COMMISSION OF THE EUROPEAN COMMUNITIES

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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 by citizens of the Union residing in a Member State of which they are not nationals

(presented by the Commission)

Table of contents

EXPLANATORY MEMORANDUM

I. General comments

1. Scale of the problem
2. Legal situation
3. Historical background
4. Article 8b(2) of the EC Treaty
5. Subsidiarity and proportionality

II. Comments on individual articles

TEXT OF THE PROPOSAL FOR A DIRECTIVE

Recitals

Chapter I: General provisions

Article 1: Scope
Article 2: Definitions
Article 3: Right to vote and to stand as a candidate
Article 4: A single vote and a single candidature
Article 5: Residence
Article 6: Ineligibility
Article 7: Disqualification from voting
Article 8: Freedom of choice

Chapter II: Exercise of the right to vote and the right to stand as a candidate

Article 9: Exercise of the right to vote
Article 10: Exercise of the right to stand as a candidate
Article 11: Appeals
Article 12: Information
Article 13: Exchange of information

Chapter III: Derogations and transitional provisions

Article 14: Derogations
Article 15: Transitional provisions
Article 16: Review clause

Chapter IV: Final provisions

Article 17: Transposition
Article 18: Addressees

EXPLANATORY MEMORANDUM

I. General comments

1. Scale of the problem

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 nationals.
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 outside their home Member State.
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.[1]
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.

2. Legal situation

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 European citizens, 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 suffrage[2] 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.

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.

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1 Eurostat population statistics, 1992.
2 OJ No L 278, 8.10.1976. The Decision of 1 February 1993 amending the Act (OJ No L 33, 9.2.1993, p. 15) does not affect Articles 7 and 8.

(a) The right to vote

With the exception of Ireland, all Member States have adopted a solution chiefly 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 country of the Council of Europe and those who have lived in a non-member country for less than ten years.
The United Kingdom grants voting rights also 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 European citizens 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.

(b) The right to stand as a candidate

The right to stand as a candidate is reserved in ten Member States for nationals, even 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.

(c) Disqualification

The national rules on disqualification vary widely and are a reflection of different legal traditions.

(i) Disqualification from voting

Members of the electorate may be disqualified from voting by means of an individual decision taken on a variety of grounds:

A criminal conviction may entail disqualification from voting in ten Member States. The exceptions are Denmark and Ireland. In Ireland,

however, a person detained in any premises in legal custody must be registered in the place where he would have been residing but for his having been so detained in legal custody. Prisoners therefore retain their right to vote and, if at liberty on polling day, may exercise that right. In Denmark there is not at present any legal basis for depriving a voter of the right to vote on the ground that he has been given a criminal sentence.

Other grounds for disqualification from voting are moral unfitness in Italy and conviction for corrupt or illegal practice in the United Kingdom.

Majors under some form of guardianship and persons suffering from mental disorder are deprived of the right to vote in ten Member States. Italy is the sole exception. In the United Kingdom disqualification may result from the fact that patients in mental hospitals are deemed to have no ordinary residence for electoral purposes. In Ireland, the situation of patients in mental hospitals is broadly similar to that of prisoners. In Denmark, only persons declared incapable of managing their own affairs are deprived of the right to vote.

The status of decisions to disqualify from voting vary between Member States:

A voter given a criminal sentence may be deprived of his right to vote automatically, by operation of law, or disqualification may require an express decision on the part of the court. In Belgium, France, Italy, Luxembourg and Portugal disqualification from voting is an automatic consequence of a conviction for certain crimes. In the UK, disqualification from voting is an automatic consequence of being convicted and sentenced to a term of imprisonment. In Germany, on the other hand, and in certain situations in Spain, France, Luxembourg, the Netherlands and Portugal, a specific court decision is required. In Ireland disqualification in practice results from the fact that the elector is imprisoned, and consequently deprived of his ordinary residence. The national systems can also be classified by reference to the grounds for disqualification. In Belgium, France, Luxembourg, the Netherlands and the United Kingdom disqualification is normally linked to a minimum sentence or conviction for a particular class of offence. In Germany, Greece and Portugal disqualification is normally confined to the offences listed by law. In France and the Netherlands the legislation departs from the general principle and lists certain articles of the penal code infringement of which may be grounds for disqualification from voting. In Spain disqualification from voting is a matter for the discretion of the courts. In certain cases courts in France, Luxembourg, the Netherlands and Portugal have a similar power.

As a general rule disqualification from voting follows automatically where a person's affairs have to be managed for him, or where he is confined in a mental hospital. In the United Kingdom the mentally ill in confinement are considered to be without an ordinary residence. In Denmark confinement in a mental hospital does not lead to disqualification from voting. In Spain and Portugal disqualification from voting requires an express decision. In Italy majors in guardianship are entitled to vote, as an Act of Parliament

has removed the earlier restrictions permitted by the Constitution. In the United Kingdom the mentally ill may exercise the right to vote during lucid intervals.

