

Official Journal no. 4 of 5 January 2002

Law 459 of 27 December 2001

Provisions governing the right to vote of Italian citizens resident abroad

The Chamber of Deputies and the Senate of the Republic have approved;

THE PRESIDENT OF THE REPUBLIC
ISSUES:

The following law:

Article 1.

1. Italian citizens resident abroad, registered in the register of electors as set forth in Article 5, paragraph 1, shall vote in the Overseas Constituency, pursuant to Article 48 of the Constitution, for the election of the Chambers and for the referendums envisaged by Articles 75 and 138 of the Constitution, within the limits and forms envisaged by the present law.
2. The electors referred to in paragraph 1 shall vote by post.
3. The electors referred to in paragraph 1 may exercise the right to vote in Italy, and in this case shall vote in the constituency on Italian territory corresponding to the electoral division in which they are registered, subject to their exercising the option to do so. This option shall be exercised separately for each poll and shall be valid only for this same poll.

Article 2.

1. The diplomatic and consular missions shall periodically inform the electors as set forth in Article 1, paragraph 1, of the provisions contained in the present law regarding the arrangements for postal votes and the exercise of the right to the option set forth in Article 1, paragraph 3, using for this purpose all appropriate means of information, in both Italian and the language of the countries of residence.
2. Within one year of the date of the entry into force of the present law the diplomatic and consular missions shall send each elector a pack containing a form on which they should enter their up-dated personal details and any relevant data concerning their residence abroad. The pack shall also contain a stamped envelope bearing the address of the competent consular office. The electors should return the envelope containing the form with their up-dated data within thirty days of receipt of same.

Article 3.

1. For the purposes of the present law the expression "consular offices" means the offices as set forth in Article 29 of Law 18 of 24 January 1979 as amended.

Article 4.

1. For each election electors may exercise the option to vote in Italy as set forth in Article 1, paragraph 3, informing the diplomatic or consular mission operating in their consular district of residence of this decision in writing no later than 31 December of the year preceding the year of the natural end of Parliament.

2. In the case of the early dissolution of Parliament or the calling of a referendum, electors may exercise the option to vote in Italy no later than the tenth (10th) day following the calling of the poll.

3. The Ministry of Foreign Affairs shall inform the Ministry of the Interior without delay of the names of those electors who have exercised the option to vote in Italy, in accordance with paragraphs 1 and 2. At least thirty (30) days before the date set for the poll in Italy the Ministry of the Interior shall inform the municipalities where the electors who have exercised the option to vote in Italy were last resident in Italy of the names of these same persons. The municipalities shall adopt whichever measures are necessary for these electors to exercise the right to vote in Italy.

4. Within one year of the entry into force of the present law the diplomatic and consular missions, acting on instructions issued for this purpose by the Ministry of Foreign Affairs, shall send electors notification of the possibility of exercising the option to vote in Italy, specifying that this option is only valid for one election or referendum and that the option must be exercised anew for any subsequent poll.

5. Electors who intend to exercise the option to vote in Italy for the first election or referendum subsequent to the date of the entry into force of the present law shall notify the diplomatic or consular mission operating in their consular district of residence of their intention, within sixty (60) days of receiving the above mentioned notification, and in any case no later than 31 December of the year preceding the year of the natural end of Parliament.

Article 5.

1. By combining the data contained in the register of Italians resident abroad and in consular files, the Government shall compile an up-dated list of Italian citizens resident abroad for the purpose of drawing up electoral registers, divided on the basis of the overseas electoral zones as set forth in Article 6, for the elections referred to in Article 1, paragraph 1.

2. Only those citizens resident abroad who have exercised the option as set forth in Article 1, paragraph 3 shall be entitled to express their vote in Italy.

Article 6.

1. The Overseas Constituency is divided into the following overseas electoral zones, which include those states and territories belonging to:

- a) Europe, including the Asian territories of the Russian Federation and Turkey;
- b) South America;
- c) North and Central America;
- d) Africa, Asia, Oceania and Antarctica

2. One deputy and one senator shall be elected in each of the overseas electoral zones as set forth in paragraph 1, while the other seats shall be distributed between the same overseas electoral zones in proportion to the number of Italian citizens resident in each, according to the list as set forth in Article 5, paragraph 1, on the basis of whole quotients and the highest remainders.

Article 7.

1. Within three days of the date of publication in the Official Journal of the decree opening the electoral campaign, a central office for the Overseas Constituency shall be set up in the court of appeal of Rome. This shall be composed of three magistrates, one of whom acting as presiding officer, selected by the presiding judge of the court of appeal.

Article 8.

1. For the presentation of the symbols and lists for the allocation of the seats to be assigned in the Overseas Constituency, the provisions set forth in Articles 14 to 26 of the Consolidated Law containing the rules for the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended, shall be observed where applicable, and in any case the following provisions shall be observed:

- a) lists of candidates shall be presented for each of the overseas electoral zones set forth in paragraph 1 of Article 6;
 - b) candidates must be resident and electors in the overseas electoral zone in question;
 - c) the presentation of each list must be subscribed to by at least 500 and not more than 1000 electors resident in the overseas electoral zone in question;
 - d) the lists of candidates must be delivered to the chancery of the court of appeal of Rome between 08.00 hours of the thirty-fifth (35th) day and 20.00 hours of the thirty-fourth (34th) day before polling day.
2. Several political parties or groups may present joint lists of candidates. In this case, the lists must be distinguished by a composite symbol, formed by the symbols of all the lists in question.
3. The number of candidates forming the lists shall be at least equal to the number of seats to be allocated in the overseas electoral zone and no higher than twice that number. No candidate may be included in more than one list, even under the same symbol.
4. Electors resident abroad who have not exercised the option as set forth at Article 1, paragraph 3, may not stand as candidates in constituencies on Italian territory.

Article 9.

1. The second and third paragraphs of Article 7 of the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended, shall be replaced by the following:

"The causes of ineligibility as set forth in the first paragraph also refer to the holding of similar positions, where these exist, with corresponding bodies in foreign states.

The causes of ineligibility as set forth in the first and second paragraphs do not have effect if the functions carried out ceased at least one hundred and eighty (180) days before the end of the five-year term of the Chamber of Deputies.

By ceasing of functions is meant the effective abstention from any act regarding the position held, preceded, in the cases envisaged at letters a), b) and c) of the first paragraph and in the corresponding cases governed by the second paragraph, by transfer, withdrawal of the position or command or by temporary discharge from the position".

Article 10.

1. After Article 1 of Law 60 of 13 February 1953, the following shall be inserted:

Article 1-bis:

1. The office of deputy or senator or member of the Government shall not be compatible with the office of member of the legislative assembly or national or regional executive bodies in foreign states".

Article 11.

1. Seats shall be allocated proportionally to the lists standing for election for each overseas electoral zone under the arrangements envisaged by Articles 15 and 16.

2. The ballot papers shall be made of strong paper, with a different colour for each poll and for each overseas electoral zone, and shall be provided, under the responsibility of the Ministry of Foreign Affairs, through the diplomatic and consular missions. The essential features of the ballot papers are shown in tables A, B, C and D attached to this law, reproduced in facsimile form. The ballot papers shall also reproduce the symbols of all the lists of candidates standing in the overseas electoral zone. The order of the symbols shall be drawn up following the procedure envisaged for the lists of candidates by Article 24, no. 2), of the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended. Lines in which electors may indicate their preferential vote should be printed alongside each symbol, within the same space.

3. Electors shall express their votes by marking the symbol corresponding to the list they have chosen or in any case within the rectangle containing this symbol. Each elector may also express two preferential votes in those overseas electoral zones to which two or more deputies or senators have been allocated and one preferential vote in the others. The preferential vote is expressed by writing the surname of the candidate on the line alongside the symbol for which the vote has been expressed. Preferential votes expressed for candidates from another list are null. A validly expressed preferential vote for a candidate is considered as a vote for the same list if the elector has not made any other mark in any other space on the ballot paper.

Article 12.

