



European Communities

EUROPEAN PARLIAMENT

WORKING DOCUMENTS

English Edition

1985-86

22 March 1985

SERIES A

DOCUMENT A 2-1/85

REPORT

drawn up on behalf of the Political Affairs Committee
on a draft uniform electoral procedure for the election
of Members of the European Parliament

Rapporteur: Mr R. BOCKLET

Part A - MOTION FOR A RESOLUTION

WG(2)1348E

PE 94.297/A/fin.
Or. It.

At its sitting of 11 September 1984, the European Parliament referred to the Political Affairs Committee, pursuant to Rule 47 of the Rules of Procedure, the motion for a resolution tabled by Mr John David TAYLOR on the denial of votes in European elections to EEC citizens in Gibraltar (Doc. 2-396/84) and the motion for a resolution tabled by Mrs VEIL on a common electoral procedure (Doc. 2-399/84).

At its sitting of 13 September 1984, the European Parliament referred the motion for a resolution tabled by Mr VANDEMEULEBROUCKE and Mr KUIJPERS on a uniform electoral procedure (Doc. 2-546/84) to the Political Affairs Committee as the committee responsible and to the Committee on Youth, Culture, Education, Information and Sport for its opinion.

At its sitting of 18 January 1985, the European Parliament referred this motion for a resolution to the Committee on the Verification of Credentials for its opinion.

At its meeting of 17 September 1984, the Political Affairs Committee decided to draw up a report. At its meeting of 18 September 1984, it appointed Mr BOCKLET rapporteur.

At the sitting of 9 October 1984, the Committee on Legal Affairs and Citizens' Rights was asked for its opinion on the motions for resolutions in Docs. 2-396/84 and 2-399/84.

The committee considered the draft report at its meetings of 19/20 December 1984 and 27-28 February/1 March 1985.

At the latter meeting it approved the motion for a resolution by 16 votes to 8 with 13 abstentions.

The following took part in the vote: Mr HÄNSCH, first vice-chairman and acting chairman; Lord DOURO, second vice-chairman; Mr BOCKLET, rapporteur; Mr ANTONIOZZI, Mr BALFE (deputizing for Mr LOMAS), Lord BETHELL, Mr BEYER de RYKE (deputizing for Mr BETTIZA), Mr BLUMENFELD, Mr CERVETTI, Mrs CHARZAT, Mr CHRISTIANSEN (deputizing for Mr GLINNE), Mr COSTE-FLORET, Mr CROUX, Lady ELLES, Mr EPHREMIDIS, Mr FILINIS (deputizing for Mr SEGRE), Mr FLANAGAN, Mrs FLESCHE (deputizing for Mr DENIAU), Mr B. FRIEDRICH, Mr GAWRONSKI, Mr HABSBURG, Mr HAMMERICH, Mrs van den HEUVEL, Mr KLEPSCH, Mrs LENZ, Mr MALLET (deputizing for Mr BERNARD-REYMOND), Mr NEWENS, Mr PELIKAN (deputizing for Mr AMADEI), Mr PENDERS, Mrs PIERMONT, Mr PIQUET, Mr POETTERING, Mr PRAG, Mr ROTHLEY (deputizing for Mr SEEFELD), Mr TURNER (deputizing for Sir Peter VANNECK), Mr TZOUNIS (deputizing for Mr BOUTOS), Mr VGENOPOULOS (deputizing for Mr PLASKOVITIS) and Mr WEDEKIND (deputizing for Mr FORMIGONI).

The opinion of the Committee on Legal Affairs and Citizens' Rights is attached.

At its meeting of 29 and 30 October 1984, the Committee on Youth, Culture, Education, Information and Sport decided not to draw up an opinion.

The opinion of the Committee on the Verification of Credentials was delivered in the form of an amendment to Article 8 of the text which appears in this report.

The report was tabled on 19 March 1985.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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A

The Political Affairs Committee hereby submits to the European Parliament the following motion for a resolution:

MOTION FOR A RESOLUTION

The European Parliament,

- having regard to the motion for a resolution tabled by Mr J.D. TAYLOR on the denial of votes in European elections to EEC citizens in Gibraltar (Doc. 2-396/84),
 - having regard to the motion for a resolution tabled by Mrs VEIL on a common electoral procedure (Doc. 2-399/84),
 - having regard to the motion for a resolution tabled by Mr VANDEMEULEBROUCKE and Mr KUIJPERS on a uniform electoral procedure (Doc. 2-546/84),
 - having regard to the report of the Political Affairs Committee and the opinion of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-1/85),
- A. having regard to Article 138(3) of the EEC Treaty, Article 108(3) of the EAEC Treaty, Article 21(3) of the ECSC Treaty and Article 7(1) of the Act of 20 September 1976,
 - B. having regard to Article 137 of the EEC Treaty,
 - C. noting that to date, the Council has not taken any decision on the draft (Doc. 1-988/81/A) submitted by the European Parliament on 10 March 1982,
 - D. whereas the European Parliament's right of initiative embodied in the Treaties includes the obligation to act as the initiating institution until a uniform electoral procedure within the meaning of the Treaties is introduced,
 - E. whereas the objective of a uniform electoral procedure is most likely to be attained in individual steps, and whereas the attached Act represents an important step towards that objective,
 - F. whereas legislative progress is essential to prevent further divergence between the national electoral legislation in force at present in the ten Member States,
 - G. whereas a uniform electoral procedure will be an important pillar in the construction of the future European Union, the attainment of which is called for by current Treaty Law,
 - H. in an attempt to enable Spain and Portugal, on accession, to follow this proposal when electing their representatives to the European Parliament,
 - I. in an attempt to enable the ratification of this Act to be undertaken simultaneously with the ratification of the accession of Spain and Portugal,