It is the courts who impose criminal convictions. Decisions on guardianship or the confinement of the mentally ill are sometimes taken by administrative authorities.

As far as the effect of foreign decisions is concerned, it would appear that as a general rule a criminal conviction imposed by a foreign court will not disqualify from voting in the Member State of origin. The United Kingdom is an exception to this rule: in the UK law the test is whether the person concerned is actually imprisoned or unlawfully at large, and not whether he has been sentenced by a domestic or foreign judge.

Under the rules of private international law, an enforceable foreign judgment in a civil-law case may result in disqualification from voting in Germany and Greece, and in certain cases in Belgium and France. In the Netherlands an elector can never be deprived of his right to vote, except by decision of a Dutch court.

(ii) Disqualification from standing as a candidate

The general approaches taken fall into three categories.

In Belgium, Italy and the Netherlands the grounds for disqualification from standing are the same as those for disqualification from voting.

In Denmark, Germany, France and Luxembourg the grounds for disqualification from voting hold good for disqualification from standing too, but there are also further grounds for disqualification from standing.

In Greece, Spain, Ireland, Portugal and the United Kingdom the rules on disqualification from standing are different from those governing disqualification from voting. In Ireland persons who have been given a criminal conviction are disqualified from standing only when serving a prison sentence of more than six months passed by an Irish court.

Looking at the substance of the rules, two types of arrangement can be distinguished.
Certain criminal convictions can lead to disqualification in Belgium, Germany, Greece, Spain, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom.
Under the law of Germany, Ireland, Italy and the United Kingdom, bankrupts and persons who for other reasons are considered unfit to hold elected public office are generally disqualified. In Denmark a person may be disqualified only if convicted for behaviour generally regarded as rendering him unfit to sit at the European (or Danish) Parliament. Following an election the Danish Parliament may declare an elected candidate to be an unfit person and thus deprive him of his seat, but such convictions may never be relied on to prevent someone standing for election.

(d) Exercise of the right to vote and to stand as a candidate

In all Member States citizens have to complete certain formalities in advance of polling day if they are to be able to exercise their right to vote and to stand as a candidate at a particular election in any given locality or constituency.

(i) Exercise of the right to vote

In order to be able to exercise their right to vote, citizens of voting age must normally appear on the electoral roll drawn up for the constituency or locality in question. There are four different kinds of arrangement for entry on the electoral roll: while France and Greece apply the principle whereby each individual has to ask for his name to be entered, in Spain and Italy voters can only be entered automatically. In the other Member States, with the exception of Portugal, voters are normally entered automatically but certain categories of people can be entered on the roll at their request. In Portugal, where it is normally up to the individual to apply, the administration must automatically enter on the electoral roll all voters of whose existence it is aware.

In some Member States where entry on the roll is automatic (Belgium, Denmark, Germany, Spain, Italy, Luxembourg and the Netherlands) the electoral roll is normally drawn up on the basis of the information on another public register, notably the population register or the register of births, marriages and deaths. In the United Kingdom and Ireland, on the other hand, voters are registered automatically on the basis of any relevant information collected by the registration officer after he has made the necessary enquiries. Clearly, in those Member States where individuals have to apply to be entered on the roll, they have to furnish the competent authority with all the necessary information and supporting documents when making their application.

In Denmark, Greece, Spain, France, Ireland, Italy, Luxembourg, Portugal and the United Kingdom electoral rolls are periodically revised. In most of them this is done once a year, and twice a year in Italy. In Belgium, Germany and the Netherlands new electoral registers are drawn up before each election.

In most Member States the electoral roll has to be published before it is finalized; Belgium and the Netherlands are the exceptions to this rule. Voters there are entitled to be informed whether or not they are on the electoral roll.

Where registration is refused, citizens can seek judicial review in all Member States. Before taking the matter to the courts, they must apply for administrative review in Belgium, Denmark, Germany, Spain, Ireland, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom.

(ii) Exercise of the right to stand as a candidate

When lodging their application, persons entitled to stand normally have to provide the administration with a number of particulars and supporting documents concerning their personal situation.

3. Historical background

In 1960, in its draft Convention on election by direct universal suffrage,[3] 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 the European Parliament replaced it in 1975 by a new draft which did not, however, deal with the right to vote and to stand as a candidate of European citizens living in a Member State of which they are not nationals. This 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 elections,[4] 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 these citizens to vote in the country which they are in 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 Parliament,[5] Parliament proposed that Member States grant their nationals the right to vote irrespective of their place of residence, provided that this is 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 the right to stand as a candidate to their nationals, irrespective of their place of residence, and to nationals of another Member State who have 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 September,[6] 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 has the right to stand for election to the European Parliament in each and every Member State.

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3 OJ No 834, 2.6.1960 (Article 11).
4 OJ No C 163, 11.6.1977, p. 39.
5 OJ No C 87, 5.4.1982, p. 61.
6 OJ No C 262, 10.10.1988, p. 222.

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.

