

## **EDPS Formal comments on the Proposal for a Council Directive 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)**

### **1. Introduction and background**

Council Directive 93/109/EC lays 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.

The Proposal for the recast of Council Directive 93/109/EC (the ‘Proposal’) aims to clarify and strengthen the existing legal framework in order to “*ensure broad and inclusive participation in the 2024 elections to the European Parliament, support mobile EU citizens in the exercise of their rights and protect the integrity of elections*”<sup>1</sup>.

The European Commission has presented the Proposal as part of measures aimed at protecting election integrity and open democratic debate, in conjunction with three other proposals, namely a 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), a Proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising, and a Proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast).

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission of 25 November 2021, pursuant to Article 42(1) of Regulation 2018/1725. In this regard, the EDPS welcomes the reference to this consultation in Recital 31 of the Proposal. The comments below are limited to the provisions of the Proposal that are relevant from a data protection perspective.

These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts, pursuant to Articles 13 and 20 of the Proposal. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of Regulation (EU) 2018/1725.

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<sup>1</sup> Explanatory memorandum, p. 1.

## 2. Comments

### 2.1 General Comments

The EDPS recognises that the participation of citizens, political forces and candidates in democratic life is indissociable from the values on which the European Union is founded. The rights and freedoms entailed by a participation in the democratic life of the Union are interdependent with other rights enshrined in the Charter of Fundamental Rights of the European Union (hereafter the ‘Charter’), including the rights to privacy and to the protection of personal data under Article 7 and Article 8 of the Charter.

According to Article 10 (1), (2) and (3) TFEU, “*The functioning of the Union shall be founded on representative democracy*”, “*citizens are directly represented at Union level in the European Parliament*” and “*every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen*”. Article 39 of the Charter guarantees the right to vote in European Parliament elections, and Article 3 of Protocol I to the European Convention of Human Rights guarantees everyone a right to free election.

Against this background, the EDPS welcomes the intention of the Commission to ensure inclusive participation ahead of European elections in 2024, by updating the existing Directive on the right to vote and stand as a candidate in elections to the European Parliament of EU citizens residing in a different Member State to their state of nationality.

The EDPS has already recalled that freedom, fairness and transparency are recognised as key principles of democratic elections<sup>2</sup>. In this context, the EDPS welcomes the reference in Recital 30 of the directive to the applicability of both Regulations (EU) 2016/679 and 2018/1725 as regards the processing of personal data. The EDPS also welcomes Recital 32 of the Proposal, stating that it is essential to ensure full respect for the right to protection of personal data when implementing this Directive.

### 2.2. Specific comments

#### 2.2.1. A secure tool

Article 13 of the Proposal requires Member States to exchange the information required for the implementation of Article 4, concerning the prohibition from voting more than once or standing as a candidate in more than one Member State. Moreover, Article 13 provides that the Commission shall provide a "secure tool" supporting the exchange by Member States of

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<sup>2</sup> [https://edps.europa.eu/sites/edp/files/publication/18-12-18\\_opinion\\_on\\_election\\_package\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/18-12-18_opinion_on_election_package_en.pdf) (paragraph 12).

the set of information referred to in Annex 3 for the purposes of paragraph 1 of this Article, and that this tool shall allow Member States of residence to provide that information in an encrypted form to each home Member State whose citizens have provided formal declarations referred to in Articles 9 and 10.

Paragraph 5 of Article 13 empowers the Commission to adopt implementing acts for the purpose of defining the responsibilities and obligations for the operation of the secure tool, in accordance with the requirements of Chapter IV of Regulation (EU) 2016/679 (GDPR).

While detailed arrangements to ensure compliance with data protection requirements may be further defined by way of an implementing act, the EDPS recommends including a number of elements and safeguards in the Proposal itself. For example, the Proposal should establish the roles of the Commission and the Member States as controller, (joint) controller or processor respectively. In addition, taking into account the principle of storage limitation, the EDPS recommends clarifying the storage period of personal data that shall be exchanged using the secure tool.

Article 13, paragraph 5 of the Proposal refers only to Regulation (EU) 2016/679, without making reference to Regulation (EU) 2018/1725. The EDPS notes that if the Commission or other Union body shall assume the role of (joint) controller or processor, the processing shall also be subject to Regulation (EU) 2018/1725.

The EDPS recalls that, in accordance with Article 42(1) of Regulation (EU) 2018/1725, the EDPS will need to be consulted prior the adoption of any implementing act envisaged by Article 13(5).

### **2.2.2 Annexes**

The Commission has put 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. Those templates include contact information which, according to the explanatory memorandum, will allow Member States to deliver on their obligation to inform<sup>3</sup>. Indeed, Recital 8 of the Proposal specifies that such information should enable competent authorities to keep Union citizens “informed on a regular basis”, and Article 12 lists the different information that Member States will have to provide, in order to inform citizens of the conditions and detailed rules for registration as a voter or candidate in municipal elections.

In accordance with Annex I (Formal declaration submitted by Union voters) of the Proposal, citizens are requested to communicate their nationality, place and date of birth, identification number issued by the home Member State (where applicable), type of identity

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<sup>3</sup> Explanatory memorandum, p. 7.

document or travel document issued by the home Member State and its serial number (as an alternative if the identification number is not available), address in the electoral territory of the Member State of residence, locality or constituency of home Member State on the electoral roll of which they were last entered (where applicable), telephone number and email. In Annex II (Formal declaration submitted by Union nationals entitled to stand as candidates), the same information should be provided and, in addition, the last address in the home Member State.

Having regard to the principle of data minimisation, the EDPS observes that the information concerning the telephone number and email may not be necessary, insofar as the address information provided should allow Member States to deliver on their obligation to inform. The EDPS understands that receiving information through other communication channels should be optional and therefore recommends updating the Annexes accordingly.

Brussels, 17 January 2022

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI