

COMMISSION OF THE EUROPEAN COMMUNITIES

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Draft

Proposal for a

COUNCIL DIRECTIVE

laying down detailed arrangements for the exercise of the
right to vote and to stand as a candidate in elections to
the European Parliament in the Member State of residence

(Commission Working Document)

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EXPLANATORY MEMORANDUM

I. General comments

1. Present situation

For Community citizens who have availed themselves of their fundamental freedom to travel to and stay in a Member State other than their own, European integration has become a reality of which they have personal experience. Today, some five million citizens of the Union are living in a Member State of which they are not nationals¹. However, equality of treatment with nationals of the Member State of residence, which is guaranteed by Community law, has not yet been achieved as far as the exercise of political rights is concerned.

From 1976 onwards, the election of members of the European Parliament by direct universal suffrage, a milestone along the road to a People's Europe based on democracy, has raised the problem of how to ensure that all citizens of the Union, and in particular those living in a Member State of which they are not nationals, can effectively exercise their right to vote in these elections. The Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage² is silent on the conditions to be met in order to enjoy the right to vote and to stand as a candidate; Article 7(2) of the Act merely refers to the relevant national provisions. Article 8, the only provision of the Act that directly concerns voting rights, merely stipulates that no one may vote more than once.

1 Some 130 000 Belgians, 40 000 Danes, 290 000 Germans, 360 000 Greeks, 470 000 Spaniards, 300 000 French, 630 000 Irish, 1.2 million Italians, 11 000 Luxemburgers, 240 000 Dutch, 840 000 Portuguese and 400 000 Britons are established in other Member States. The number of resident citizens of other Member States stands at approximately 541 000 in Belgium, 27 000 in Denmark, 1.3 million in Germany, 50 000 in Greece, 240 000 in Spain, 1.3 million in France, 62 000 in Ireland, 150 000 in Italy, 105 000 in Luxembourg, 163 000 in the Netherlands, 29 000 in Portugal and 880 000 in the United Kingdom (source: Eurostat population statistics, 1992).

2 OJ No L 278, 8.10.1976. The Decision of 1 February 1993 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage (OJ No L 33, 9.2.1993, p. 15) does not affect Articles 7 and 8 of the Act.

The national rules on European elections are thus based on different approaches to the problem of ensuring that every citizen can genuinely take part in elections to the European Parliament.

With the exception of Ireland, all Member States have adopted a solution largely based on entitling their nationals living abroad to vote. Certain Member States (Denmark, the Netherlands and Portugal) grant such voting rights only to those of their expatriate nationals who are living in another Member State.

In Germany, voting rights are extended to all German nationals residing in another Member State and those who have lived in a non-member country for less than ten years.

The United Kingdom grants voting rights to UK citizens who have been out of the country for less than 20 years.

Other Member States (Belgium, Greece, Spain, France, Italy and Luxembourg) continue to allow their nationals to vote in European elections even if they are living outside the Community.

In four Member States (Belgium, Ireland, the Netherlands and the United Kingdom), residents who are nationals of other Member States may also vote, subject to certain conditions. In Ireland, these citizens of the Union must comply with the same rules on voting rights as Irish nationals; on the other hand, expatriate Irish nationals do not have the right to vote, whether they live in another Member State or in any other foreign country.

In the Netherlands, the right to vote is granted to residents who are nationals of another Member State, unless their home Member State maintains their voting rights.

In Belgium, nationals of other Member States may vote provided that they have been on the population register for at least three years and have lost their voting rights in their home Member State on account of their residence in Belgium.

Lastly, all Irish nationals and Commonwealth citizens have the right to vote in the United Kingdom.

The right to stand as a candidate is reserved in ten Member States for nationals, including those residing in another Member State or a non-member country. In Germany, only those who have possessed German nationality for at least one year may stand as candidates. British citizens, Irish nationals and Commonwealth citizens may stand as candidates in the United Kingdom. In Italy, nationals of other Member States may stand for election, even if they do not live in Italy.

2. Historical background

In 1960, in its draft Convention on election by direct universal suffrage³, the European Parliament proposed that Member States grant voting rights to their nationals living in another Member State; in cases where the Member State of residence also granted them the right to vote, they should not be allowed to vote twice.

This draft was not favourably received by the Council, and accordingly the European Parliament replaced it in 1975 by a new draft which did not, however, deal with the right to vote or to stand as a candidate of European citizens living in a Member State of which they are not nationals. The draft was incorporated to a large extent in the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, which the Council adopted on 20 September 1976.