The European Council, meeting in Rome on 14-15 December 1990, welcomed Spain's initiative and invited the intergovernmental conference to examine, 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 citizenship[7] and on the guidelines for the draft uniform electoral procedure,[8] the European Parliament reiterated its views on the topic.

Article 8b(2) 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 but of which he is not a national. The timetable in Article 8b(2) was laid down 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 election to the European Parliament in 1994, enabling the citizens of the Union to exercise these new rights for the first time and experience the reality of European Union.

Even before entry into force of the Treaty on European Union, the Commission, responding to requests by the Council and Parliament, adopted on 23 June 1993 and transmitted to them a 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 (SEC(93) 1021 final). On the basis of this working document, the Council and Parliament held informal discussions between July and October 1993 on how to implement Article 8b(2) of the Treaty so as to ensure that, in the elections to the European Parliament due to be held in June 1994, every citizen of the Union can effectively exercise his right to vote and to stand as a candidate in a Member State in which he resides but of which he is not a national. This proposal for a Directive takes account of the outcome of these preliminary discussions within the Council and Parliament.

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[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.

4. 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.

(a) 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 give joint expression to their European identity while maintaining their respective national identities.
It is therefore necessary to ensure that the citizens of the Union enjoy the greatest possible freedom with regard to the right to vote and to stand for election to the European Parliament, and that the exercise of these rights is subject only to such conditions as are strictly necessary.

(b) Given that Article b(2) of the 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 actually replacing those rights in the home Member State, citizens of the Union must have a free choice as to the Member State in which they exercise their right to vote or to stand as a candidate. Care must be taken, however, to ensure that this freedom is not misused through double voting or standing as a candidate in more than one Member State.

(c) Without prejudice to the uniform electoral procedure provided for in Article 138(3) of the EC Treaty, and while respecting the diversity of electoral systems in the Member States, Article 8b(2) of this Treaty does not seek overall 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 subject, by virtue of the principle of non-discrimination, to 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.

(d) Based on Article 8b(2) of the EC Treaty, the aim of this Directive can only be to lay down, without prejudice to Article 138(3) of the EC Treaty and to the provisions adopted for its implementation, the detailed arrangements for the exercise, by citizens of the Union, of the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which they reside but of which they are not nationals. Consequently, this Directive does not deal with matters concerning the establishment of a uniform electoral procedure as provided for by

Article 138(3) of the EC Treaty.[9] The differences between the procedures involved are substantial: unanimous decision of the Council, acting on a proposal from the Commission, under Article 8b(2); and proposal by the European Parliament, unanimous decision by the Council and adoption by the Member States, in accordance with their respective constitutional requirements, under Article 138(3).

5. Subsidiarity and proportionality

In presenting this 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 detailed 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: Scope

Spelling out the scope of Article 8b(2) of the EC Treaty, Article 1 defines the field of application of this Directive.

1. Paragraph 1 makes it clear that this Directive covers only citizens of the Union residing in a Member State of which they are not nationals and their right to take part in the election of representatives of that State to the European Parliament; its aim is not, therefore, to achieve overall approximation of Member States' electoral laws. Consequently, the Directive does not affect, for instance, the rules of each Member State governing the right to vote and to stand as a candidate either of nationals in their home Member State (e.g. French nationals in France or British citizens in the United Kingdom) or of citizens of the Union residing in a Member State other than the one in which they exercise their right to vote or to stand as a candidate (e.g. a French citizen residing in France and standing as a candidate in Italy). Neither does it affect the right to vote or to stand as a candidate of persons who are not citizens of the Union, for example nationals of Commonwealth countries established in the United Kingdom.

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[9] The electoral procedure concerns primarily the electoral system, preparations, and in particular the drawing-up of lists of candidates, voting, the choice of polling day and the method of counting votes. On the other hand, the right to vote and to stand as a candidate concerns only the conditions to be met in order to be entitled to vote or to stand as a candidate, such as those relating to citizenship, minimum age and disqualification, and the conditions to be met for a voter or a person entitled to stand as a candidate to be able effectively to exercise his right in a particular election (for example, entry on the electoral roll for a given constituency).

2. Paragraph 2 specifies that the Directive does not affect each Member State's rules on the conditions in which nationals may vote or stand as a candidate in their home Member State, even if they reside outside the electoral territory of that State.

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 paragraph 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 2: Definitions

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

2. To ensure consistency with the Act of 20 September 1976 and its territorial scope as laid down in Article 2, the second paragraph of Article 15 and the Annexes thereof, the concept of electoral territory has to be defined by reference to that Act and the national provisions adopted under it. The question of whether or not a particular part of the national territory of a Member State or whether or not an overseas country or territory attached to a Member State belongs to the electoral territory therefore falls within the exclusive scope of the Act and the national provisions adopted under it by each Member State.

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

4. Article 2(5) and (6) define the concepts of Community voter and Community national entitled to stand as a candidate by reference to Article 3 of the Directive.

