court of Justice confirmed the Commission's view that the United Kingdom legislation granting the franchise in Gibraltar to "qualified Commonwealth citizens" which include certain non-British third country nationals, had extended the voting rights within the margin of discretion presently given to Member States by EU law. Furthermore, in this judgement and in a second judgement of the same day concerning the right to vote of Dutch citizens residing in Aruba¹³, the Court stressed that it is currently for Member States to regulate aspects of EP electoral procedure not harmonised at Community level, and in particular to define the persons entitled to vote and stand as candidate. However, they must respect Community law, including its general principles, under the Court's control.

3. PARTICIPATION IN THE 2004 EP ELECTIONS – APPLICATION OF DIRECTIVE 93/109/EC

3.1. General overview

As recognised in the Commission's Plan D for democracy, Dialogue and Debate¹⁴ the lower level of participation in the elections has reinforced the sense of lack of confidence in the political process. The Commission is very concerned about the decline in the overall turnout in the elections to the European Parliament which continued in the 2004 elections. With a much bigger electorate as a result of the 2004 enlargement, 45.6% of the total electorate voted.

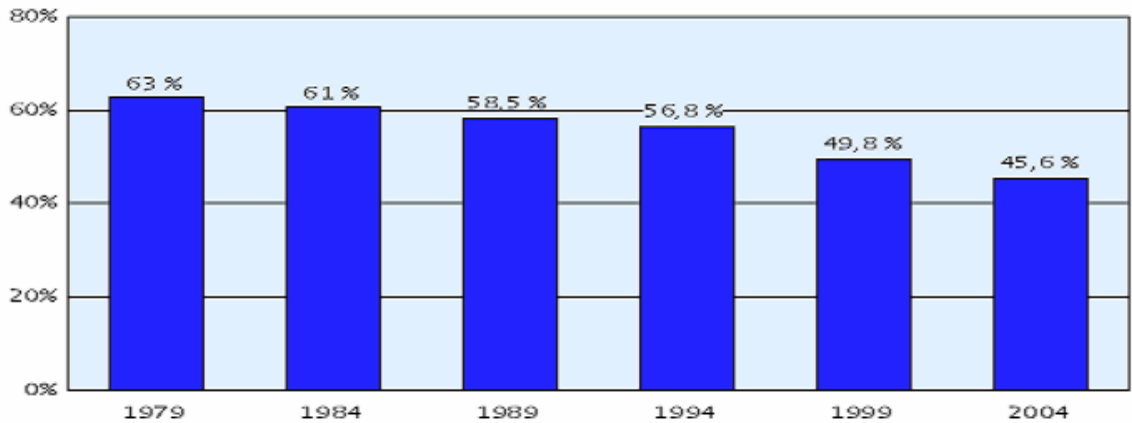
Trends in turnout

¹¹ The UK statute was adopted following the "Matthews v. UK" case in which the European Court of Human Rights ruled against the United Kingdom because no European elections had been held in Gibraltar – Judgment of 18 February 1999.

¹² Case C-145/04, Spain v. UK.

¹³ C-300/04, Eman and Sevinge (elections to EP in the Aruba).

¹⁴ The Commission's contribution to the period of reflection and beyond - COM(2005) 494.



Citizens' participation in the democratic life is essential and should be further promoted, by a coordinated endeavour of all actors involved, the European institutions, the Member States and the civil society. In this context, the Commission follows closely, and stands ready to contribute to the European parliament's survey, carried out with national Parliaments, on increased voter participation and how to improve turnout in elections.

In 2004 an increase in turnout was recorded in some Member States whereas others witnessed a significant fall in turnout. EU-15 voter turnout was 49.1%, below the 49.8% turnout in 1999. EU-10 voter turnout was 26.9%.

In this context it has to be taken into account that in some Member States voting is compulsory.

Overall turnout – 2004

AT	BE	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE
42.43	90.81	71.19	28.32	43	47.9	26.83	63.4	45.1	39.4	42.76	38.5	58.8
IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK	EU
73.1	48.38	89	41.34	82.37	39.3	20.87	38.6	37.8	28.3	16.96	38.83	45.6

3.2. Participation of non-national EU citizens in the Member States of residence – as voters.

Not all Member States supplied data on non-national EU citizens registered as voters for the EP elections and even fewer Member States could provide data on whether these citizens actually voted.