In 1977, in its resolution on voting rights in direct elections⁴, the European Parliament urged Member States to ensure that their nationals living in another Member State could exercise their right to vote in the direct election of the European Parliament and called upon them to agree to allow those citizens to vote in the country in which they were to be found

3 OJ No 834, 2.6.1960 (Article 11).

4 OJ No C 163, 11.6.1977, p. 39.

on the date of the election (voting "in loco"). On the basis of work which began in the spring of 1977, the Council adopted in February 1978 a report on voting in loco, and in particular the practical arrangements for such voting.

In 1982, in its draft Act adopting certain provisions relating to a uniform electoral procedure for the election of Members of the European Parliament⁵, Parliament proposed that Member States grant their nationals the right to vote irrespective of their place of residence, provided that this was in a Member State, and take the necessary measures to enable nationals to exercise their right to vote, without difficulty, in the country whose nationality they hold. Parliament also proposed that Member States grant their nationals the right to stand as candidates, irrespective of their place of residence, and grant that right to nationals of another Member State who had been resident on their territory for at least five years. The Council discussed this draft in detail but suspended work on the matter in 1983.

In 1988, in its written declaration of 16 September⁶, Parliament solemnly declared that, as from the June 1989 elections, the European Communities should adopt and apply the principle whereby any national of any Member State had the right to stand for election to the European Parliament in any Member State.

In 1990, during preparations for the intergovernmental conference on political union, Spain proposed to the other Member States that the future treaty include provisions on European citizenship, and in particular the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence.

The Conference of Parliaments of the European Community, which was held in Rome from 27 to 30 November 1990, also urged in its final declaration that the intergovernmental conference consider granting European citizens the right to vote and to stand as a candidate in elections to the European Parliament in their Member State of residence.

5 OJ No C 87, 5.4.1982, p. 61.

6 OJ No C 262, 10.10.1988, p. 222.

The European Council, meeting in Rome on 14-15 December 1990, welcomed Spain's initiative and invited the intergovernmental conference to consider, among other things, the extent to which certain civic rights, and in particular the right to take part in elections to the European Parliament, could be enshrined in the Treaty.

In 1991, in its resolutions on Union citizenship⁷, and on the guidelines for the draft uniform electoral procedure⁸, the European Parliament reiterated its views on the topic.

3. Article 8b(2) of the EC Treaty

Article 8b(2) of the Treaty establishing the European Community, as embodied in Title II of the Treaty on European Union, guarantees every citizen of the Union the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State, and provides that the Council, after consulting the European Parliament, is to adopt the detailed arrangements for the exercise of these rights before 31 December 1993. Implementation of that Article is consequently the exclusive responsibility of the European Community.

The aim of Article 8b(2) is to ensure that every citizen of the Union can effectively exercise his right to vote and to stand as a candidate in elections to the European Parliament, to strengthen still further the democratic legitimacy of Parliament and thus to reduce the democratic deficit in the Community, which has often been the object of criticism. These rights will also enable citizens of the Union to express collectively their European identity while maintaining their respective national identities.

7 Resolution of 14 June 1991, OJ No C 183, 15.7.1991, p. 473; Resolution of 21 November 1991, OJ No C 326, 16.12.1991, p. 205.

8 Resolution of 10 October 1991, OJ No C 280, 28.10.1991, p. 141.

It is therefore necessary to ensure that the citizens of the Union enjoy the greatest possible freedom in connection with the right to vote and to stand for election to the European Parliament, and that the exercise of those rights shall be subject only to such conditions as are strictly necessary.

Without prejudice to the uniform electoral procedure provided for in Article 138(3) of the EC Treaty, and whilst deferring to the diversity of electoral systems in the Member States, Article 8b(2) of this Treaty does not seek a comprehensive harmonization of the relevant national laws, but merely the elimination of the nationality condition, which in most cases means that citizens of the Union have no right to vote or to stand as candidates in elections to the European Parliament in Member States in which they reside but of which they are not nationals. To overcome this problem they will be governed, pursuant to the principle of non-discrimination, by the same conditions as nationals of the Member State concerned.

The need to observe the principle of equality between nationals and non-nationals leads to the conclusion that changes to Member States' electoral laws should be kept to the minimum necessary. The directive is the most suitable type of legal instrument for such action and the one that interferes least with the role of national parliaments.

4. An early proposal

The timetable laid down in Article 8b(2) was adopted by the intergovernmental conference on the assumption that the Treaty on European Union would enter into force at the beginning of 1993. The political point of the deadline of 31 December 1993 is that the arrangements to be adopted by the Council should apply for the fourth direct elections to the European Parliament in 1994, enabling the citizens of the Union to exercise these new rights for the first time and to experience the reality of European Union. The considerable delay in the entry into force of the Treaty risks jeopardizing this political objective.

That being so, in its resolution of 10 March 1993 on the draft legislative programme for 1993, the European Parliament called on the Commission to put forward a proposal on this question by the end of April 1993.