5. In defining the electoral roll, Article 2(7) aims not to alter but to embrace 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 (automatic registration or registration on individual application) and updated (permanent or non-permanent lists, periodic revision or compilation before each election). The definition also makes allowance for the special situation of some Member States which do not draw up a specific electoral register but indicate eligibility to vote on the population register. Article 2(7) does not rule out the electoral roll being subdivided 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 a candidate is not the same in all Member States, Article 2(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. Since the aim is not to approximate Member States' electoral systems, the definition also makes allowance for the special situation of certain Member States which specify several reference dates.

7. In defining the concept of the formal declaration, Article 2(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 9 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 3: Right to vote and to stand as a candidate

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 and to stand as a candidate 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 polling day or any other reference date. Clearly, whether the reference dates for the right to vote and for the right to stand as a candidate are the same also depends on the rules laid down by each Member State.

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(a) merely refers to that provision of the EC Treaty. In so doing, Article 3 takes account of the fact that the rules on the acquisition and possession of the nationality of a Member State fall within the scope not of the EC Treaty, but of the national law of the Member State concerned.
This means in particular that determination of the nationality of persons originating in overseas countries and territories, within the meaning of Article 227(3) of the Treaty, is a matter exclusively for the legislation of the Member State which has a special relationship with each overseas country or territory. Consequently, persons originating in overseas countries or territories who possess, under the legislation of a Member State, the nationality of that State and who reside in another Member State have the right to vote and to stand as a candidate there in elections to the European Parliament. It is thus for the individual Member States to specify, if necessary for the purposes of applying this Directive, the persons who are to be deemed their nationals.

On the other hand, since the Directive concerns only the right to vote and the right to stand as a candidate in a Member State other than the home Member State, it cannot deal with the situation of persons originating in overseas countries or territories who do not have the nationality of a Member State or of those residing in the Member State with which the overseas country or territory has a special relationship, even if they have the nationality of that State.

2. Within the framework established by the first sentence of Article 8b(2) of the EC Treaty, Article 3(b) 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 or to stand as a candidate 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 and 5 consequently refrain from giving any such definition, which enables the principle of equal conditions for national voters and Community voters and for national candidates and Community nationals entitled to stand as candidates 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; the minimum age for standing as a candidate varies between 18 and 25 years.

Article 3 does not, however, affect the administrative requirements to be met in each Member State if a voter is to be able to exercise his right to vote in a particular locality or constituency in a given election or if a person entitled to stand as a candidate is to be able to stand on a particular list or in a particular constituency in a given election. These requirements are designed to ensure that elections are properly prepared and proceed smoothly and concern, in particular, residence in the locality or constituency in which the vote is to be cast, possibly for a minimum period. The same applies to the administrative requirements to be met by candidates. These concern, in particular, nomination procedures, certain means of proof and the closing dates for applications. It goes without saying that any Community voter or Community national entitled to stand as a candidate who wishes effectively to take part in the European elections in his Member State of residence must comply with the relevant national rules applicable to nationals.

3. In view of the importance of the rules on disqualification from voting and from standing as a candidate, Article 3 provides that citizens of the Union may not vote or stand as candidates in their Member State of residence if they have been deprived of the right to vote or the right to stand as a candidate respectively and, as far as the substance of the requirements is concerned, refers to Articles 6 and 7.

4. In some Member States, citizens who acquired their nationality by naturalization must have been nationals for a certain minimum period, say a year, before they can stand as a candidate. That being so, the principle of equality between nationals entitled to stand as candidates and nationals of other Member States so entitled means that citizens of the Union who acquired the nationality of their home Member State by naturalization and who reside in another Member State (for example, a French citizen of Moroccan origin residing in Germany) must, mutatis mutandis, comply with this condition. Citizens should, therefore, be deemed to have met this condition in the Member State of residence when they have been nationals of their home Member State for the same minimum period.

Article 4: A single vote and a single candidature

1. The elections are intended to produce a single Community institution, and Article 4(1) accordingly sets out to prevent any voter from voting twice, thereby abusing the freedom to choose the place in which he wishes to vote given him by Articles 1(2) and 8. Article 4(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 Articles 8 and 13.

2. As the body to be elected is a single Community institution a person must not be allowed to stand as a candidate in more than one Member State. Since residence outside the home Member State does not normally result in disqualification from standing as a candidate in that Member State, and in view of the fact that some Member States allow also non-resident citizens of the Union to stand as candidates, the risk of dual candidatures must not be taken lightly. In order to interfere with Member States' electoral systems as little as possible, Article 4(2) does not affect national rules governing dual candidatures within each Member State. Clearly, too, Article 4(2) is aimed merely at preventing a person standing as a candidate in more than one Member State at the same election; it does not, for example, preclude a person standing as a candidate in his Member State of residence at one election and in his home Member State at subsequent elections.

Article 5: Residence

1. Article 5 returns to the residence condition referred to in Article 3(b), on the right to vote and the right to stand. It avoids any uniform definition, indirectly leaving the concept of residence used in the electoral law of the Member State of residence to apply. 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.

The laws of some Member States require that the person concerned must have completed a minimum period of residence there; Article 5 is intended to prevent any discrimination against Community voters or Community nationals entitled to stand as 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 5 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.