- J. whereas the rapid adoption of a draft by the European Parliament will create the requisite conditions for the necessary provisions for a uniform electoral procedure to be put into effect in good time before the next direct elections,
 - K. whereas it is important, *inter alia*, to ensure that every citizen of a Member State may vote in elections to the European Parliament,
 - L. whereas the elections to the second directly elected Parliament were characterized by substantial differences between the Member States with particular regard to the electoral system and the right to vote,
 - M. whereas the concept of uniformity does not entail the electoral procedure being totally identical in all the Member States but does require agreement on the essential aspects of the electoral procedure (electoral system and the right to vote and the right to stand for election),
 - N. whereas the concept of uniformity requires electoral procedure eventually to be identical on all points throughout the Member States, and recognizing that an agreement on the points covered in this draft First Act (electoral system, the right to vote, and the right to stand) must be accompanied by agreement on a wide range of other points before a uniform electoral procedure can be said to be in place,
 - O. whereas the European Parliament will be able to fulfil its representative function most effectively if the many national, regional and ideological trends of the peoples of the Community are represented in it in proportion to their numerical strength, the number of seats laid down for each Member State in the 1976 Act continuing to apply,
 - P. convinced that a high degree of proportionality within the framework of the current allocation of seats per Member State may be achieved by means of an election based on lists (proportional representation) which also take account of the possibility of personal voting,
 - Q. in an attempt to enable proceedings to be instituted before the Court of Justice of the European Communities in respect of rulings of the European Parliament on disputes following an election,
 - R. anticipating that all the Member States will ensure that the requisite conditions obtain, including those in the field of information, which allow all parties and electoral groups to have a fair chance in the elections,
 - S. in an attempt to take account of specific situations in certain Member States, both as regards specific traditions of electoral law and the consideration of geographical and ethnic peculiarities,
1. Submits to the Council the draft of the following Act;

Proposal for a First Act
for the introduction of a
uniform electoral procedure
for the election of Members
of the European Parliament

THE COUNCIL,

Having regard to Article 21(3) of the Treaty establishing the European Coal and Steel Community,

Having regard to Article 138(3) of the Treaty establishing the European Economic Community,

Having regard to Article 108(3) of the Treaty establishing the European Atomic Energy Community,

Having regard to Article 7(1) of the Act concerning the elections of the representatives of the Assembly by direct universal suffrage,

Having regard to the draft of Parliament,

has laid down the provisions annexed to this Decision which it recommends to the Member States for adoption in accordance with their respective constitutional requirements.

This Decision and the provisions annexed hereto shall be published in the Official Journal of the European Communities.

The Member States shall notify the Secretary-General of the Council of the European Communities without delay of the completion of the procedures necessary in accordance with their respective constitutional requirements for the adoption of the provisions annexed to this Decision.

This Decision shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 1

The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected in free, secret and uniform elections in accordance with this Act, the Act of 20 September 1976 and, in the absence of Community provisions, with the respective legislative provisions of the Member States.

Eligibility

Article 2 Right to vote

(1) Nationals of the Member States of the Community who are aged 18 or over on the date of the election shall be entitled to vote in elections to the European Parliament irrespective of their place of residence, insofar as it is in a Member State of the Community. Nationals of a Member State whose place of residence is outside the territory of the Member States of the Community may be granted the right to vote in the country of which they are nationals.

- (2) Nationals of a Member State shall be entitled to vote in the country of which they are nationals. The Member States shall take all the necessary measures to enable their nationals whose place of residence is outside their country of origin to exercise their electoral rights without hindrance in the Member State of which they are nationals.
- (3) A Member State may grant the right to vote to nationals of another Member State whose place of residence is on the territory of that Member State. The Member States shall cooperate in order to facilitate the exercise of the right to vote as provided for in this article and to prevent electors from voting twice at one and the same election.

Article 3 Right to stand for election

- (1) Nationals of the Member States of the Community aged 18 or over on the date of the election shall be entitled to stand for election to the European Parliament irrespective of their place of residence, insofar as it is in a Member State of the Community, in the country of which they are nationals. Nationals of the Member States whose place of residence is outside the territory of the Member States of the Community, may be granted the right to stand for election in their country of origin.
- (2) A Member State may grant the right to stand for election to nationals of another Member State whose place of residence is on the territory of that Member State.
- (3) In one and the same election, a national of a Member State may stand for election in no more than one Member State. The Member States shall cooperate in order to prevent any person from standing for election more than once in one and the same election.

