II

(Preparatory Acts)

COMMISSION

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

(93/C 325/11)

COM(93) 534 final

(Submitted by the Commission on 29 October 1993)

THE COUNCIL OF THE EUROPEAN UNION,

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 8b of the Treaty, specific provisions concerning the composition 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.

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

(1) OJ No L 278, 8. 10. 1976, p. 5.

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 10 years.

These provisions are without prejudice to appropriate measures 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 States 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 IV

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.