Given the fact that, under Articles 8 and 9 of the Directive, citizens have to be enrolled on the electoral rolls of their Member State of residence, data on the number of citizens enrolled may be considered a reliable indicator of trends in voter participation.

Proportion of non-national EU citizens registered to vote in their Member State of residence (%)¹⁵

<i>Country</i>	AT	BE	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE
1994	7.9	5.1	-	-	6.7	24.9	-	1.6	12.6	22	3.4	-	44.1
1999	15.1	7.7	-	-	2.1	26.6	-	1.8	22.4	28	4.9	-	43.9
2004	16	11.5	4.4	-	6.1	26.7	12.2	3.9	18.5	18.3	13.1	11	39
<i>Country</i>	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK	EU
1994	1.8	-	6.6	-	-	-	-	2.3	24	-	-	1.96	5.9
1999	9.2	-	8.8	-	-	16.9	-	13.6	27.2	-	-	23.1	9
2004	10.9	17.5	10.3	14.4	12.8	-	-	-	25.1	7.2	8.6	-	11.9

While bearing in mind these reservations, we may, however, conclude that the percentage of EU citizens registered to vote in their Member State of residence was low in 2004 EP elections.

While general turnout in the elections is falling, entry in the electoral roll of non-national EU citizens for the EP elections has increased in comparison with previous elections: 5.9% in 1994, 9% in 1999, 11.9% in 2004. This rise could be the result of increasing awareness of EU citizens' rights, the Member States' efforts to encourage participation, as well as the increased mobility of the EU citizens.

3.3. Participation of non-national EU citizens in the Member States of residence – as candidates

Statistics on non-national EU citizens standing as candidates in the elections reflect weak participation in the political life of the Member States of residence.

There was a slight fall in the number of non-national candidates compared to the 1999 elections when 62 stood for election.

<i>Country</i>	AT	BE	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE
Candidates	1	8	0	5	13	0	0	4	1	0	8	0	0
Elected	0	0	0	1	1	0	0	0	0	0	1	0	0
<i>Country</i>	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK	EU

¹⁵ Proportions calculated on the basis of number of non-national EU citizens of voting age residing in the MS and the number of non-national EU-citizens enrolled on the electoral roll of that MS – where both figures were provided in answer to the questionnaire.

<i>Candidates</i>	0	0	8	0	0	2	0	1	1	0	0	2	57
<i>Elected</i>	0	0	0	0	0	0	0	-	0	0	0	0	3

Several factors can be assumed to lie behind this downward trend.

In some Member States, there was criticism of the heavy administrative burden that candidates have to face when submitting an application to stand. Article 10(2) of the Directive laying down conditions for standing as a candidate provides *inter alia* that a Community national must also produce an attestation from the competent administrative authorities of the home Member State certifying that he/she has not been deprived of the right to stand as a candidate in that Member State or that no such disqualification is known to those authorities. Cases were reported where non-national EU citizens wishing to stand as a candidate had difficulty identifying the authorities in their Member State of origin designated to issue such attestations.

Another possible reason for the low participation is related to the right of non-national EU citizens to participate in the political life of the Member State of residence.

According to the Opinion on participation of EU citizens in the political parties of the Member State of residence drafted by the EU network of independent experts on fundamental rights¹⁶, 16 Member States recognise the right of non-national EU citizens both to join existing national political parties and to found a new political party in the Member State in which they reside. Two Member States make a distinction between the right to found a political party and the right to become a member of a political party, only granting the right to the latter. In seven other Member States non-nationals may neither become members of political parties, nor found political parties.

Non-national voters may therefore be deprived of the opportunity to exercise their right to stand as a candidate, as in practice candidates are in the majority of cases put forward by political parties. The Commission encourages Member States to offer to non-national resident EU-citizens the possibility to become members of national political parties under the same conditions which are open to their nationals. This would considerably facilitate the citizens' participation in the political life of the Member States where they live as well as their integration and it would enrich the political life and enhance democracy.

The European political parties may also play a role in promoting an enhanced participation of EU citizens in the democratic process at the European and national level.

The Commission intends to examine further the compatibility with the Directive of the above mentioned national legislations.

¹⁶ Reference: CFR-CDF. Opinion 1.2005:
http://europa.eu.int/comm/justice_home/cfr_cdf/doc/avis/2005_1_en.pdf.