Article 3a

Nationals of the Member States of the Community who are officials of the Community shall not be excluded from voting or standing in elections to the European Parliament in the Member States of which they are nationals by virtue of their being resident outside the Community.

Electoral system

Article 4

- (1) In each Member State, Members shall be elected on lists in accordance with the principle of proportional representation.
- (2) The Member States shall decide on the division of their territory into constituencies. They may divide their territory into one or more constituencies.
- (3) The Member States shall lay down the conditions for lists and for the combination of lists at national level.

Member States may not lay down as a condition that a list must be submitted in more than one constituency.

- (4) The Member States shall lay down the conditions for the submission of lists. In so doing, they shall lay down that parties and electoral associations may participate in the elections, that the nomination of candidates must be in line with democratic principles and that a certain number of signatures of electors is required to support a nomination.
- (5) Each elector shall have one vote. The Member States may provide for the casting of preferential votes.
- (6) The Member States may lay down that the lists shall be accompanied by lists of substitutes.
- (7) Member States shall bear the official costs of the election, in particular the printing and distribution of voting papers.

Article 5

- (1) Seats shall be allocated to every list or combination of lists at national level in accordance with the d'Hondt system, account being taken of the total number of votes secured by that list or national combination of lists. In the case of a combination of lists, the total number of seats won by a combination of lists shall then be allocated in accordance with the votes secured by the individual lists.
- (2) Seats shall be allocated within a list on the basis of the order of the names on the list. In the case of preferential voting, the seats shall be allocated on the basis of the number of votes secured by each of the candidates on the list concerned. Where the number of votes is identical, seats shall be allocated in the order of the names on the list.
- (3) If a seat falls vacant, it shall be filled in accordance with paragraph 2. The same shall apply to the replacement of such Members to whom Article 6(1) of the Act of 20 September 1976 becomes applicable during their term of office.

Article 6

- (1) The Member States may introduce a national threshold, which may not exceed 5%, below which a list shall obtain no seats.
- (2) In order to take account of special situations caused by geographical or ethnic factors and which originate in the constitutional framework of a Member State or are traditionally recognized by that State, such a Member State may lay down conditions diverging from Article 5(1) and (2) and Article 6(1) of this Act.

Miscellaneous provisions

Article 7

- (1) Elections to the European Parliament shall be held on the date fixed by each Member State which shall fall within the same period for all the Member States beginning on a Thursday morning and finishing at 8 p.m. on the Sunday evening.

- (2) The counting of votes may not begin until the Sunday after the close of polling in the Member State in which the polling stations close first.

Article 8

The European Parliament shall verify the credentials of its Members. For this purpose, it shall take as a basis the election results declared officially by the Member States and rule on any disputes which may arise out of the provisions of this Act and of the Act of 20 September 1976. Proceedings against a decision of Parliament may be instituted by those concerned before the Court of Justice of the European Communities.

Article 9

- (1) This Act for the introduction of a uniform electoral procedure shall be ratified by the Parliaments of the Member States of the European Communities. It shall come into force immediately in the Member States after ratification according to the respective constitutional provisions. The ratification shall be notified to the Commission of the European Communities.
2. Points out that this draft takes account of the draft contained in the Seitlinger report and the findings of consultations held since then and that this draft replaces the previous draft;
3. Calls on the Council to consider this draft without delay and to adopt it in time for the Member States to ratify it within the stipulated period and lay down the requisite provisions in accordance with their constitutional requirements in good time before the next elections;
4. Reminds the Council that in this field, the European Parliament is the sole repository of the right of initiative, and calls on the Council and the European Parliament to arrange a conciliation meeting to discuss the Act so that they may arrive at a decision supported by both bodies;
5. Instructs its President to forward this resolution and the draft Act, together with the report of its committee, to the Council and the Commission of the European Communities and to the parliaments and governments of the Member States.

ANNEX I

MOTION FOR A RESOLUTION (Doc. 2-396/84)

tabled by Mr John David TAYLOR

pursuant to Rule 47 of the Rules of Procedure

on the denial of votes in European Elections to EEC
citizens in Gibraltar

The European Parliament,

- A. recalling that Gibraltar is within the European Economic Community, having acceded in 1973 along with the United Kingdom of Great Britain and Northern Ireland,
 - B. conscious of the great Community desire for a directly elected Parliament and of the firm conviction that there should be universal franchise for elections to the European Parliament,
 - C. alarmed that Gibraltar is the only area of the Community where residents are denied a vote in European Elections and that, therefore, Gibraltar is the only area which does not have Members representing it in the European Parliament,
 - D. noting that the Gibraltar Branch of the European Movement is presently preparing a petition to the European Parliament calling for an extension of the European franchise to residents of Gibraltar,
 - E. aware of the need for greater urgency in this matter given that, after 1985, the Parliament will contain Spanish Members elected by people living adjacent to Gibraltar,
1. Condemns the denial of basic human rights to the residents of Gibraltar which is unjustified and unacceptable in the Western democratic system;
 2. Calls upon the Community to report as a matter of urgency on means by which the right to vote in European Elections may be extended to residents of Gibraltar;
 3. Urges the Council to implement as soon as possible recommendations which will provide this extension;
 4. Instructs its President to forward this resolution to the Commission, to the Council, and to the governments of all the Member States.