Given that the fourth direct elections to the European Parliament will be held between 5 and 12 June 1994, the Permanent Representatives' Committee called on the Commission to present an early proposal, even before the entry into force of the Treaty, so that discussions in the Council could begin.

The Commission is responding to these invitations by presenting this early proposal for a Directive.

In view of the political importance of the question, in particular for the Parliament, it is essential that the discussions should be organized from the outset in such a way that the Parliament is not excluded.

In presenting this early proposal for a Directive, which comes under the Community's exclusive powers, the Commission is aiming to discharge at the earliest opportunity its obligations under the second sentence of Article 8b(2). In keeping with the principles of subsidiarity and proportionality, the Commission proposes that the arrangements referred to in the second sentence of Article 8b(2) be adopted in the form of a directive and that the content of the Directive be limited to what is strictly necessary for attaining the objective set out in Article 8b(2) of the EC Treaty.

II. Comments on Individual Articles

Article 1: Definitions

1. Article 1(1) defines the concept of "elections to the European Parliament" as used in Article 8b(2) of the EC Treaty. To that end, it refers to Article 1 of the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage.

2. To ensure consistency with the Act of 20 September 1976 and its territorial scope as laid down in Article 2 and the second paragraph of Article 15 thereof, and the Annexes thereto, the meaning of "electoral territory" has to be defined by reference to that Act and to the national provisions adopted under it.

3. In defining the term "Member State of residence", Article 1(3) reproduces the relevant phrase in Article 8b(2) of the EC Treaty. On the other hand, "home Member State" is defined in Article 1(4) according to the criterion of nationality.

4. Article 1(5) and (6) define "Community voter" and "Community national entitled to stand as a candidate" by reference to Articles 3 and 7 of the Directive.

5. In defining "electoral roll", Article 1(7) attempts to encompass the different types of official registers of voters which currently exist in the Member States, irrespective of the way in which they are drawn up. It does not rule out the subdivision of the electoral roll into categories of voter.

6. Given that the date on which citizens of the Union must satisfy the requirements for voting or for standing as candidate is not the same in all Member States, Article 1(8) refrains from any harmonization and introduces the concept of the reference date, which is defined by reference to the law of the Member State of residence.

7. In defining the term "formal declaration", Article 1(9) refers, avoiding any approximation of national rules, to the different types of declaration that currently exist in the Member States. It can correspond, for example, to a "statutory declaration" under UK law or an "eidesstattliche Versicherung" (sworn statement) under German law. According to this definition, the declaration must be lodged with the competent authority referred to in Articles 6 and 10 of the Directive. Furthermore, inaccuracy in the declaration must make the person concerned liable to penalties in accordance with the law of the Member State of residence. When they transpose the Directive, it will be for the Member States to spell out the form the declaration has to take.

Article 2: Members States' electoral laws

Given that the aim of Article 8b(2) of the EC Treaty is not a comprehensive approximation of national rules on the right to vote and to stand as a candidate in elections to the European Parliament, Article 2 specifies that the Directive does not deal with the right of nationals of a Member State to vote and to stand as a candidate in their home Member State, even if they reside outside the electoral territory of that State. The Directive therefore does not affect Member States' provisions in the matter.

Article 8b(2) of the EC Treaty guarantees the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence without substituting this for the right to vote and to stand as a candidate in the home Member State. The purpose of Article 2 is to ensure, in the eventuality of such rights being maintained in the home Member State, that citizens of the Union have a free choice as to the Member State in which they can take part in the European elections.

Article 3: Right to vote

Within the framework established by the first sentence of Article 8b(2) of the EC Treaty, Article 3 lays down the conditions to be met in order to have the right to vote in the Member State of residence. The date on which these conditions must be met may, depending on the law of the Member State of residence, be either the day of the election or any other reference date.

1. Given that the second sentence of Article 8(1) of the EC Treaty defines the concept of Union citizenship and the definition is spelled out in the Declaration on nationality of a Member State, which is annexed to the Treaty on European Union, Article 3(1) merely refers to that provision of the EC Treaty.

2. In view of the importance of the rules on disqualification and specific problems concerning Community voters, Article 3(2) provides that the voters must not have been disqualified from voting and, as far as the substance of the requirements is concerned, refers to Article 4.

3. Within the framework established by the first sentence of Article 8b(2) of the EC Treaty, Article 3(3) implements the principle of equality between national and Community voters and, at the same time, the principle of interfering as little as possible with Member States' electoral laws. Under these laws, the other conditions to be met in order to have the right to vote concern, in particular, the voting age and residence.