Since Article 5 deals only with the conditions to be met in order to have the right to vote or to stand as a candidate in the Member State of residence, the requirement laid down in the first sentence does not affect any specific conditions laid down by a Member State in respect of the exercise of these rights in a particular constituency or locality at a particular election and normally linked to a minimum period of residence in that constituency or locality.

Article 6: Ineligibility

1. Article 6 deals only with ineligibility, the state of a Union citizen who has been legally 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.

2. Since 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 home Member State, and, in the absence of international conventions, such court decisions are not normally enforceable in the Member State of residence, Article 6 lays down the principle that both sets of rules are to apply concurrently. Concurrent application is not incompatible with the Community principle of non-discrimination: since the aim is to prevent possible distortion as a result of disparities between disqualification rules in force in the Member States, such a system can be regarded as forming part of the "detailed arrangements" to be adopted by the Council under Article 8b(2) of the EC Treaty.
As far as the substance is concerned, concurrent application is justified on the ground that a person who has been deprived of his right to stand as a candidate at elections in his home Member State, normally by order of a court, should not be able to recover this right merely by virtue of his residence in another Member State. The possibility of a citizen of the Union who has been deprived of his right to stand as a candidate in his home Member State standing as a candidate in his Member State of residence and campaigning for election there is of concern to both Member States. To safeguard the reputation of the European Parliament, steps should be taken to prevent a citizen of the Union who has been deprived of his right to stand as a candidate sitting in Parliament or even campaigning for election to it. Clearly, the risks of Parliament's reputation being undermined are

greater and more visible in the case of disqualification from standing as a candidate as in that of disqualification from voting. Article 6(1) thus requires the Member State of residence to recognize any disqualification from standing as a candidate in the home Member State.
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.

2. To implement these rules on concurrent application, Article 10(2) requires the Member State of residence to ask the person concerned to produce, when he submits his application to stand as a candidate, an attestation from his home Member State certifying that he has not been deprived of the right to stand as a candidate in that State or that no such disqualification is known to those authorities. On that basis, Article 6(2) requires the Member State of residence to declare an application to stand as a candidate inadmissible where the citizen is unable to produce the attestation. Since Article 10(2) establishes a procedural requirement, Article 6(2) relates to a purely formal check which in most Member States is normally carried out before the election. That being so, Article 6(2) in no way affects certain national rules on disqualification from standing as a candidate whereby a check on the substance of the matter can only be made after the election. Given the political importance of disqualifications, however, it is desirable that disqualification should wherever possible be declared before the election campaign begins.

Article 7: Disqualification from voting

Since the risks of Parliament's reputation being undermined are much smaller in the case of disqualification from voting than disqualification from standing as a candidate, Article 7 lays down more flexible arrangements than Article 6.

1. The Member State of residence is free to decide whether or not to take account of a disqualification from voting in the home Member State. It is consequently also free to decide whether or not to require the Community voter to state in his declaration under Article 9(3) that he has not been deprived of the right to vote in his home Member State.

2. Member States which opt for concurrent application as allowed by Article 7(1) may notify the home Member State of the declaration referred to in Article 9(3). They must, however, transmit only such details as are strictly necessary for the implementation of that provision. On the other hand, the home Member State must respond to enquiries from the Member State of residence and supply it with all relevant and normally available information. To protect personal data and comply with the principle of proportionality, the home Member State must provide the Member State of residence with only those details that are strictly necessary for the implementation of the rules on concurrent application. For the same reasons, the Member State of residence may use the information only for that purpose. Once it has opted for concurrent application, the Member State of

residence must take the appropriate steps to prevent the person concerned from voting, either by removing him from the electoral roll or by refusing him access to the polling station.

3. Under Article 7(3), the home Member State may take the initiative of transmitting to the Member State of residence any necessary information to enable it to take account of a disqualification from voting in the home Member State. In such cases, however, the Member State of residence will not have to respond.

Article 8: Freedom of choice

1. To preserve the voter's freedom to choose the Member State in which he wishes to vote, Article 8(1) provides that a Community voter will be entered on the electoral roll of his Member State of residence only at his express request. The importance of a voter's showing that he has opted to vote in his Member State of residence stems above all from the effect such a decision has on voting entitlement in the home Member State: a voter thereby waives his right to vote in his home Member State. It would be inconceivable for this to happen without the person concerned first making a request to that effect.

2. In accordance with the principle of equality between nationals and Community voters Article 8(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 9: Exercise of the right to vote

1. Article 9(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, Community voters would be able to submit their applications during that period. Outside that period registration would 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 closure of the register. 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 9(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. Since the rules on supporting documents should also be based on the principle that statements made by the citizens concerned should be trusted, Article 9(2) requires Community voters merely to produce a formal declaration containing a limited number of particulars enabling the home Member State to identify them easily and take the necessary steps to prevent double voting.