MOTION FOR A RESOLUTION (Doc. 2-399/84)

tabled by Mrs Simone VEIL

on behalf of the Liberal and Democratic Group

pursuant to Rule 47 of the Rules of Procedure

on a Common Electoral Procedure

The European Parliament,

- A. having regard to Articles 137 and 138(3) of the Treaty of Rome,
- B. having regard to Article 7, para.s 1 and 2 of the Act of 20 September 1976,
- C. having regard to Article 14(3) of the Draft Treaty establishing European Union.
- D. having regard to the resolution on a common electoral system, adopted by the Parliament on 10 March 1982,
- E. noting that in Great Britain, 19.5% of the votes cast in the 1984 European elections secured no representation, although these voters totalled 2,591,635 citizens of the European Community,
- F. noting that the Conservative and Labour Parties resist any change in the system although repeated opinion polls show that proportional representation is desired by a large majority of the British electorate,
- G. noting that candidates of the parties adhering to the European Liberals and Democrats secured nearly 10 million votes and 32 seats, whereas the candidates of parties adhering to the European Democratic Group polled just under 6 million votes and obtained 50 seats,
- H. noting that France operates a single member constituency system for its national parliamentary elections and a proportional system for the European elections,
 1. Insists on the legal and moral obligation of the Community and of its Member States to establish a uniform electoral system which will ensure the fair representation "of the peoples" of the Member States in time for its use in the 1989 European elections;
 2. Therefore declares its support for a system which would establish the principles of proportionality and of the right of every Community citizen to vote in the European Parliament's elections;
 3. Urges the President-in-Office of the Council to ensure that the principle of the establishment of such a uniform electoral procedure for the 1989 and subsequent European elections is accepted by the Council during his term of office;
 4. Instructs its President to forward this resolution to the Council, the Commission and the Governments and Parliaments of Member States.

MOTION FOR A RESOLUTION (Doc. 2-546/84)

tabled by Mr VANDEMEULEBROUCKE and Mr KUIJPERS
pursuant to Rule 47 of the Rules of Procedure

on a uniform electoral procedure

The European Parliament,

- A having regard to Article 137 and Article 138(3) of the EEC Treaty,
- B having regard to Article 7 of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage,
- C having regard to Article 14 of the Draft Treaty establishing the European Union,
- D having regard to its resolution of 10 March 1982 on a draft uniform electoral procedure for the election of Members of the European Parliament (Doc. F-988/81),
- E whereas the Council failed to introduce a uniform electoral procedure before the second direct European elections and has deferred a decision until 1989,
- F whereas, as a result, the second direct elections to the European Parliament were marked by major differences between the Member States with regard to electoral systems and voting rights,
- G whereas these differences influence the composition and representativeness of the European Parliament and affect how the citizens of the Community exercise their civic rights, such differences including in particular:
 - a) the fact that minimum numbers of votes may still be imposed,
 - b) the fact that deposits may be demanded, which can be declared forfeit if a minimum number of votes is not obtained,
 - c) the lack of guaranteed representation for regions, particularly for those regions which already enjoy autonomous status and have their own autonomous government and legislative assembly,
 - d) the lack of criteria for dividing the Member States into constituencies,
- H having regard to its resolution of 16 October 1981 on a Community Charter of regional languages and cultures and a Charter of rights of ethnic minorities (Doc. F-965/80),
- I whereas a uniform electoral procedure must, at all events, allow for the democratic representation of different regions and their ethnic and cultural minorities,

1. Takes the view that the enhancement of democracy must be a guiding principle for the establishment of the European institutions and for their proper functioning;
2. Calls on the President-in-Office of the Council to ensure that, during his term of office, the Council accepts, in principle, the introduction of a uniform electoral procedure for the 1989 European elections;
3. Believes that this uniform electoral procedure should incorporate the following democratic principles of non-discrimination in financial and technical considerations:
 - a) the abolition of the requirement to place deposits,
 - b) the abolition of minimum numbers of votes to be obtained,
 - c) the creation of constituencies in which a minimum of three and a maximum of 15 Members are to be elected,
 - d) acknowledgement, with regard to the drawing-up of constituencies, of the existence of ethnic groups, in order to guarantee these small sections of the populace direct representation in the European Parliament,
 - e) the allocation of seats on the basis of straightforward proportional representation,
 - f) provision for a bicameral system incorporating an upper house with proportional representation of the people of the Community and, in line with federalist principles, a lower house in which the different regions would enjoy equal representation,
4. Instructs its President to forward this resolution to the Council, the Commission and the Governments and Parliaments of the Member States.

OPINION

of the Committee on Legal Affairs and Citizens' Rights

Draftsman: Mr BARZANTI

The Committee on Legal Affairs and Citizens' Rights was asked for an opinion on 9 October 1984.

On 30 November 1984, Mr Barzanti was appointed draftsman.

At its meeting of 31 January/1 February 1985, the Committee on Legal Affairs and Citizens' Rights discussed the problems relating to a uniform electoral procedure. It considered the draft opinion at its meetings of 19/20 February and 27/28 February 1985. At the latter meeting the Committee on Legal Affairs and Citizens' Rights adopted the conclusions of the draft opinion by 15 votes to 0 with 3 abstentions.