After Union citizenship, residence in the Member State in which the right to vote is exercised is the second key condition to be met in order to benefit from the guarantee afforded by Article 8b(2) of the EC Treaty. This condition highlights the link with the right to move and reside freely which is enshrined in Article 8a of that Treaty. Although, unlike the concept of citizenship, residence is not defined in the Treaty itself, there is no need to define it uniformly for the purposes of this Directive. Articles 3, 7 and 11 consequently refrain from giving any such definition, which enables the principle of equal conditions for national voters and Community voters to be complied with more effectively. At the same time, the Directive avoids interfering, in this area, with Member States' electoral systems.

The voting age is currently 18 years in all Member States.

Article 4: Disqualification

Since a citizen of the Union may be deprived of his voting rights under the civil or criminal law of either his Member State of residence or his home Member State, Article 4, by way of exception to the principle of equality of national and Community voters, establishes the principle whereby the disqualification rules of the Member State of residence and the home Member State apply concurrently.

This is justified on the ground that a person who has been deprived of his voting rights in his home Member State, normally following a court decision, should not be able to recover these rights merely by virtue of his residence in another Member State. In the absence of international agreements, such court decisions are not normally enforceable in the Member State of residence.

The arrangements governing disqualification do vary widely from one Member State to another; concurrent application is based on the view that they all comply with the general principles of democracy and the rule of law, and that there is consequently nothing to prevent the Member State of residence recognizing a disqualification in the home Member State. Concurrent application is nevertheless subject to the exception provided for in Article 12.

The concurrent application called for by Article 4 does not necessitate any machinery for the exchange of information between Member States. The legal problem being tackled here is of very limited practical importance, given the relatively small number of cases arising in practice, and it is important that any unnecessary red tape should be avoided. The supporting documents referred to in Article 6(2) should be quite enough to provide the Member State of residence with the information it requires.

Article 5: Exercise of the right to vote

1. The elections are intended to produce a single Community institution, and Article 5(1) accordingly sets out to prevent any voter from voting twice and thus abusing the freedom to choose the place in which he wishes to vote given him by Article 2. Article 5(1) confirms that it is not permissible to vote twice, a principle already stated in Article 8 of the Act of 20 September 1976. The mechanism for ensuring that this principle is complied with in practice is laid down in Article 6.

2. To preserve the voter's freedom to choose the Member State in which he wishes to vote, Article 5(2) provides that a Community voter will be entered on the electoral roll of his Member State of residence only at his express request.

It goes without saying that in order to exercise their right to vote in their Member State of residence Community voters will have to satisfy the same administrative requirements as nationals. Those requirements are intended to ensure that the election can be properly prepared and conducted. The voter may have to be resident in the constituency or area in which he is to vote, for example, and in some cases a minimum period of residence may be required.

In accordance with the principle of equality between nationals and Community voters the second subparagraph of Article 5(2) makes it clear that where a Community voter has exercised his entitlement to choose which State to vote in and has had himself entered on an electoral roll in his Member State of residence, and that Member State is one in which voting is compulsory, he too will be subject to the obligation to vote.

Article 6: Entry on the electoral roll

1. Article 6(1) deals with the time at which an application for entry on the electoral roll should be made to the competent authority in the Member State of residence; it seeks to interfere as little as possible with the rules in force in the Member States, which vary widely in this respect.

In those Member States in which the registers are updated periodically, and names can be added only during a certain period, Community voters will have to submit their applications during that period. Outside that period registration will be possible only by way of exception, under the same rules as apply to nationals.

In Member States where the register is finalized before each election, usually automatically, Community voters must be entitled to apply within a reasonable period before the election. When they transpose this Directive into their national law the Member States concerned will have to determine an appropriate period taking account on the one hand of the legitimate interests of the voters and on the other of the need for proper organization of the election.

2. Article 6(2) deals with the documents which a Community voter must produce in support of his application: these are to be the same as those required of a national. In order to prevent anyone from voting twice, however, Community voters have to be asked for a number of further documents. As the objective is as far as possible to facilitate the exercise of the right to vote in the Member State of residence, these extra documents have to be kept to a strict minimum. Article 6(2) therefore lays down the limits on what has to be submitted.

The practical steps to be taken under Article 6(2) are as follows

In the first place the individual will have to apply to the competent authority in his Member State of residence to be entered on the electoral roll, and will have to submit his formal declaration.

In the second place, the Member State of residence is required by Article 13 to inform the Member State of origin that the person has been entered on the electoral roll.

On the basis of this information the competent authorities of the Member State of origin can be notified that the person concerned has been entered on the electoral roll in his Member State of residence, and they can then remove his name from the roll in their own country.

3. Article 6(3) is aimed at preserving the Community voter's freedom to choose the Member State in which he proposes to vote, whilst avoiding any interference with the electoral rules in the Member States, and at the same time seeks to facilitate the updating of the registers of Community voters by the Member States without imposing any unnecessary administrative formalities on the voters.