3.4. Informing EU citizens of the right to vote and stand as a candidate

The Eurobarometer survey conducted in 2002¹⁷ shows that citizens of the Union are aware of their right to vote and to stand as a candidate in the EP elections in the Member State of residence.

However, in order to exercise this right every voter must have sufficient information on the practical arrangements. This is why Article 12 of the Directive provides that Member States must inform Community nationals entitled to stand as candidates in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of these rights.

The Commission reiterates its belief that Member States must specifically inform EU citizens residing on their territory about how to exercise their electoral rights. The information should be tailored to meet the specific information requirements of non-national electors.

A wide variety of different means were used by national authorities to inform citizens. The most common were brochures and leaflets, advertisements in different media and personal letters sent to citizens. In several Member States, the authorities provided information to non-national EU citizens not only in the official language or languages of the Member State but also in other EU languages.

In the three Member States where participation exceeded 25%, personal letters sent to inform non-national EU citizens of the right to participate also included the voter registration form to be filled in.

In Denmark, personal letters were sent both to non-nationals who had already registered on the electoral rolls for EP elections and to non-nationals who had not yet been included. The latter was accompanied by the relevant registration form.

In Ireland, personal letters were sent to non-national citizens identified by the electoral authorities since the last elections in 1999, including the relevant registration form. In addition, an advertising campaign urging people to check whether they were registered was carried out. Newspaper advertising was undertaken in 2004 to inform non-national EU citizens, including citizens of applicant Member States, of their entitlement to be added to the electoral register.

In Sweden the Election Authority sent a personal letter to all non-nationals with information about the procedures for the election, including a special form to be used either to be included on the electoral roll or to be deleted from it. The personal letter included also a leaflet in eight different languages with information on how to fill out the attached form.

Personal letters sent to every non-national EU citizen seems to be efficient particularly when they contain relevant information tailored to the addressee in as many languages as possible and when they contain the registration form with instructions that can be sent back to the competent authority. The Commission

¹⁷ Flash Eurobarometer No 133.

strongly encourages all the Member States to apply this practice, which is highly beneficial in promoting the effective exercise of the right to vote.

Some Member States reported having provided information through various channels, such as public services of all levels that have frequent and mass contacts with citizens.

The potential role of the political parties could be crucial, especially in encouraging participation as a candidate. Furthermore, the European Institutions should also contribute to an appropriate information of the citizens about their right to vote and stand as candidate.

3.5. Preventing people from voting or standing twice

Article 4 of the Directive prohibits EU citizens from voting or standing as a candidate in more than one Member State in the same election. To that end, Member States are obliged under Article 13 to exchange information on EU citizens who have been entered on the electoral roll or have stood as a candidate in the Member State of residence. An information exchange system was set up in order to apply Article 13: on the basis of information sent by the Member State of residence to the home Member State, the latter deletes from its own electoral roll any persons who have been added to the electoral roll in the Member State of residence.

As from the 1994 elections, the Commission found that the information exchange system was not functioning as it should¹⁸. Consequently, efforts were made with Member States to implement a series of practical measures to increase the operability and effectiveness of the system: a standard form and format of personal data to be sent to the Member State of origin was adopted, practical arrangements for information exchange (diskettes and/or email) were laid down and a list of the national authorities responsible for receiving data was circulated among the Member States.

Information exchange system – as reflected in the answers to the questionnaire

Despite all efforts almost all Member States concluded that there were shortcomings in the operability of the information exchange system and its effectiveness was hampered by a number of difficulties.

Almost all Member States reported that they encountered serious problems with data being exchanged. A number of Member States failed to communicate data such as maiden name, or place and date of birth that were necessary to allow such persons to be identified in the home electoral roll so that their names could be removed. Some Member States supplied percentages: Spain reported having been able to identify around 53% of the persons notified; in Poland the authorities could identify around 69% of such persons; in Latvia this proportion was 73%; in the Czech Republic and Sweden 75%; and in Lithuania 85%.

The second biggest obstacle to the proper functioning of the system, as identified by a large majority of Member States, was the fact that data often arrived too late to be

¹⁸ COM(97) 731, p. 23, and COM(2000) 843, p. 10.

processed without additional emergency measures or in many cases even to be taken into account.