3. Under Article 9(3), the Member State of residence may require a limited number of other supporting documents for the purposes of implementing Article 7, identifying the person concerned more easily or checking the minimum period of residence referred to in the first sentence of Article 5.

4. Article 9(4) is aimed at preserving the Community voter's freedom to choose the Member State in which he proposes to vote while avoiding any interference with the electoral rules in the Member States, and at the same time at facilitating the updating of the registers of Community voters by the Member States without imposing any unnecessary administrative formalities on the voters.

Article 10: Exercise of the right to stand as a candidate

1. Article 10(1) 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 Member States, however, Article 10(1) requires Community candidates to produce a number of further documents, but these are kept to a strict minimum. The layout of Article 10(1) is identical to that of Article 9(2).

2. For the purposes of applying the rule on concurrent application of disqualifications from standing as a candidate laid down in Article 6, Article 10(2) provides that a Community national must produce, in support of his application, an attestation from the competent administrative authorities of his home Member State certifying that he has not been deprived of the right to stand as a candidate in that Member State. If necessary, and in particular where such information is not centralized, the home Member State may confine itself to certifying that no such disqualification is known to its authorities. Clearly, it is up to each Member State to decide which of its authorities are to be competent for the purposes of Article 10(2), and in particular to determine what role could be played here by its consular authorities.

3. Under Article 10(3), the Member State of residence may require the person concerned to produce a limited number of additional supporting documents in order to help identify him or check that any condition laid down under the last paragraph of Article 3 is met.

Article 11: Appeals

1. The notification required by Article 11(1) serves to enable appeals to be lodged under Article 11(2). 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, but whatever method is chosen, the information must be supplied in good time.

2. Applying the principle that the rules governing nationals and non-nationals are to be the same, Article 11(2) 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 12: Information

As Community voters and Community nationals entitled to stand as candidates have to meet the same conditions as nationals as well as certain specific conditions, particularly as regards supporting documents, Article 12 requires the competent authorities of the Member State of residence to inform them of their entitlements in good time, in order to enable them to exercise their right to vote or to stand as a candidate there if they so wish. It leaves Member States free to choose the most appropriate way of doing this.

Article 13: Exchange of information

While avoiding any unnecessary red tape, Article 13 establishes machinery for the exchange of information between Member States in order to prevent, wherever possible, double voting and double candidature in violation of Article 4. To that end, the Member State of residence will have to pass on to the home Member State information on the latter's nationals who are entered on electoral rolls or are standing as candidates.

The content of the information should be based on the statements made by the individuals concerned in their formal declarations. To ensure that Union citizens' personal data are properly protected and in accordance with the principle of proportionality, the information exchanged should contain only those particulars that are necessary for implementing Article 4 and should be used only for that purpose.

If this machinery for the exchange of information is to operate effectively, the information must be transmitted sufficiently in advance of polling day. The fact remains, however, that the time allowed for entry on the electoral roll and submission of applications to stand as candidates varies widely between the Member States.

On the basis of the information transmitted by the Member State of residence, the home Member State will have to take, in accordance with its existing electoral law, appropriate measures to prevent as far as possible its nationals voting twice or standing as candidates in two Member States. Given the variety of electoral systems and political traditions in the

Member States, Article 13 allows either preventive checks before polling day (for example, removal from the electoral roll), repressive checks after the election (e.g. penalties under criminal law) or a combination of both.

Article 14: 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 proportion of Community residents of voting age 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.

Since the detailed arrangements referred to in Article 8b(2) of the Treaty are to be adopted "without prejudice to Article 138(3) and to the provisions adopted for its implementation", Article 14 makes it clear that this Directive does not affect each Member State's right to adopt appropriate measures relating to the electoral procedure. Pending additional provisions to be adopted under Article 138(3) of the Treaty, neither this Directive, nor the Act of 20 September 1976 concerning the election of the representatives of the European Parliament by direct universal suffrage (see Article 7(2) of the Act) affect in any way each Member State's existing or planned provisions relating to electoral procedure, and in particular the composition of lists of candidates.

Points (a) and (b) in paragraph 1 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.

But provision must be made to ensure that Community nationals who are unable to vote or to stand as candidates in their home Member State 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 and to stand in their Member State of residence.

2. Furthermore, problems specific to a Member State and warranting derogations under the second sentence of Article 8b(2) of the EC Treaty can stem from the fact that, in certain Member States, nationals of other Member States already have the right to vote in elections not only to the European Parliament but also to the national parliament.
In one Member State, citizens of a neighbouring Member State are not treated as foreigners and have had the right to vote and to stand as candidates in parliamentary elections and local elections since 1948, as well as in elections to the European Parliament since 1979, under conditions that are exactly the same in both form and substance as those applying to nationals.
In the neighbouring Member State, since 1935 any person born in the other Member State has not been treated as a foreigner. In addition, the constitution has been amended to allow the legislator to grant non-national residents the right to vote in elections to the national parliament. On that basis, the electoral law adopted in 1985 provides that citizens of the other Member State in question and, on a reciprical basis, nationals of all other Member States have the right to vote in elections to the national parliament. As far as elections to the European Parliament are concerned, residents who are nationals of the other Member State concerned, as well as nationals of all other Member States, have had the right to vote since 1977.
Consequently, nationals of these two Member States residing in the other one normally appear, in the Member State of residence, on the electoral rolls for elections to the national parliament, which are established automatically in both the Member States. The electoral rolls for elections to the European Parliament are established automatically on the basis of those national electoral rolls in both countries.
Nationals of the two Member States concerned who reside in the other one should not therefore have to comply with the specific formalities laid down by Articles 6 to 13 of this Directive.

