

EDPS Formal comments on 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)

1. Introduction and background

Council Directive 94/80/EC lays 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.

The Proposal for the recast of the Council Directive 94/80/EC (the ‘Proposal’) aims to clarify and strengthen the existing 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*”¹.

The European Commission has presented the Proposal as part of a set 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 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), 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 (EU) 2018/1725. 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 delegated acts, pursuant to Articles 2, 8, 9 and 16 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.

¹ 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 aim of the Commission to address the difficulties faced by 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 origin².

The EDPS has already recalled that freedom, fairness and transparency are recognised as key principles of democratic elections³. In this context, the EDPS welcomes the reference, in Recital 27 of the Proposal, to the applicability of both Regulations (EU) 2016/679 and 2018/1725 as regards the processing of personal data. The EDPS also welcomes Recital 28 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

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

² Explanatory Memorandum, p. 1.

³ https://edps.europa.eu/sites/edp/files/publication/18-12-18_opinion_on_election_package_en.pdf (paragraph 12)

explanatory memorandum, will allow Member States to deliver on their obligation to inform⁴. 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 II (Formal declaration submitted by Union voters) and Annex III (Formal declaration submitted by Union nationals entitled to stand as candidates) of the Proposal, citizens are requested to communicate their nationality, date of birth, address in Member State of residence, telephone number and email.

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 remain optional and therefore recommends updating the Annexes accordingly.

Brussels, 17 January 2022

(e-signed)

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⁴ Explanatory Memorandum, p. 7.