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

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(presented by the Commisssion)

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TEXT OF THE PROPOSAL

EXPLANATORY MEMORANDUM

A. General comments

I. Nature and scale of the problem

1. Figures

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 non-nationals who are 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].

About 4 million of these are not entitled to vote or to stand as candidates in their Member State of residence. About 2.6 million have lost their rights in their home Member States on the sole ground that they are resident abroad. Some 1.6 million citizens of the Union must travel to their home Member State in order to vote in local elections there.

2. Local authorities

(a) Without going into detail, we can identify a number of features shared by local authorities in all Member States[2]:

- They have a defined territory, which is very often treated as an administrative unit for central government purposes too.

- They have a measure of independence[3] given them by the constitution or by statute, either in general terms or by means of a list of specified powers. In many Member States they do not only act in their own names but also exercise certain powers on behalf of central government.

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(1) Eurostat population statistics, 1992.

(2) See Alain Delcamp, Les institutions locales en Europe, Paris 1990, p. 41.

(3) See for example Article 3 of the European Charter of Local Self-government agreed in the Council of Europe framework in 1985.

- There is always a representative council elected by direct universal suffrage.

- They are provided for by law, by statute if not by the constitution, and are subject to the supervision of central government[4]. Statute law most often lays down the composition of councils and executives, the mechanisms by which their members are to be designated, their powers, the resources, particularly financial resources, which are to be available to them, and any supervisory mechanisms.

(b) Local authorities can also be classified according to their place in the structure of government in their Member State. A distinction can be made between the basic local government units and subordinate local government units:

(aa) Basic local government units are the authorities closest to the citizen. They are given a measure of independence by the constitution or by statute, and handle the main local government tasks. They have their own territory, their own democratic institutions and their own staff.

These authorities are the following: Belgium: commune/gemeente/Gemeinde; Denmark: *primaerkommune, amtskommune;* Germany: *Gemeinde, Kreis;* Greece: *koinotis, dimos;* Spain: *municipio;* France and Luxembourg: *commune;* Ireland: *county, county borough, urban district, non-county borough, town;* Italy: *comune*; Netherlands: *gemeente;* Portugal: *município*; United Kingdom: *county, district, metropolitan district, London borough and, in Scotland, region and islandauthority.*

The number and size of the basic local government units is extremely variable from one Member State to another:

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[4] See for example Articles 8 and 11 of the European Charter of Local Self-government.

Table 1 : Number and population of basic local government units [5]

Member State	Number	Average size	Minimum	Maximum
Belgium	589	16.890	2.500 (5 %)	470.000
Denmark	276	18.600		503.000
Germany [6]	8.592	7.050		2.068.300
Greece	5.761	1.740	< 500 (53 %)	885.730
Spain	8.150	4.780	< 500 (60 %)	3.100.500
France	36.600	1.580	< 500 (61 %)	2.152.000
Ireland	88	39.750		502.700
Italy	8.000	7.190	< 1000 (22 %)	2.816.400
Luxembourg	118	3.200		74.400
Netherlands	700	21.270	< 5000 (10 %)	700.000
Portugal	305	33.890		829.600
United Kingdom	444	129.040	< 75.000	810.000

5 See Jacques Ziller, Administrations comparées, Les systèmes politico-administratifs de l'Europe de Douze, Paris 1993, p.180

6 Before reunification.

Table 2 : Comparison between number and population of basic local government units [7]

Member State	**Total population (rounded figure)**	Population over 10 000 ha		**1 000 to 10.000 ha**		**Less than 1000 ha**	
		%	**Number**	**%**	**Number**	**%**	**Number**
B	9.000.000	51,0	303	49	286	-	-
DK	5.000.000	18,5	45	82,5	227	1,0	3
D	80.000.000	13,1	1.105	50	4.250	38,9	3.145
EL	11.000.000	1,5	91	18,5	1.114	80,0	4.817
E	38.000.000	6,7	547	33	2.689	60,3	4.914
F	57.000.000	2,3	765	19,3	6.886	78,4	28.782
IRL	3.000.000	3,8	21	30,6	171	65,6	558
I	56.000.000	16,0	1.292	62,0	5.006	22,0	1.776
L	400.000	5,0	5	48,0	61	47,0	60
NL	14.000.000	51,0	367	48,0	340	1,0	7
P	10.000.000	74,0	203	26,0	72	-	-
UK	56.000.000	100,0	481				

7 See Jacques Ziller, Administrations comparées, p. 181

(bb) There are subordinate local authorities which at first sight appear closer again to the citizen. But they are indeed subordinate to the basic unit both in law and in practice, have very limited powers, and usually cover a subdivision of the basic authority's territory[8].

