



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary-General

Brussels, 30 September 2024
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Dear Mr Venables and Mr Ziegler,

Thank you for your letter of 30 July 2024, on behalf of ECIT and New Europeans UK, in which you urge the Commission to act against the disenfranchisement of EU citizens living in a third country by guaranteeing the right to vote in European Parliament elections, in line with EU democratic principles.

You suggest that EU citizens living in a third country should retain their right to vote in European Parliament elections in their home Member State as a matter of EU law. You highlight that nationals of several Member States, such as Bulgaria, Cyprus, Denmark, Ireland, and Malta, living in a third country, are denied the right to vote in European Parliament elections, even when returning to their home Member State. You also express the opinion that, while not disenfranchised as a matter of law, Italian nationals residing in the UK are in practice disenfranchised from European Parliament elections.

You also take the view that in its current state, EU law does not safeguard the ability of citizens to participate in the democratic life of the EU, and that limitations to the right to vote are not in line with the spirit and reality of direct universal suffrage.

You further refer to the proposal for the reform of EU electoral law tabled by the European Parliament, which would ensure that EU citizens living in a third country would be able to exercise their right to vote in European Parliament elections, including via postal voting.

You also suggest that the Commission should revise Council Directive 93/109/EC related to the voting rights of mobile EU citizens, chiefly Article 1(2) thereof, advance the discussions on the proposal for a new EU electoral law put forward by the Parliament, adopt a Commission Recommendation, Opinion, or Communication supporting the exercise of the right to vote in European Parliament elections, irrespective of the place of residence, and focus in its forthcoming mandate on tackling the issue of disenfranchisement of EU citizens.

The Commission attaches a particular importance to the rights linked to EU citizenship and has adopted several policy initiatives to support democratic participation in the Union. However, it is the competence and the responsibility of the Member States to lay down the specific conditions for the conduct of elections, subject to the respect of certain

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basic principles, such as those laid down in Articles 2 and 10 of the Treaty on European Union, and their international commitments. Additionally, it is the responsibility of the competent national administrative and judicial authorities to ensure compliance with applicable law and relevant international standards.

As regards the elections to the European Parliament, national electoral procedures must also comply with the principles set out in the Act concerning the election of the members of the European Parliament by direct universal suffrage ('1976 Electoral Act'), annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976. Under Article 1(3) of the 1976 Electoral Act, elections must be by direct universal suffrage and shall be free and secret. Furthermore, pursuant to Article 8 of the 1976 Electoral Act, subject to the provisions of the 1976 Electoral Act, the electoral procedure is to be governed in each Member State by its national provisions. These national provisions, which may, if appropriate, take account of the specific situation in the Member States, must not affect the essentially proportional nature of the voting system.

We are aware that each of the Member States you mention in your letter impose a residence criterion as a condition for the right to vote in European Parliament elections¹.

The 1976 Electoral Act does not however impose the obligation on Member States to introduce a system that ensures the exercise of the right to vote from third countries for their non-resident citizens. Furthermore, Article 5 of Council Directive 93/109/EC 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, is clearly based on the premise that a Member State may require a period of residence 'in the electoral territory' as a condition of the right to vote.

In its judgment of 12 September 2006 in Case C-300/04, *Eman and Sevinger*, the Court held that Union law does not preclude Member States from defining, in compliance with EU law, the conditions of the right to vote and to stand as a candidate in elections to the European Parliament by reference to the criterion of residence in the territory in which the elections are held.

As regards the proposed revision of Council Directive 93/109/EC, let me draw your attention to the fact that that directive only applies to mobile EU citizens ie EU citizens who have moved to live, work or study in another Member State. Its legal basis, namely Article 22(2) TFEU, is confined to ensuring that mobile EU citizens have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which they reside, under the same conditions as nationals of that State.

Under the special legislative procedure envisaged by Article 223 of the TFEU, it is up to the European Parliament to draw up a proposal to lay down the provisions necessary for the election of its members by direct universal suffrage in accordance with a uniform

¹ Bulgaria grants the right to vote to its nationals under the condition to have resided in Bulgaria or in another Member State of the EU at least during the last three months. Cyprus requires a length of residence of at least six months in Cyprus or another Member State, prior to the date of registration on the electoral roll. Denmark requires its nationals to reside permanently in Denmark to be able to vote, but also provides for numerous exceptions. Ireland grants the right to vote only to residents. Malta requires its nationals to be residents in Malta for a continuous period of six months or for periods amounting in the aggregate to six months during the eighteen months immediately preceding their registration.

procedure in all Member States or in accordance with principles common to all Member States. The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which would act based on a majority of its component Members, would lay down the necessary provisions. These provisions would enter into force following their approval by the Member States in accordance with their respective constitutional requirements. The Commission does not have a formal role in this process. However, it has repeatedly confirmed its commitment to support the Parliament in securing an agreement on the electoral law in the Council and offered its election-related expertise to the Parliament and the Council, as needed. The Commission expects discussions on this proposal to continue in the Council.

You may be interested to know that Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the 1976 Electoral Act provides in its Article 1(6) that in accordance with their national electoral procedures, Member States may take the measures necessary to allow their citizens residing in third countries to vote in elections to the European Parliament. The foregoing decision has not entered into force yet as approval has not been given by all Member States.

You may remember that in 2014, the Commission issued the Recommendation ‘Addressing the consequences of disenfranchisement of Union citizens exercising their rights to free movement’ (2014/53/EU), addressed to five Member States, whose disenfranchisement rules automatically deny the right to vote in national parliamentary elections to those of their nationals who reside in another Member State for a certain period, without giving them any option to remain on the electoral rolls. In that recommendation, the Commission invited the Member States concerned to enable their nationals who make use of their free movement rights to retain their right to vote in national elections — if they demonstrate a continuing interest in the political life of their country. Further to that, in its 2020 EU Citizenship Report, the Commission called on the Member States concerned to abolish these disenfranchisement rules and committed to continue monitoring the situation.

In December 2023, in its Recommendation (EU) 2023/2829 on inclusive and resilient elections adopted as part of the Defence of Democracy package, the Commission highlighted, among others, the importance of Member States supporting, in line with their electoral rules, the participation in elections of Union citizens residing in third countries.

The Commission will continue to work closely with the Member States’ competent authorities to promote free and fair elections in the EU, and to support the exchange of best practices on elections, including in the framework of the European Cooperation Network on Elections.

We would like to thank you for the elements you brought to our attention.

Yours sincerely,

Ilze JUHANSONE