The following took part in the vote: Mrs Vayssade, chairman; Mr Evrigenis, vice-chairman; Mr Barzanti, draftsman; Mr Bocklet (deputizing for Mr Graf Stauffenberg), Mrs Boot, Mrs Fontaine, Mr Ippolito (deputizing for Mr Gremetz), Mrs Marinaro, Mr Price, Mr Prout, Mr Rogalla, Mr Rothley, Mr Schwalba-Hoth, Mr Selva, Mr Turner, Mr Vetter, Mr Wijsenbeek and Mr Zagari.

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I - INTRODUCTION

1. The European Parliament's right of initiative in the matter of the drafting of a uniform electoral procedure is based on Article 21(3) of the ECSC Treaty, Article 138(3) of the EEC Treaty and Article 108(3) of the EURATOM Treaty. These provisions, whose terms are identical, stipulate that 'the Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States'.

A similar provision is also included in Article 7(1) of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage.¹

It should be remembered that Article 137 of the EEC Treaty and the corresponding articles of the ECSC and Euratom Treaties stipulate that 'the Assembly shall consist of representatives of the States brought together in the Community'.

2. It is clear that Parliament has been given both a power and a duty, consisting not only in the obligation to draft proposals for direct elections,² but also in the requirement to monitor the progress of its proposal within the Council and to amend and update it when this is considered politically necessary. This derives, as the rapporteur of the Political Affairs Committee has pointed out,³ not only from the use of the plural in the legislative texts ('the Assembly shall draw up proposals'), but is inherent in the way in which Community acts are originated. It is a general principle of Community law that the body invested with the power of initiative can always modify its original proposal, as long as it is still under consideration by the body which has the power of decision. (cf. the position of the Commission, the body which usually has the power of initiative, under Article 149(2) of the EEC Treaty).

The initiative by means of which the Political Affairs Committee is seeking to have a new proposal adopted by the whole House is therefore a legitimate one.

1 OJ No. L 278, 8.10.1976, p. 1

2 It has been correctly pointed out by the Legal Affairs Committee that this obligation is necessarily followed by the subsequent requirement that the Council adopt recommendations to the Member States designed to introduce the uniform electoral procedure (see the opinion adopted by the Legal Affairs Committee on 27 October 1981 on the basis of a draft opinion by Francescopaolo D'Angelosante - Doc. 1-988/81/B-C, pp. 26 et seq.)

3 Working document by Mr Bocklet - PE 91.626 - part A, paragraph 4(b)

It should be noted in passing that a number of proposals from Parliament do not call for an equal number of acts by the Council. The decision of 20 September 1976 concerning direct elections must be followed up - and the time for this follow-up has come - by a single proposal in the form of a recommendation in accordance with the provisions of Article 138(3) of the EEC Treaty (and the corresponding provisions in the ECSC and EURATOM Treaties), which do not stipulate that the uniform electoral procedure should be introduced in a fragmentary and piecemeal manner.

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However, it would be pointless to discuss the 1982 proposal in an unfavourable light, although it should certainly be kept in mind, as should the obstacles which have arisen within the Council to the realization of this very important objective.

Moreover, the enlargement of the Community to include Spain and Portugal offers a historic opportunity to do something to put an end to the tangle of derogations and inconsistencies which is threatening to frustrate the whole enterprise.

3. As far as the ratio legis is concerned, the significant powers vested in Parliament in this field derive from the realization that the matter is a highly complex one and that only an open and wide-ranging political debate within the Assembly could provide a basis for a proposal capable of achieving the necessary consensus.

4. The proposal should be framed with the consent of Parliament and the parties themselves with continuous monitoring in plenary of at least the essential points. The vital issues and problems on which an opinion is to be given can be usefully brought into the open and debated publicly, although it must be borne in mind that an extremely wide body of support is needed if the end result is to be adopted and also to secure solid backing during the stages following the vote by Parliament.

It is legitimate, however, for Parliament to request the Council, in the resolution accompanying the draft convention, to provide for the conciliation procedure to be set in train, having regard to Parliament's resolution of 14 December 1983.¹ The resolution, which was based on a Commission proposal, stipulated that the conciliation procedure should be used for 'Community legislative acts which are of general application and which, in the opinion either of the Parliament or of the Council, are of considerable importance for the Community and whose adoption is not required by acts already existing'. It should be noted that:

- this last condition should be understood to mean that there is no need for conciliation in respect of acts which are merely implementing provisions, the adoption of the content and terms of which is imposed on the Council by the existence of previous provisions which are of general application. In other words, there can be no conciliation on acts which are required as a matter of course;

¹ OJ No. C 10, 16.1.1984, pp. 30 et seq.