Transliteration of names or addresses turned out to be a major problem in Greece where, due to the different alphabet, the authorities were not able to identify persons communicated through the system.

Several Member States also reported adverse experience of information exchange with Member States which have decentralised registers, resulting in practical problems caused by the tremendous number of mostly paper communications of varying quality from the authorities in charge of decentralised registers.

The methods used to send the information (email, diskette, etc.) often varied even inside one Member State, which could also create confusion.

It may be concluded that all the previous efforts made by the Commission with the Member States to improve the operability and effectiveness of the system had only limited impact and failed to meet expectations. Overall, only five Member States considered the present system adequate to prevent double voting without the introduction of further changes.

On the other hand, in several cases implementation of the current system led to EU citizens being deprived of the right to vote in the elections in their home Member State as a consequence of the exchange of information on non-national EU citizens, because they were incorrectly considered as still wishing to vote in their previous Member State of residence when they had in fact returned to their home Member State and exercised political rights such as voting in local elections¹⁹.

While the aim of the system is solely to prevent people from voting or standing twice and it does not allow detection of attempts to do so, information provided by the Member States seems to indicate that the number of cases of double registration or double voting by non-national EU citizens is low²⁰; furthermore, these cases tended to be linked not to deliberate abuse but to mistakes and misunderstandings due to unfamiliarity with the legislative arrangements or to information being sent twice, i.e. by Member States of residence and of origin.

4. APPLICATION OF THE 1976 ACT CONCERNING THE ELECTION OF REPRESENTATIVES OF THE EUROPEAN PARLIAMENT AS AMENDED BY COUNCIL DECISION 2002/772/EC, EURATOM

4.1. Publishing the results of the elections

When preparing for 2004 EP elections, the Commission drew the attention of the Member States to the need for a common interpretation of Article 9(2) concerning the timing of publication of the electoral results.

¹⁹ See Petition No 592/2004.

²⁰ In the 2004 elections, only Germany reported an estimate of 120 cases and Luxembourg 4 cases.

A majority of the Member States did not publish results of the EP elections before polling closed in the last countries. However, some Member States published results before that time. The Commission would emphasize that in its view the purpose of the Article 9(2) is to ensure that the early release of information on results in one Member State does not influence the vote in any way in other Member States where polling is still going on. This is to guarantee free suffrage, which includes the voter's freedom to form his/her own opinion. Free suffrage is a basic democratic principle, which is to be upheld in European parliamentary elections pursuant to Article 1(3) of the 1976 Act.

4.2. The issue of double or multiple citizenship

Several Member States reported that voting or standing twice is impossible to prevent in the case of citizens of the Union who hold the nationality of more than one Member State.

Although the question of dual nationality falls outside the scope of the Directive, the Commission draws the attention to this problem being a potential source of double voting which is also prohibited under Article 8 of the 1976 Act.

5. CONCLUSIONS

5.1. Proposals for amendments to Directive 93/109/EC

The current information exchange system set up to prevent voting or standing twice has proved unsatisfactory. The main reason for this failure is that some Member States are unable to provide the necessary data on registered EU citizens enabling their names to be deleted from the electoral roll in the home Member States. The procedure is lengthy and cumbersome.

The Commission, together with the Member States, tried in the past to improve the system to make it work efficiently in practice. Although several problems were more or less successfully tackled, others remain. The workload has also increased since the last elections, mostly due to enlargement and greater mobility of the EU citizens.

A second problem was detected regarding participation as a candidate in the elections. It seems that the current rules on submitting an application to stand as a candidate in the Member State of residence results in a heavy administrative burden for potential candidates which could be a factor in the low participation rate.

Considering these shortcomings, the Commission carried out an impact assessment and proposes amendments to the Directive.

5.2. Problems detected in the implementation of the 1976 Act concerning the election of representatives of the European Parliament as amended by Council Decision 2002/772/EC, Euratom

The Commission detected that the interpretation by certain Member States of Article 9(2) concerning the timing of publication of the electoral results in 2004 elections had led to early publication of the results in these Member States. Another problem was identified related to the participation in European elections of citizens holding

the nationality of more than one Member State which could be a source for double voting.

The Commission would draw the attention of the European Parliament and of the Council of the European Union to these shortcomings, which might lead to the violation of basic principles of democracy enshrined in the Community law.