Article 7: Right to stand as a candidate

1. Within the framework established by the first sentence of Article 8b(2) of the EC Treaty, Article 7 defines the circumstances in which a citizen of the Union may stand for election in his Member State of residence. It does not deal with the administrative requirements which must be satisfied in order actually to become a candidate. These may involve such things as the procedures for nomination or the closing date for the receipt of nominations by the responsible body. Obviously in these respects any Community voter who wishes to stand for election in his Member State of residence must comply with the rules applying to nationals of that country.

The layout of Article 7 is identical to that of Article 3.

The requirements in points 1 to 3 of Article 7 follow the same reasoning as that concerning the right to vote⁹. Thus the operative principles are equality between nationals and other Community citizens, and the need for the least possible interference with the rules governing eligibility in the Member States. Point 3 mentions residence and age requirements; age requirements vary from 18 to 25 in different Member States.

2. In some Member States naturalized persons are entitled to stand for election only after a certain period, and the principle of equality between nationals and Community citizens accordingly requires that persons who became Union citizens by naturalization in what for these purposes is their Member State of origin should be subject to this rule, mutatis mutandis, in their Member State of residence.

Article 8: Ineligibility

Article 8 deals only with ineligibility - that is, the circumstances in which a Union citizen can legally be barred from standing as a candidate at elections. The question of incompatibility between membership of Parliament and other offices, which is currently governed by Articles 5 and 6 of the Act of 20 September 1976, is a matter for the uniform election procedure referred to in Article 138(3) of the EC Treaty, and is not affected by this Directive.

The layout of Article 8 is identical to that of Article 4. A person may be disqualified from standing as a candidate under the civil or criminal law either of his Member State of residence or of his Member State of origin, and Article 8 lays down the principle that both sets of rules are to apply concurrently. The reasoning is the same as that regarding disqualification from voting¹⁰: a person deprived of his right to stand as a candidate at elections in his home country, normally by order of a court of law, might otherwise be able to regain that right simply by residing in another Member State. Like Article 4, Article 8 establishes a system of "mutual recognition"; subject to the exception in Article 12.

⁹ See above at Article 3.

¹⁰ See above at Article 4.

Article 9: Exercise of the right to stand as a candidate

As the body to be elected is a single Community institution, a person must not be allowed to stand in two places, just as he must not be allowed to vote in two places. He must not be allowed to stand as a candidate in more than one Member State. Article 9 lays down the principle that a person may be a candidate in only one place, and may appear on only one list of candidates.

Article 10: Submission of applications to stand as a candidate

Article 10 deals with the documents which a Community national is to produce when he submits his application to stand as a candidate: these are to be the same as the documents required of a national of the country. To prevent candidates from standing in two places, however, Article 10 requires Community candidates to produce a number of further documents, but these are kept to a strict minimum. The layout of Article 10 is identical to that of Article 6(2).

Under Article 10 a Community candidate who satisfies all the conditions laid down by the law of his Member State of residence, particularly as regards nomination, will in practice have to go through a two-stage process corresponding to that of Article 6.

Article 11: Residence

Article 11 returns to the residence condition under Article 3(3), on the right to vote, and Article 7(3), on the right to stand. It avoids any uniform definition, indirectly importing the concept of residence as it is used in the electoral law of the Member State of residence. The laws of the Member States vary widely here, some requiring the person concerned to have his principal or habitual residence in the place, some requiring only that he stay there habitually, and some that he be entered on the register of population.

In addition to the mere fact of residence in a particular constituency or area, the laws of some Member States require that the person concerned must have completed a minimum period of residence there; Article 11 is intended to prevent any discrimination against Community voters or potential candidates which might arise if this condition could in practice be met easily by nationals of the country but only with difficulty by non-nationals. Article 11 makes a period of residence in other Member States, for example in the Member State of origin, equivalent to a period spent in the Member State of residence.

Article 12: Exception to the principle of concurrent application

The rules governing disqualification from voting or from standing in the Member States are very different, and Article 12 allows Member States, by way of exception, to disregard the fact that a person has been deprived of the right to vote or the right to stand in his Member State of origin.

Article 13: Information

1. As Community voters and Community nationals entitled to stand as candidates have to meet certain specific conditions, particularly as regards supporting documents, Article 13(1) requires the competent authorities to inform them of their entitlements in good time, in order to enable them to exercise their rights if they so wish. It leaves Member States free to choose the most appropriate way of doing this.

2. The notification required by Article 13(2) is necessary to enable appeals to be lodged under Article 14. It leaves Member States free to choose the way in which the information is to be supplied; it may be given to the person concerned individually, or announced when the electoral roll is published. The information to be supplied to the Member State of origin is intended to prevent anyone from voting or standing twice.