These are small districts or neighbourhoods in certain German Länder (Stadtbezirke, Gemeindebezirke, Ortsbezirke, Ortschaften, Ortsteile)[9], neighbourhood or community councils in Greece, neighbourhoods or districts in Italy (*circoscrizioni*), local districts in some Spanish regions (*entidades locales menores*), *sections de communes* and *arrondisements* in France[10], neighbourhood councils in the Netherlands (*deelgemeenten*), parishes in Portugal (*freguesias*) and parishes and communities in the United Kingdom[11].

3. Legal situation

(a) The right to vote and to stand as a candidate

The right to vote and to stand as a candidate in municipal elections as a rule depends on nationality or residence, or both, according to the political tradition of the Member State. These Member States whose legal and political tradition is strongly marked by Roman law and the French revolution tend to look at the question in terms of nationality, while the United Kingdom (for historical reasons) and Ireland attach more importance to residence.

At the present time the constitutions of half the Member States confine the right to vote and to stand as a candidate to their own nationals (Belgium (Article 4(2)), Germany (Article 20), Greece (Article 51), France (Article 3), Italy (Article 48), and Luxembourg (Articles 52 and 107)).

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(8) Obviously their profile, powers and legal status are not the same in all Member States. Their profile is highest in the United Kingdom (parishes in England, communities in Scotland and Wales) and Portugal (*freguesias*). In France, *sections de communes* have legal personality.

(9) In Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Schleswig-Holstein, and the city-states of Bremen, Berlin and Hamburg. Not all of the new *Länder* in eastern Germany have yet established new local government structures.

(10) Only the cities of Paris, Lyons and Marseilles are divided into *arrondissements*.

(11) Parishes exist only in England. The approximate equivalent in Wales is the community. In Scotland the establishment of communities is optional.

Three Member States -Portugal, Spain and the United Kingdom – give voting rights to certain foreigners only. In the case of Portugal and the United Kingdom this is due to historical links with other countries. In the United Kingdom all citizens of Ireland and all Commonwealth citizens are entitled to vote and to stand. Portugal gives the right to vote and to stand to nationals of Portuguese speaking countries, subject to reciprocity; in practice the rule is applied only to Brazilians. In Spain the right to vote is to be granted to resident foreigners subject to reciprocity, but because the necessary bilateral agreements have not been concluded or have not entered into force[12] this rule has not yet been applied.

Denmark, Ireland and the Netherlands give foreign residents the right to vote and to stand, on different conditions.

Ireland treats national and non–national residents in precisely the same way (Section 2 of the Electoral Amendment Act 1985).

In Denmark and the Netherlands non–national residents must meet certain specific conditions in order to qualify. In both countries they must show that they have been living in the country for a minimum period (in Denmark three years, under § 1 of the Local Elections Act; in the Netherlands five years, under Article B.1.A of the Elections Act). In the Netherlands it is also stipulated that the person concerned must have a right of residence, and may not be working in the service of a foreign State (Article B.1.A of the Elections Act, Article 21 of the Municipalities Act).

In those Member States where non–nationals are free to vote and to sit on local councils, there are no specific provisions to prevent them from taking part in local elections in their country of origin as well.

Eight Member States do not permit their own nationals to vote or to stand if they are resident outside the country. In Greece and Italy voters living abroad must travel to their country of origin to vote in local elections. Only in the case of France and Spain do citizens resident abroad retain their voting rights in full.

(b) Link with the place

In all Member States a person wishing to vote or to stand as a candidate in local elections in any of the basic local government units must already have some specified and stable link with the place.

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(12) An agreement between the Netherlands and Spain concluded on 23 May 1989 has not yet been implemented.

As far as voting rights are concerned, all Member States require the voter to have his domicile, principal residence[13] or ordinary residence in the basic local government unit in which he proposes to vote; the precise requirement varies from one country to another. In three Member States voters must have been resident there for a minimum period (six months in Belgium, from three to six months in Germany depending on the *Land*, and two years in Greece if the voter has changed the unit in which he proposes to vote). In other countries the voter must show that he was resident in the place on a stated reference date (Denmark, Spain, France, Ireland, Italy, Luxembourg, Portugal and the United Kingdom). In seven Member States a voter must also satisfy the general obligation to be entered on the local register of population (Belgium, Denmark, Germany, Spain, Italy, Luxembourg and the Netherlands).

In two Member States the national legislation links the right to vote to the municipality of birth (Greece and, for emigrants only, Italy). In France anyone who has been entered on the income tax register for a particular municipality five times without interruption is entitled to vote there.

As a general rule candidates seeking office in the representative council or executive of a basic local government unit must also demonstrate a link of a specified kind with the place. According to the Commission's information most Member States required the candidate to show that he has his domicile or principal residence there (Belgium, Denmark, Germany, Luxembourg, the Netherlands, Portugal and the United Kingdom). In the United Kingdom one may stand for election in a basic local government unit in which one has occupied land or carried on one's principal business for the twelve months preceding the reference date (10 October). In France one must be entered on the municipal income tax register, or show that one should have been entered there, on 1 January of the year of the election.