1. The Ministry of the Interior shall deliver to the Ministry of Foreign Affairs the lists of candidates and samples of the ballot papers no later than the twenty-sixth (26th) day before polling day.
2. Acting on instructions issued by the Ministry of Foreign Affairs the diplomatic and consular missions appointed by the Ministry for this purpose shall arrange for the printing of the electoral material for inclusion in the pack as set forth in paragraph 3 and for the cases as set forth in paragraph 5.
3. No later than eighteen (18) days before the date set for polling day in Italy, the consular offices shall send to those electors who have not exercised the option set forth in Article 1, paragraph 3, the pack containing the electoral certificate, the ballot paper with its envelope, and a stamped envelope bearing the address of the competent consular office; the pack shall also contain a sheet with instructions on how to express the vote, the text of the present law and the lists of candidates in the overseas electoral zone to which the elector belongs, as described in Article 6.
4. In cases where there is more than one ballot paper for each elector, these should be sent in the same pack and should subsequently be returned by the elector in one single envelope. No pack may contain voting documents for more than one elector.
5. The electors referred to in the present Article who, by fourteen (14) days before polling day in Italy, have not received the pack as set forth in paragraph 3 at their place of domicile, may apply to the consular office for one. This office may issue to any voter applying in person another voting certificate complete with seal and a second ballot paper which should be returned in accordance with the arrangements set out in paragraphs 4 and 6 of this Article. The consular office should note in the appropriate register that these documents have been issued.
6. Once they have expressed their vote on the ballot paper or papers electors should place the ballot paper or papers in the appropriate envelope, seal the envelope, place it in the stamped outer envelope along with the counterfoil detached from the voting certificate as proof that they have exercised their right to vote and post the envelope, no later than the tenth (10th) day preceding the date set for the poll in Italy. The ballot papers and the envelopes containing them must not bear any identifying sign or mark.
7. The persons in charge of the consular offices shall without delay send those envelopes that have reached them up to and no later than 16.00 hours local time of the Thursday preceding polling day in Italy, to the central office for the Overseas Constituency, together with a notification of the number of voters in the consular district who have not exercised the option as set forth in Article 1, paragraph 3. The envelopes should be sent in one single despatch, by air and using the diplomatic bag.
8. After the packs have been sent to Italy, the persons in charge of the consular offices shall arrange for the immediate incineration of any ballot papers that have arrived after the deadline set forth in paragraph 7 and those printed, but not used, for the cases as set forth in paragraph 5. A report detailing these operations should be drawn up and sent to the Ministry of Foreign Affairs.

Article 13.

1. In the central office for the Overseas Constituency an electoral commission shall be set up for every 50,000 electors resident abroad who have not exercised the option set forth in Article 1,

paragraph 3. This Commission will have the task of arranging the operations of sorting and counting the votes sent in by electors. Each electoral commission shall be responsible for the sorting of the votes arriving from a single overseas electoral zone as set forth in Article 6, paragraph 1. The envelopes containing the ballot papers shall be allocated to each electoral commission under the responsibility of the central office for the Overseas Constituency.

2. For the constitution of the electoral commissions, for the fee to be paid to the members of the commissions and for the arrangements for sorting and counting the votes, the provisions of Article 6 of decree law 408 of 24 June 1994, confirmed with amendments by Law 483 of 3 August 1994, shall be applied where compatible; any reference to the electoral office shall be understood as having been replaced by reference to the central office for the Overseas Constituency.

3. The electoral office set up in each commission shall be composed of the returning officer and four scrutineers, one of whom, chosen by the returning officer, shall perform the functions of deputy returning officer and one the functions of secretary.

Article 14.

1. The scrutiny operations, which the representatives of the lists shall attend, shall take place at the same time as the scrutiny operations of the votes expressed on Italian territory.

2. Along with the package containing the envelopes sent in by electors, the central office for the Overseas Constituency shall deliver to the returning officer of the electoral commission an authentic copy of the list as set forth in paragraph 1 of Article 5, of citizens having the right to express their vote by post in the allotted overseas electoral zone.

3. Once the electoral commission has been set up, the returning officer shall begin the operations of opening the packs and envelopes allocated to the Commission by the central office for the Overseas Constituency and, subsequently, the scrutiny operations. For this purpose the returning officer, assisted by the deputy returning officer and the secretary:

a) shall ascertain that the number of envelopes received corresponds to the number of envelopes indicated in the list drawn up and delivered with the envelopes by the central office for the Overseas Constituency;

b) shall ascertain at the same time that the envelopes received come only from one overseas electoral zone;

c) shall subsequently proceed to open each of the outer envelopes. For each of these the returning officer, assisted by the deputy returning officer and the secretary:

1) shall ascertain that the envelope contains the counterfoil of the electoral certificate of only one elector, together with the second envelope containing the ballot paper or ballot papers, in the case of contemporaneous voting for the election of the Chamber of Deputies and the Senate of the Republic, with the expression of the vote;

2) shall ascertain that the counterfoil contained in the envelope belongs to an elector entered in the list as set forth in paragraph 2;

3) shall ascertain that the envelope containing the ballot paper or papers with the expression of the

vote is closed, undamaged, and does not bear any identifying mark or sign, and place it in the sealed ballot box;

4) shall annul, without counting the vote, any ballot papers contained in an envelope that contains more than one electorate certificate counterfoil, or a counterfoil of an elector who has voted more than once, or of an elector who does not belong to the allotted overseas electoral zone, or, finally, ballot papers contained in an envelope that is open, torn or which bears identifying signs or marks; in any case the returning officer shall separate the envelope containing the annulled ballot paper from the electoral certificate counterfoil in such a way that the vote cannot be identified;

d) once all the outer envelopes have been opened and all the inner envelopes containing the ballot paper or papers bearing the expression of the vote have been placed in the sealed ballot box, shall proceed to the sorting operations. For this purpose:

1) the deputy returning officer of the electoral commission shall then extract from the ballot box each of the envelopes containing the ballot paper bearing the expression of the vote; once the envelope is opened he or she shall stamp the back of each ballot paper with the division stamp, in the appropriate space;

2) when the returning officer receives the ballot paper he or she shall sign the back of each one and state aloud the poll for which the vote has been expressed and, in the case of contemporaneous voting for the election of the Chamber of Deputies and the Senate of the Republic, shall again state aloud the poll for which the vote has been expressed and hand the ballot paper to the secretary;

3) the secretary shall read aloud the votes expressed and take note of the votes for each list and each candidate; he or she shall then place the scrutinised votes into separate sorting boxes for each poll;

4. All the operations set forth in paragraph 3 shall be carried out in the order indicated; the performance and result of each of these shall be noted in the report.

5. The provisions contained in Articles 45, 67, and 68 of the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended, shall apply to the operations of sorting, counting and endorsing the ballot papers, since no other provisions are set forth in the present article.

Article 15.

1. Once the scrutiny operation is completed, the central office for the Overseas Constituency shall carry out the following operations for each of the overseas electoral zones set forth in Article 6:

a) it shall determine the electoral number for each list. The electoral number is given by the sum total of the valid list votes obtained within the overseas electoral zone;

b) it shall determine the individual electoral number for each candidate, which is given by the sum total of the preferential votes obtained by the candidate in that overseas electoral zone;

c) it shall assign the seats to the lists mentioned at letter a). For this purpose it shall divide the sum total of the electoral numbers of all the lists presented in that overseas electoral zone by the number of seats to be assigned; in carrying out this division fractional numbers should be ignored. The result obtained is the electoral quotient for the overseas electoral zone. The electoral number for

each list is then divided by this quotient. The whole number thus obtained represents the number of seats to be assigned to each list. Any remaining seats shall be assigned to those lists for which the division calculations have produced the highest remainders. In the case of identical remainders, the seats shall be assigned to the list with the highest electoral number;

d) it shall then proclaimed elected, in correspondence with the seats attributed to each list, the candidates belonging to that list in the order of their respective electoral numbers. In the case of identical electoral numbers those coming first in order in the list shall be proclaimed elected.

Article 16.

1. Any seat allocated in accordance with Article 15 that for any cause whatsoever, including intervening circumstances, should remain vacant, shall be assigned within the same overseas electoral zone to the candidate who comes immediately after the last elected candidate in the ranked list of individual electoral numbers, or in the absence of this candidate, to whichever candidate is next on the list.

Article 17.

1. The electoral campaign shall be regulated by forms of cooperation that the Italian Government shall agree on, where possible, with the states on whose territory electors of Italian citizenship are resident.

2. The parties, political groups and candidates shall comply with the laws in force on Italian territory in accordance with the forms of cooperation envisaged in paragraph 1.

3. Italian diplomatic and consular missions shall adopt initiatives to promote extensive political communication through Italian newspapers and periodicals published and distributed abroad and through any other information media in the Italian language, or addressed to Italian communities living abroad, in compliance with the principles on equality of access and treatment and on impartiality with respect to all political entities as embodied in the regulations currently in force on Italian territory.

Article 18.

1. Anyone who, in a foreign country, commits any of the offences envisaged in the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended, shall be punished in accordance with Italian Law. The penalties envisaged by Article 100 of the aforementioned Consolidated Law shall be doubled in the case of voting by post.

2. Anyone who, on the occasion of the elections to the Chamber of Deputies and of referendums, votes both by post and at the polling station with which they are registered in Italy, or who votes more than once by post, shall be punished by detention of from one to three years and a fine ranging from 52 euros to 258 euros.

Article 19.

1. Italian diplomatic missions shall enter into simplified agreements with the Governments of the states on whose territory electors of Italian citizenship are resident to ensure:

a) that citizens can exercise their right to vote by post in conditions of equality, freedom and confidentiality;

b) that electors and other Italian citizens shall not be subjected to prejudice in terms of employment and individual rights as a result of their participating in the activities envisaged by this Act.

2. The Minister of Foreign Affairs shall inform the Prime Minister and the Minister of the Interior of the simplified agreements that have been drawn up. These will enter into force, by agreement between the signatory parties, immediately they are signed.

3. The provisions of the present law concerning postal votes do not apply to Italian citizens resident in states with whose Governments it is not possible to conclude simplified agreements as set forth in paragraph 1. The provisions on the right to exercise their vote in Italy shall apply to such citizens.