Article 14: Appeals

Applying the principle that the rules governing nationals and non-nationals are to be the same, Article 14 provides that Community nationals may lodge appeals in the same way as nationals of the Member State of residence, whether through litigation or some form of review procedure.

Article 15: Derogations

1. The second sentence of Article 8(b)(2) of the EC Treaty allows derogations where warranted by problems specific to a Member State; such problems arise mainly where there is a particularly high proportion of nationals of other Member States. The average proportion is currently between about 0.3% and about 6% of all resident Union citizens. There is only one Member State in which the number of Community residents of voting age in which the proportion is substantially higher, at about 29% of the total potential electorate.

In view of this situation, paragraph 1 lays down a threshold of 20% which must be reached before a Member State can derogate under points (a) and (b). The proportion is to be calculated on the basis of statistics for all Union citizens of voting age residing in the Member State on the date indicated.

Points (a) and (b) limit the possible derogations, which may not go beyond a requirement that Community nationals must have resided in that Member State for a minimum period. As far as the right to stand is concerned it is reasonable to set a period which is no longer than twice the term for which the European Parliament is elected. As far as the right to vote is concerned the minimum period of residence may not be more than one such term.

However, provision must be made to ensure that Community nationals who are unable to vote or to stand as candidates in their Member State of origin by reason of their residence in another Member State, or because of the length of their residence there, do not need to satisfy this minimum residence requirement in order to vote or to stand in their Member State of residence.

2. The clause in Article 8b(2) of the Treaty which allows derogations is concerned with the arrangements for the exercise of the rights guaranteed, and not the guarantee itself. Any derogation must therefore be subject to review. Article 15(2) accordingly establishes a system of regular reports.

3. In order to enable the Commission, in its capacity as guardian of the Treaty, to verify whether the tests of paragraph 1 are satisfied, Member States which derogate must be required to supply the Commission with all the necessary background information, and in particular with the relevant statistics.

Article 16: Transitional provisions

1. As the fourth direct elections to the European Parliament are to be held from 5 to 12 June 1994, and in some Member States nominations will close before the end of 1993, paragraph 1 provides that such candidatures will not be affected by Community rules which come into force later.

2. Since in some Member States citizens of the Union or citizens of certain other Member States may already have been entitled to register, even before the entry into force of this Directive, the Directive should not affect their inclusion on the electoral roll. Such persons need not submit an application under Article 5 or produce the supporting documents required by Article 6(2).

3. Article 16(3) provides that, where a Member State requires that as a rule names are to be entered on an electoral roll only at a certain time of year, that Member State is to take any measures necessary to enable Community voters to exercise their right to vote in their Member State of residence at the European elections in June 1994.

Article 17: Transposition

So that the Directive can apply at the fourth direct elections to the European Parliament, in June 1994, Article 17(1) sets an extremely short deadline for transposition.

Draft
Proposal for a
COUNCIL DIRECTIVE

laying down detailed arrangements for the exercise of
the right to vote and to stand as a candidate in elections to
the European Parliament in the Member State of residence

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, as amended
by the Treaty on European Union, and in particular Article 8b(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the European Union marks a new stage in the process of creating an
ever closer union among the peoples of Europe; whereas one of its tasks is
to organize, coherently and supportively, relations between the peoples of
the Member States; whereas its fundamental objectives include a
strengthening of the protection of the rights and interests of the
nationals of its Member States through the introduction of a citizenship of
the Union;

Whereas to that end Title II of the Treaty on European Union, amending the
EEC Treaty with a view to establishing the European Community, introduces a
citizenship of the Union for all nationals of the Member States and confers
on such nationals on that basis a number of rights which they may assert;

Whereas the right to vote and to stand as a candidate in elections to the
European Parliament in the Member State of residence, embodied in
Article 8b(2) of the EC Treaty, is an instance of the application of the
principle of non-discrimination between nationals and non-nationals and a
corollary of the right to move and reside freely, enshrined in Article 8a
of that Treaty;

Whereas Article 8b(2) is concerned only with the possibility of exercising the right to vote and to stand as a candidate in elections to the European Parliament, without prejudice to Article 138(3) of the Treaty, which provides for the establishment of a uniform procedure in all Member States for those elections; whereas it essentially seeks to abolish the nationality requirement which currently has to be satisfied in most Member States before those rights may be exercised;

Whereas application of Article 8b(2) does not presuppose harmonization of Member States' electoral systems; whereas, moreover, to take account of the principle of proportionality set out in the third paragraph of Article 3b of the EC Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b(2);