- the Council recommendation provided for in Article 138(3) of the EEC Treaty - and in the corresponding articles of the ECSC and EURATOM Treaties - although it is not binding, constitutes a Community legislative act, since the procedure by which it is originated is laid down in the Treaties in the same way as it is for other Community legislative acts;
- with regard to elections, provision already exists for conciliation between the Council and the European Parliament; Article 13 of the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage states that: 'Should it appear necessary to adopt measures to implement this Act, the Council, acting unanimously on a proposal from the Assembly after consulting the Commission, shall adopt such measures after endeavouring to reach agreement with the Assembly in a conciliation committee consisting of the Council and representatives of the Assembly'.

It is absolutely vital, moreover, for Parliament to monitor its proposal closely until it is finally adopted by the Council and to this end conciliation with the body which is at the same time the author and addressee of the proposal should prove both technically helpful and politically stimulating.

II - UNIFORM NATURE OF THE ELECTORAL PROCEDURE

5. The electoral procedure is the concrete instrument by means of which a body is constituted. It therefore has a constituent function, provides a basis of legitimacy and is the form by means of which a certain degree of representation is attained. That it should be homogeneous in character when it serves to elect a given body is a factor of major importance, which is bound to have a bearing on the proper functioning of that body and the authority which it enjoys vis-à-vis the outside world.

6. An electoral procedure may be said to be uniform when, apart from the organizational flexibility needed for peripheral or highly specific matters, it ensures a substantial degree of similarity between the principal elements which make up the system.

It is necessary to oppose any system which allows excessive scope for derogations, which, if applied, would once again frustrate what is the second initiative of its kind, which makes success an objective to be achieved at all costs. It is no use submitting a proposal which, from the very outset, provides for the possibility of its not being applicable to all the Member States.

It must be said that, in addition to the negative effects on Parliament's internal balance - and thus on its external credibility - the very existence of derogations in the procedure for election of 'representatives of the peoples of the States brought together in the Community'¹ would be damaging to the construction of Europe as a whole, a process whose brief history is already marked by too many derogations.

¹ See Article 20 of the ECSC Treaty, Article 137 of the EEC Treaty and Article 107 of the EURATOM Treaty

However, an option which cannot be ruled out is that of implementing the provisions of the convention one stage at a time, in order to surmount the difficulties which make it impossible for some Member States to adopt the proposed system at the same time as all the others, although with the proviso that all Member States would be subject to a general obligation. Not a derogation, in other words, but a possible postponement with the explicit consent of all concerned.

III - ESSENTIAL ELEMENTS OF A UNIFORM ELECTORAL PROCEDURE

7. In the committee's view, the essential elements of the uniform electoral procedure should be as follows:¹

1. entitlement to vote,
2. the weight attaching to each vote,
3. standardization of procedures and freedom of choice,
4. the type of constituency,
5. the degree of choice offered to the voter,
6. the procedure for calculating how the votes are transformed into seats.

All these elements, acting together, go to characterize a system and emphasize its uniformity.

8. The current situation (nine countries have a proportional system, while the United Kingdom has two distinct systems - England, Scotland and Wales have a single constituency majority vote system with a single ballot, whereas the three Members for Northern Ireland are elected by a proportional system with a multi-member constituency and transferable votes) clearly shows that the bases for a proportional system are largely in place, though this should not be a system based on specific principles of proportionality which can be adapted by the Member States of the Community, but rather a clearly defined proportional system carved out from the vast range of possibilities in this field. Otherwise, there would inevitably be vast disparities, with no guarantee that the system chosen would be a proportional system pure and simple - one out of the many available - and no guarantee of homogeneity in the weight given to each vote and thus in the calculation of results.

9. The limits which make the proportional system imperfect - whichever one is adopted at Community level - are clearly apparent, in particular the pre-established quotas of representatives of each Member State in Parliament. It seems neither advisable nor practical to alter this element of the system and replace it, for example, by calculating the number of seats for each Member State on the basis of demographic trends, which would be updated a year prior to the elections.

¹ Cf. Stein ROKKAN, under the heading Electoral System, International Encyclopedia of Social Sciences, Vol. V, New York, 1968

10. Secondly, it must be remembered that the population of some Member States is much lower than in others and this means that corrective weighting is inevitably required in order to ensure proper pluralistic representation of these countries.

11. There are also other unavoidable restrictions. It is commonly agreed that the radical principle of one man, one vote, one value has to be realistically tempered by the requirements of mathematics and the need for a workable notion of representation, taking due account of the constraints imposed by the nature of the electorate.

12. The reasons underlying the choice of a proportional system are to some extent specific to the European Parliament. The debate on electoral systems, which has been particularly intense in some countries, has focused and continues to focus on issues which are not relevant to the problems peculiar to the election of a parliament which is not required to produce a government and whose main task is to represent the European Community in all its political and cultural diversity. Consequently, both those who maintain that an electoral system - and the author does not share this view - must be based firmly on the need to ensure continuity of government (even if correctives have to be used), and those who place the emphasis on the need for Parliament to represent all shades of opinion or at least those trends that enjoy an appreciable level of support, could agree on a proportional approach and exclude from their assessment of the problem of electing the European Parliament considerations and judgments which are not strictly connected with the specific questions which must be faced when seeking to devise a uniform electoral procedure for the European Parliament.

13. A system of proportional representation is the only way for Europe to secure balanced and pluralistic representation in Parliament capable of giving voice to all points of view, all opinions and all cultures.