4. The provisions on the right to exercise their vote in Italy shall apply also to those electors referred to in Article 1, paragraph 1, residing in states where the prevailing political or social conditions do not ensure, even temporarily, the exercise of their voting rights under the conditions set forth in letters a) and b) of paragraph 1 of this Article. For this purpose, the Minister of Foreign Affairs shall inform the Prime Minister and the Minister of the Interior of the situation in such states, in order that the appropriate measures might be adopted to enable Italian citizens to exercise their right to vote in Italy.

Article 20.

1. The special terms applying to travelling expenses, as envisaged by Article 117 of the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended, and by Article 26 of the Consolidated Law containing the provisions governing elections to the Senate of the Republic, pursuant to Legislative Decree 533 of 20 December 1993, and, with respect only to the elections of the Chamber of Deputies and the Senate of the Republic, the special terms envisaged by Article 2 of Law 241 of 26 May 1969, are suppressed.

2. Electors residing in states where there is no Italian diplomatic mission or in states in which it has not been possible to conclude simplified agreements as set forth in Article 19, paragraph 1, or in states where the conditions described in Article 19, paragraph 4, prevail, are entitled to having 75 percent of their travelling expenses reimbursed. For this purpose the elector shall present an application to the consular office of the consular district in which he or she resides, or, where no such office exists in the state of residence, to the consular office of one of the neighbouring states, accompanied by his or her electoral certificate and ticket for the journey.

Article 21.

1. Paragraph one of Article 55 of the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957, shall be replaced by the following paragraph:

"Voters may not be represented by proxies, nor may they send their vote in writing if they vote in Italy".

Article 22.

1. In order to define, in the constituencies of the Chamber of Deputies, those seats that are to be attributed to the Overseas Constituency, Article 56, paragraph four, of the Constitution shall apply, without prejudice to the single-member wards of each national constituency as already defined pursuant to the electoral law currently in force.

2. In order to identify, in the regions, those seats of the Senate of the Republic that are to be attributed to the Overseas Constituency, paragraphs three and four of Article 57 of the Constitution shall apply, without prejudice to the single-member wards of each region as already defined pursuant to the electoral law currently in force.

Article 23.

1. Italian citizens resident abroad, as set forth in Article 1, paragraph 1, shall take part in the request for popular referendums as envisaged by Articles 75 and 138 of the Constitution.

2. For the purposes indicated in paragraph 1, Law 352 of 25 May 1970 shall be amended as follows:

a) in Article 7, paragraph one, after the words "of a municipality of the Republic", the following words shall be introduced: "or in the register of Italian citizens resident abroad pursuant to the law on the exercise of the right to vote by Italian citizens resident abroad";

b) the following words shall be added at the end of Article 8, paragraph two: "or, for citizens resident abroad, their registration in the electoral registers of the unified register of Italian citizens resident abroad";

c) in Article 8, paragraph three, the following shall be introduced after the first sentence: "For electors of Italian citizenship resident abroad, the authentication shall be carried out by the competent Italian Consul";

d) in Article 8, paragraph six, first sentence, after the words: "electoral [...] of the same municipalities", the following words shall be added: "or, for Italian citizens resident abroad, their registration in the register of Italian citizens resident abroad pursuant to the law on the exercise of the right to vote of Italian citizens resident abroad";

e) the following words shall be added at the end of Article 50: "and, for Italian citizens resident abroad, the legal provisions concerning the exercise of the right to vote by Italian citizens resident abroad".

Article 24.

1. The costs arising from the implementation of this law shall be charged to the "Fund for expenses arising from general and local elections, elections for the European Parliament, and the execution of

referendums", included under budget item 7.1.3.2 "Electoral expenses" of the budget of the Ministry of the Treasury, Budget and Economic Planning.

Article 25.

1. For all matters that are not provided for by the present law the provisions of the Consolidated Law containing the provisions governing the election of the Chamber of Deputies, pursuant to Presidential Decree 361 of 30 March 1957 as amended, shall be observed where applicable.

Article 26.

1. The arrangements for the implementation of this law are set forth in the Rules adopted under Article 17, paragraph 1, letter b) of Law 400 of 23 August 1988.

2. The draft Rules referred to in paragraph 1 shall be sent to the Chamber of Deputies and to the Senate of the Republic so that, within sixty days of the date of forwarding of the document, the Committees with competency in these matters may express their opinion. If these Committees do not express their opinion within this period the Rules shall be issued without the opinion of Parliament.

Article 27.

The present law shall enter into force on the day following the date of its publication in the Official Journal.