Whereas the purpose of Article 8b(2) is to ensure that all citizens of the Union, whether or not they be nationals of the Member State in which they reside, can exercise in that State their right to vote and to stand as a candidate in elections to the European Parliament under the same conditions; whereas the conditions applying to non-nationals, including those relating to length and proof of residence, should therefore be identical to those, if any, applying to nationals of the Member State concerned;

Whereas Article 8b(2) guarantees the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, without actually substituting it for the right to vote and to stand as a candidate in the Member State of which the citizen is a national; whereas the freedom of citizens of the Union to choose the Member State in which to take part in European elections must be respected, while taking care to ensure that this freedom is not abused by people voting or standing as a candidate in more than one country;

Whereas any derogation from the general rules of this Directive must be warranted, pursuant to Article 8b(2), by problems specific to a Member State; whereas any derogation must, by its very nature, be subject to review; whereas such specific problems may arise in a Member State in which the proportion of citizens of the Union of voting age who reside in

it but are not nationals of it is very significantly above average; whereas derogations are warranted where such citizens form more than 20% of the total electorate; whereas such derogations must be based on the criterion of length of residence,

HAS ADOPTED THIS DIRECTIVE:

Chapter I: General provisions

Article 1

For the purposes of this Directive:

- (1) "elections to the European Parliament" means elections by direct universal suffrage to the European Parliament of representatives of the peoples of the States brought together in the European Community in accordance with the Act concerning the election of the representatives of the European Parliament by direct universal suffrage¹;
- (2) "electoral territory" means the territory of a Member State in which, in accordance with the Act concerning the election of the representatives of the European Parliament by direct universal suffrage and, within that framework, in accordance with the electoral law of that Member State, members of the European Parliament are elected by the people of that Member State;
- (3) "Member State of residence" means a Member State in which a citizen of the Union resides but of which he is not a national;
- (4) "home Member State" means the Member State of which a citizen of the Union is a national;
- (5) "Community voter" means any citizen of the Union who is entitled to vote in elections to the European Parliament in his Member State of residence in accordance with this Directive;

¹ OJ No L 278, 8.10.1976, p. 5.

- (6) "Community national entitled to stand as a candidate" means any citizen of the Union who has the right to stand as a candidate in elections to the European Parliament in his Member State of residence in accordance with this Directive;
- (7) "electoral roll" means the official register of all voters entitled to vote in a given constituency or locality, drawn up and kept up to date by the competent authority under the electoral law of the Member State of residence;
- (8) "reference date" means the day on which citizens of the Union must satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;
- (9) "formal declaration" means a declaration by the person concerned, any false statement in which makes that person liable to penalties.

Article 2

Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory.

Chapter II: The right to vote and its exercise

Article 3

Any person who, on the reference date:

- (1) has Union citizenship within the meaning of the second subparagraph of Article 8(1) of the EC Treaty,
- (2) has not been deprived of his right to vote pursuant to Article 4 of this Directive, and

(3) not being a national of the Member State of residence, satisfies the same conditions, notably as to age and residence, in respect of the right to vote as that State imposes by law on its own nationals

shall have the right to vote in elections to the European Parliament in the Member State of residence.

Article 4

Any citizen of the Union who resides in a Member State of which he is not a national and has been deprived of his right to vote under either the law of the Member State of residence or the law of his home Member State shall not be entitled to vote in elections to the European Parliament.

Article 5

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State.

2. A Community voter may exercise his right to vote in the Member State of residence only if his name has, at his request, been entered in that Member State on an electoral roll.

If voting is compulsory in the Member State of residence, Community voters whose names are entered on the electoral roll shall be obliged to vote.

Article 6

1. An application from a Community voter for entry on an electoral roll in the Member State of residence may be lodged throughout the period when that roll is open for the inclusion of voters who are nationals of that State, and with the same authority; in Member States in which the names of voters who are nationals are entered automatically, Community voters shall be allowed a reasonable period before polling day in which to lodge their application.

2. In support of his application to have his name entered on the electoral roll, a Community voter shall produce the same documents as a voter who is a national. He shall also produce a formal declaration stating:

- (a) his nationality and his address in the electoral territory of the Member State of residence,
- (b) whether his name has been entered, in his home Member State, on an electoral roll and, if so, on the roll of what locality or constituency his name was last entered, and
- (c) that:

- either, if he retains his right to vote in his home Member State, he waives that right there;
- or that he does not have the right to vote there, specifying, whether this is because he is disqualified from voting or because he does not reside in that State.

The Member State of residence may require him to produce an identity document issued by the Member State of origin, valid on the date of entry on the electoral roll.

3. Community voters who have been entered on the electoral roll shall remain thereon, under the same conditions as voters who are nationals, until such time as they request to be removed or until such time as they are removed automatically because they no longer satisfy the requirements for exercising the right to vote.