3. The clause in Article 8b(2) of the EC 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 14(3) accordingly establishes a system of regular reports.

In order to enable the Commission, in its capacity as guardian of the Treaty, to verify whether the tests of paragraphs 1 and 2 are still 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 15: Transitional provisions

Given the extremely tight schedule for implementing this Directive in time for the fourth direct elections to the European Parliament, a number of transitional provisions are essential to take account of some specific problems facing certain Member States.

1. Since in some Member States all citizens of the Union or citizens of other, specified, Member States are already entitled to vote in elections to the European Parliament and may therefore be entered on the electoral rolls even before this Directive enters into force, it is necessary to recognize their acquired rights and to provide that the Directive should not affect their registration. Such persons need not submit an application under Article 8 or produce the supporting documents required by Article 9. Under Article 9(4), this situation may be maintained after the fourth direct elections to the European Parliament if the existing national legislation so allows.

2. Article 15(2) 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, it is to take any measures necessary to enable Community voters to exercise their right to vote in their Member State of residence at the fourth direct elections to the European Parliament.

3. Article 15(3) takes account of certain technical problems facing Member States which do not draw up a specific electoral roll but indicate eligibility to vote in the population register. The arrangements provided for here do not encroach on the principle of the free choice of the Member State in which to exercise the right to vote or the principle laid down in Article 8(1).

4. Since the legislation of certain Member States lays down a lengthy internal procedure for the nomination of candidates by political parties or groups, and this procedure, which normally lasts over a year, will already have been started or even completed by the political parties or groups before 1 February 1994, the Member States concerned must be able to provide that the procedures and decisions taken under them remain valid.

Article 16: Review clause

In view of the complexity of the technical problems involved in implementing Article 8b(2) of the EC Treaty, in particular the machinery for the exchange of information referred to in Articles 7 and 13, the Commission will have to evaluate, in a report to Parliament and the Council drawn up after the June 1994 elections, the experience gained in applying the Directive and propose any amendments that may be necessary. If necessary, the Council will be requested to act unanimously, once Parliament has been consulted, on any proposals for amendments put forward by the Commission.

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.

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 by citizens of the Union residing in a Member State of which they are not nationals

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, 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, in a manner demonstrating consistency and solidarity, 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 EC 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 in order to exercise those rights;

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 period 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 period of residence;

Whereas citizenship of the Union is intended to enable citizens of the Union to integrate better in their host country and that in this context, it is in accordance with the intentions of the authors of the Treaty to avoid any polarization between lists of national and non-national candidates;

Whereas this risk of polarization concerns in particular a Member State in which the proportion of non-national citizens of the Union of voting age exceeds 20 % of the total number of citizens of the Union of voting age who reside there and that, therefore, it is important that this Member State may lay down, in compliance with Article 8 B of the Treaty, specific provisions concerning the compsition of lists of candidates;

Whereas account must be taken of the fact that in certain Member States residents who are nationals of other Member States have the right to vote in elections to the national parliament and the formalities provided for by this Directive can consequently be eased,

HAS ADOPTED THIS DIRECTIVE:

Chapter I: General provisions

Article 1

1. This Directive lays down the detailed arrangements whereby citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate there in elections to the European Parliament.

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.

Article 2

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 suffrage;[1]

(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;

(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, or the population register if it indicates eligibility to vote;

(8) "reference date" means the day or the days 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, inaccuracy in which makes that person liable to penalties.

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[1] OJ No L 278, 8.10.1976, p. 5.

Article 3

Any person who, on the reference date:

(a) is a citizen of the Union within the meaning of the second subparagraph of Article 8(1) of the Treaty,
(b) not being a national of the Member State of residence, satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals,

shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7.

Where, in order to stand as a candidate, nationals of the Member State of residence must have been nationals for a certain minimum period, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

Article 4

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.

2. No person may stand as a candidate in more than one Member State at the same election.

Article 5

If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum 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 equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

Article 6

1. Any citizen of the Union who resides in a Member State of which he is not a national and who, through a criminal law or civil law decision, has been deprived of his 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 precluded from exercising that right in the Member State of residence in elections to the European Parliament.

2. An application from any citizen of the Union to stand as a candidate in elections to the European Parliament in the Member State of residence shall be declared inadmissible where that citizen is unable to provide the attestation referred to in Article 10(2).

Article 7

1. The Member State of residence may check whether the citizens of the Union who have expressed a desire to exercise their right to vote there have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.