The proportional system has the added advantage of encouraging a higher turnout of electors than the majority system, under which there is a high rate of abstention, particularly in constituencies where the success of a particular candidate is taken for granted. This is particularly important for the European elections where a by no means secondary aim is to produce a psychological impact on the people, who by the common act of voting are made to feel more closely part of a single community.

14. It is vital to ensure adequate representation in Parliament of ethnic or other minorities, since it offers a forum for constructive debate between all the voices which go to make up the wide spectrum of European democracy.

To opt for a system of proportional representation is to opt for a Parliament which represents the essential variety of organized civil and political life in the countries of Europe.

To adopt this perspective is not to take a stance against individual national systems, which often have their well-founded historical reasons and must not be presumptuously challenged or overturned by a Parliament whose task is to look to the future and not to stand in judgment on individual national

systems. The way in which France and Greece adopted an electoral system for the election of the European Parliament quite different from that used for national elections clearly illustrates the scope available to those who do not wish to allow questions or discrepancies which are part of the domestic political environment to intrude unduly upon problems in the Community sphere.

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15. However, although it is easy to justify the basic choice of a proportional system (largely in existence already, in any case), it would be unfair not to give due weight to the views of those who criticize electoral systems which depersonalize excessively the relationship between the voter and the elected member and which give party machines a role which some see as autocratic in tendency.

Hence the need to lay down clear guidelines concerning objectives (to which technical solutions must then be matched), before drawing up a genuine proposal, which must be more than a statement of principles, as these would be faced by a multitude of different situations and as a result would break down when put into practice.

16. Although it is impossible to reconcile a proportional system with a majority one, it is nevertheless possible to ensure the application of the basic criteria of a system based, for example, on the d'Hondt method of counting votes and to temper that system by introducing constituencies to provide the necessary element of personal contact. The system used for electing the German Bundestag or that used for the election of the Italian Senate could offer useful points of reference for devising a new and suitably flexible system capable of achieving the broadest possible consensus and meeting conflicting requirements.

17. It is not a question of going back on changes which are by now historical and have given political parties a decisive role in public life - remember the crucial experience of Weimar - but rather of dealing with a specific situation such as that of the European Parliament by adopting a system able to come to terms with a subject as complex as the role of mass parties in parliamentary representation. A recent study¹ correctly pointed out, in connection with the most successful phase in the history of proportional representation (the first post-war period), that 'in some countries the adoption of proportional representation and the extension of the suffrage were simultaneous, while in others they followed closely upon each other; in all these countries they were the basis of the post-war system and the new model for the organization of society. The way in which politics was conducted changed profoundly and took the form of action by mass organizations in opposition to each other. The parties officially became the driving force behind this action and parliamentary life was transformed by the recognition of the groups representing these forces within the chamber'.

18. To combine a proportional system with an element of personal representation at constituency level may have the positive effect of encouraging greater participation by those figures who are most closely involved with new movements, which are either still taking shape or are

¹ Cf. Fulco LANCHESTER, Sistemi elettorali e forma di governo, Bologna 1981, p. 73

critical of or excluded from party organizations. This is not without significance, given the crisis of confidence in the relationship between citizens and institutions and the crisis of credibility affecting parliamentary representation, reflected in a widespread scepticism about the selection of candidates, which is often perceived as being predetermined by the dictates of the system or the requirements of bureaucracy: this can happen particularly when there is a national constituency with a blocked list.

19. The alternative to a proportional system of the type described in general outline above could only be a system which is truly proportional. This brings to mind the precise formula put forward by Mr D'Angelosante (Doc. 1-988/81/B-C, p. 43) as a possible first article of a draft proposal: 'The Members of the European Parliament shall be elected in accordance with the list system of proportional representation. The seats shall be distributed among the lists in accordance with the d'Hondt method. The elector shall cast his preferential vote for one or more candidates, depending on the size of the constituency and the number of candidates allocated to each list'.

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20. Apart from the fundamental principle for counting the votes and transforming them into seats, other common elements are needed to make an electoral system uniform.

It would not be consistent in principle with the general aims which the European Parliament must set itself in terms of its representativeness to introduce an electoral threshold, a percentage of the vote below which seats would not be allocated.

By its very nature, proportional representation possesses a technical threshold, which varies from country to country. This situation cannot be standardized by the imposition of a threshold, but by harmonizing the rules governing the different proportional systems.

At the present time, France and the Federal Republic of Germany make explicit provision for a threshold.

21. Procedures for the nomination of candidates differ widely from country to country. Although provisions on this subject must be extremely flexible, justifiable doubts have been raised about the 'dubious constitutional legitimacy' of requiring candidates to pay a deposit, a practice which is current in some countries (Netherlands, United Kingdom, Ireland, France, Greece).

22. With regard to incompatibilities between the office of Member of the European Parliament and the holding of other offices, provisions other than those provided for by the Act exist in Greece and Belgium, where membership of the European Parliament is incompatible with membership of the national parliament, and in Italy, which adds to the list of incompatibilities the offices of regional councillor and chairman of a regional council. Harmonization does not appear vital in this field.