Chapter III: Right to stand as a candidate and its exercise

Article 7

Any person who, on the reference date,

- (1) has Union citizenship within the meaning of the second subparagraph of Article 8(1) of the EC Treaty,
- (2) has not been deprived of his right to stand as a candidate pursuant to Article 8 of this Directive, and
- (3) not being a national of the Member State of residence, satisfies the same conditions, notably as to age and residence, in respect of the right to stand as a candidate as that State imposes by law on its own nationals,

shall have the right to stand as a candidate in elections to the European Parliament in the Member State of residence.

Where under the law of the Member State of residence the right to stand as a candidate is restricted to persons who have been nationals for a certain minimum period, that restriction shall apply mutatis mutandis as far as citizenship of the Union is concerned.

Article 8

Any person who has been stripped of the right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State shall be ineligible to stand as a candidate in the Member State of residence.

Article 9

A Community national entitled to stand as a candidate in elections to the European Parliament shall not do so in more than one Member State.

Article 10

When he submits his application to stand as a candidate to the competent authority, a Community national shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating:

(a) his nationality and his address in the electoral territory of the Member State of residence, and

(b) either that

- he is entitled to stand as a candidate in his home Member State and that he waives that right,

or that

- he is not entitled to stand as a candidate there, specifying whether this is because he is disqualified from standing or because he does not reside there; and

(c) that he is not standing as a candidate for election to the European Parliament in any other Member State.

The Member State of residence may also require him to produce an identity document issued by the Member State of origin, valid on the date of registration as a candidate.

Chapter IV: Common provisions

Article 11

If in a Member State, irrespective of any specific conditions as to length of residence in a given constituency or locality, the exercise of the right of nationals to vote or to stand as candidates in elections is subject to the condition that they must have spent a certain period as a resident in

the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equal period in other Member States.

Article 12

Member States may disregard the forfeiture of the right to vote or the right to stand as a candidate in the home Member State.

Article 13

1. Community voters and Community nationals entitled to stand as candidates shall be informed in good time and in an appropriate manner by Member States' competent authorities of the conditions laid down by this Directive concerning the exercise of the right to vote and to stand as a candidate in elections in the Member State of residence.

2. The competent authority in the Member State of residence shall, in an appropriate manner and without delay, inform the person concerned and the home Member State of the action taken on an application for entry on the electoral roll or of the decision concerning the admissibility of an application to stand as a candidate.

Article 14

Should a voter's application to have his name entered on the electoral roll be rejected or should his name not be entered on the roll in good time, or should a person's application to stand as a candidate be rejected, the person concerned shall be entitled to lodge an appeal with the competent authorities on the same terms as the electoral law of the Member State of residence prescribes for voters and persons entitled to stand as candidates who are its nationals.

Chapter V: Derogations and transitional provisions

Article 15

1. If on 1 January 1993, in a given Member State, the number of citizens of the Union of voting age who reside in it but are not nationals of it exceeds more than 20% of the total of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from Articles 3, 6, 7 and 10 of this Directive:

- (a) restrict the right to vote to Community voters who have resided in that Member State for a minimum period, which may not exceed five years;
- (b) restrict the right to stand as a candidate to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed ten years.

However, Community voters and Community nationals entitled to stand as candidates who, owing to the fact that they have taken up residence outside their home Member State or by reason of the duration of such residence, do not have the right to vote or to stand as candidates in that State shall not be subject to the conditions as to length of residence set out in the first subparagraph.

2. By 31 December 1997, and thereafter 18 months prior to each election to the European Parliament, the Commission shall present to the Council and to Parliament a report in which it shall state whether, in its view, the grant to the Member States concerned of a derogation pursuant to Article 8b(2) of the Treaty is still warranted and shall propose that any necessary adjustments be made.

Member States which invoke derogations under paragraph 1 shall furnish the Commission with all the necessary background information.

Article 16

1. Member States may provide that candidatures for the fourth direct elections to the European Parliament, if made in good and due form before the measures adopted under Article 17 enter into force, shall not be affected by the provisions of Chapter III.

2. Citizens of the Union who, when the measures adopted under Article 17 enter into force, already have the right to vote in the Member State of residence and are already entered on an electoral roll in that State may exercise their right to vote there without carrying out the formalities provided for in Articles 5 and 6.

3. Member States in which the electoral rolls have been finalized before the measures adopted under Article 17 enter into force shall take the steps necessary to enable Community voters who wish to exercise their right to vote there in the fourth direct elections to the European Parliament to enter their names on the electoral roll during a reasonable period before polling day.

Chapter VI: Final provisions

Article 17

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 February 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 18

This Directive is addressed to the Member States.

Done at Brussels,

**For the Council
The President**