2. For the purposes of paragraph 1 of this Article, the Member State of residence may notify the home Member State of the declaration referred to in Article 9. To that end, the relevant and normally available information from the home Member State shall be provided in good time and in an appropriate manner; such information may only include details which are strictly necessary for the implementation of this Article and may only be used for that purpose. If the information provided invalidates the content of the declaration, the Member State of residence shall take the appropriate steps to prevent the person concerned from voting.

3. The home Member State may, in good time and in an appropriate manner, submit to the Member State of residence any information necessary for the implementation of this Article.

Article 8

1. A Community voter shall exercise his right to vote in the Member State of residence if he has expressed the wish to do so.

2. If voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote.

Chapter II: Exercise of the right to vote and the right to stand as a candidate

Article 9

1. Member States shall take the necessary measures to enable a Community voter who has expressed the wish for such to be entered on the electoral roll sufficiently in advance of polling day.

2. In order 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) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and
(c) that he will exercise his right to vote in the Member State of residence only.

3. The Member State of residence may also require a Community voter to:

(a) state in his declaration under paragraph 2 that he has not been deprived of the right to vote in his home Member State,
(b) produce a valid identity document, and
(c) indicate the date from which he has been resident in that State or in another Member State.

4. 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.

Article 10

1. When he submits his application to stand as a candidate, 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,
(b) that he is not standing as a candidate for election to the European Parliament in any other Member State, and
(c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered.

2. When he submits his application to stand as a candidate a Community national must also produce an attestation from the competent administrative authorities of his home Member State certifying that he has not been deprived of the right to stand as a candidate in that Member State or that no such disqualification is known to those authorities.

3. The Member State of residence may also require a Community national entitled to stand as a candidate to produce a valid identity document. It may also require him to indicate the date from which he has been a national of a Member State.

Article 11

1. The Member State of residence shall inform the person concerned of the action taken on his application for entry on the electoral roll or of the decision concerning the admissibility of his application to stand as a candidate.

2. Should a person be refused entry on the electoral roll or his application to stand as a candidate be rejected, the person concerned shall be entitled to legal remedies on the same terms as the legislation of the Member State of residence prescribes for voters and persons entitled to stand as candidates who are its nationals.

Article 12

The Member State of residence shall inform Community voters and Community nationals entitled to stand as candidates in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections in that State.

Article 13

Member States shall exchange the information required for the implementation of Article 4. To that end, the Member State of residence shall, on the basis of the formal declaration referred to in Articles 9 and 10, supply the home Member State, sufficiently in advance of polling day, with information on the latter State's nationals entered on electoral rolls or standing as candidates. The home Member State shall, in accordance with its national legislation, take appropriate measures to ensure that its nationals do not have a double vote or stand as candidates in two Member States.

Chapter III: Derogations and transitional provisions

Article 14

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 20% of the total number of citizens of the Union residing there who are of voting age, that Member State may, without prejudice to the appropriate measures relating to the composition of lists of candidates which it is entitled to take, subject to the provisions to be adopted in pursuance of Article 138(3) of the Treaty, and by way of derogation from 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.

These provisions are without prejudice to appropriate mesures which this Member State may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union.

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 home State shall not be subject to the conditions as to length of residence set out above.

2. Where, on 1 February 1994, the nationals of a Member State who reside in another Member State have also the right to vote for the national parliament there and, for that purpose, may be entered on the electoral roll under exactly the same conditions as national voters, the latter Member State may, by way of derogation, refrain from applying Articles 6 to 13 of this Directive in respect of such nationals.

3. 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 check whether 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 paragraphs 1 and 2 shall furnish the Commission with all the necessary background information.

Article 15

For the fourth direct elections to the European Parliament, the following special provisions shall apply:

1. Citizens of the Union who, on 15 February 1994, already have the right to vote in the Member State of residence and whose names appear on the electoral roll in the Member State of residence shall not be subject to the formalities laid down in Article 9.

2. Member States in which the electoral rolls have been finalized before 15 February 1994 shall take the steps necessary to enable Community voters who wish to exercise their right to vote there to enter their names on the electoral roll sufficiently in advance of polling day.

3. Member States which do not draw up specific electoral rolls but indicate eligibility to vote in the population register and where voting is not compulsory may also apply this system to Community voters who appear on that register and who, having been informed individually of their rights, have not expressed a wish to exercise their right to vote in their home Member State. They shall forward to the home Member State the document showing the intention expressed by those voters to vote in the Member State of residence.

4. Member States in which the internal procedure for the nomination of candidates for political parties and groups is governed by law may provide that any such procedures which, in accordance with that law, were opened before 1 February 1994 and the decisions taken within that framework shall remain valid.

Chapter VI: Final provisions

Article 16

The Commission shall submit a report to the European Parliament and the Council by 31 December 1995 on the application of the provisions of this Directive to the June 1994 elections to the European Parliament. On that basis the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may adopt provisions amending this Directive.

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 measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 18

This Directive is addressed to the Member States.

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