23. The age at which the right to vote is granted should be reduced in all countries to the lowest level, i.e. 18 years. Cases in which citizens are prohibited from voting should continue to be those laid down by the internal penal code of each Member State. This is in any case inevitable.

24. The right to stand for election should be granted at the same age as the right to vote and should also be reduced to 18 years. Indeed, there is no reason why any distinction should be made in terms of age between the right to vote and the right to stand for election, given the current state of cultural and political development of European societies.

In a system where a strong desire for integration exists between all the citizens who live in Europe and who, in their different national contexts, share the same problems and hopes, the same difficulties and aspirations, the right to vote and to stand for election should depend on a given period of residence in a country rather than on nationality.

This last objective is a fundamental one. Nevertheless, at the present time, in view of the existence of pre-established national quotas, it is impossible not to endorse the proposal of the rapporteur of the Political Affairs Committee that the right to vote and to stand for election should be linked to nationality, regardless of place of residence.

25. Obviously, if a system of single-member constituencies within an overall proportional framework is not introduced, it would be necessary to retain the preference mechanism, in order to provide an explicit link between the will of the electorate and the choice of representatives to the European Parliament. This would be more difficult with blocked lists or if preference voting were abolished.

In addition, the expression of preference is a factor which encourages a higher turnout at the polls by involving the voter to a greater extent (see paragraph 13 above).

The number of preference votes depends essentially on the size of the constituencies.

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26. The verification of credentials should be performed in such a way as to involve the European Parliament, which at present is only required in practice to take note of the information forwarded to it by the authorities of the individual Member States.

The proposal to provide for proceedings to be brought before the Court of Justice against a decision of the European Parliament concerning an electoral dispute should be supported.

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27. Criteria should be laid down for determining the size of constituencies, a task which must remain the prerogative of national legislation. If a number of constituencies are used, a minimum and maximum population size for the composition of a constituency should be fixed. If there is a single national constituency (cf. the present situation in France), the problem would obviously not arise. If a system of the type proposed above were to be chosen, the problem would present itself in different terms, although it would still be necessary to adopt criteria, otherwise the principle of giving equal weight to each vote would have no basis.

28. It must be repeated that it is vital gradually to build a consensus around a new electoral system which has a truly uniform character and steers clear of the (quibbling) distinctions between uniform and identical. Once the political principles have been established, the task of defining this system should be accomplished by using the medium of public debate to bring together the intellectual energies of those who have special knowledge of the subject and can work positively together to make the new uniform electoral procedure for the election of the European Parliament by direct universal suffrage an important step towards a truly united Europe. There is no doubt that the electoral system which gives Parliament its legitimacy is an important - albeit symbolic - element of this project.

IV - CONCLUSIONS

A. The European Parliament has the power and the duty to draw up proposals for the introduction of a uniform electoral procedure, which is essential both for its internal balance and its authority and credibility vis-à-vis the outside world (paragraphs 1 to 5).

B. In the resolution by which it adopts the draft convention, the European Parliament should request the Council to open the conciliation procedure, which would be to the advantage of both Parliament, as author of the proposal, and to the Council (paragraph 4).

C. An extremely wide body of support is needed if the end result is to be adopted and also to secure solid backing during the stages following the vote by Parliament (paragraph 4).

D. The Treaty does not stipulate that the Uniform Electoral Procedure may be introduced in a fragmentary and piecemeal manner and considerable efforts will be required before the European Parliament can unite around a formal proposal of a genuinely uniform system (paragraphs 1-3 and 5-7).

E. The present Booklet draft report, which launches a valuable initiative, should at this stage put forward concrete proposals on issues such as the right to vote.

F. A joint working group should be established, comprising members of both the Political Affairs Committee and the Committee on Legal Affairs and Citizens' Rights, to seek agreement on a Uniform Electoral Procedure, so that a proposal for a draft Act can be submitted to the Council with maximum possible support and as soon as possible.

G. The uniformity of the electoral procedure should be based on a substantial degree of similarity between the elements which make up the system (paragraphs 5 and 6).

H. The Committee on Legal Affairs and Citizens' Rights points out that as a matter of law the requirement for a 'uniform electoral procedure' means not merely that principles, objectives or results of the electoral systems shall be uniform, but that the actual procedures by which those principles, objectives and results are put into effect shall be uniform'.

I. Votes should be counted in accordance with the proportional method and an element of personal representation may be introduced by the use of constituencies (paragraphs 8 to 18).

J. No provision should be made for derogations, since these would have an extremely adverse and psychologically disruptive effect on European integration, both in the countries which 'enjoy' the derogations and in the others. If necessary, provision could be made for the deferred application of the provisions of the convention in certain countries (paragraph 6).

K. The age limit for both voting and standing for election should be set at 18 years (paragraphs 23 and 24).

L. Under a fully integrated system, the right to vote and stand for election ought to depend on residence in a given country, but at the present time, in view of the existence of pre-established quotas, it is legitimate that they should be linked to nationality (paragraph 24).

M. The procedure for the verification of credentials should effectively involve the European Parliament and provisions should be made for reviews by the Court of Justice of the European Communities of decisions by Parliament on electoral disputes (paragraph 26).