(c) Disqualification

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

(aa) 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.

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[13] The concept of "principal residence" used in other Member States is similar to that of "ordinary residence" in Ireland and the UK.

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 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.

(bb) 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 imposed 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 on the local council. An elected candidate may be declared to be an unfit person and thus deprived of his seat, but such convictions may never be relied on to prevent someone standing for election.

(d) Formal requirements

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 local government unit or constituency.

(aa) 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 local government unit 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.

(bb) 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.

II. Historical background

1. Article 8b(1) of the Treaty is in some ways the culmination of a political debate which began in the early 1970s. It had become clear at that time that the millions of migrant workers who had left the Mediterranean countries with their families to work in the industrialized countries of western and northern Europe would not be returning to their countries of origin, and would be settling permanently in their host countries. The number of Italian and later Greek, Portuguese and Spanish immigrants meant that to a great extent this migratory movement took place inside the Community. As it became clear that the migration was permanent, the question was asked whether the Community should confine itself to guaranteeing Community migrants a right of residence and certain social entitlements, or whether it should go further and give them certain political rights too, chief among these being the right to vote and to stand as a candidate at local elections.

2. The European Council meeting in Paris in June 1974 asked a working party to study "special rights" for citizens of the Member States. When the Commission submitted a report on the subject in 1975, which among other things proposed a right to vote at local elections, it was not favourably received by the Council[14]. But the idea put forward by the Commission was taken up by the European Parliament, which maintained constant political pressure between 1977 and 1983[15].

   In 1985 the Adonnino committee, set up at the European Council meeting in Fontainebleau, recommended to the Milan European Council that discussion of this subject should continue, through it stressed that the matter was one within the competence of the Member States. In 1986 the Commission submitted to Parliament, at its request[16], a report on voting rights in local elections for Community nationals[17].

   Parliament asked the Commission to act immediately (Vetter Report of 1987)[18] and in 1988 the Commission submitted a proposal for a directive on voting rights for Community nationals in local elections in their Member State of residence[19], which it amended in 1989[20]. The Council suspended discussion of the proposal in view of the work of the intergovernmental conference drawing up the Treaty on European Union.

   Article 8b(1) of the Treaty on European Union declares citizens of the Union entitled to vote and to stand as candidates at municipal elections in their Member State of residence.

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(14) Between 1976 and 1979 Coreper discussed a report and preliminary draft resolution, without reaching agreement.

(15) Resolution on the granting of special rights to the citizens of the European Community: OJ C 299, 12.12.1977, p. 26; Macciocchi report: OJ C 184, 12.7.1983, p. 28.

(16) Resolution: OJ C 345, 31.12.1985, p. 82.

(17) Bulletin of the European Communities, Supplement 7/86.

(18) OJ C 13, 18.1.1988, p. 33.

(19) OJ C 246, 20.9.1988, p. 3.

(20) OJ C 290, 18.11.1989, p. 4.

In 1992 agreement was reached in the Council of Europe framework on a Convention on the Participation of Foreigners in Public Life at Local Level, which was signed by several Member States (Denmark, Italy and the United Kingdom); Article 6 provides for the right to vote and to stand for election for all foreign residents[21].

III. Article 8b(1) of the Treaty

1. General rules

(a) Like paragraph 2 of Article 8b, which deals with elections to the European Parliament, paragraph 1 of the Article does not seek to align all the legislation in the Member States on the subject of local elections: its purpose is a great deal less ambitious, and extremely specific. It sets out to remove the obstacles still present in the legislation of the various Member States which prevent citizens of the Union from exercising the right to vote and to stand as candidates at municipal elections in their Member State of residence whether or not they are nationals of that country. The main objective, therefore, is to replace the nationality requirement by the requirement of citizenship of the Union. The Community rules can therefore be confined to what is strictly necessary to achieve this objective.

(b) Like paragraph 2, paragraph 1 of Article 8b provides that Union citizens who are not nationals are to have the right to vote and to stand as candidates "under the same conditions" as nationals; it introduces the principle of equal treatment of Union citizens, both national and non-national. Under this principle identical or similar situations are to be treated in the same way; situations can be treated differently only where they are dissimilar. No special requirements are to be imposed on non-nationals unless there is a difficulty specific to non-nationals which justifies a difference of treatment.

(c) Article 8b(1) gives the citizens concerned the freedom to take part in municipal elections in their Member State of residence. They may choose to avail themselves of this entitlement. Only then will they be subject to the obligation to vote in those countries where voting is compulsory. The paragraph does not affect the right to vote and to stand as a candidate in the home Member State if that right has not been lost.

(d) In addition to equal treatment Article 8b(1) lays down two other principles, the requirement of citizenship of the Union and the requirement of residence. The concept of citizenship is clarified by the "Declaration on Nationality of a

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(21) "(1) Each Party undertakes, subject to the provisions of Article 9, paragraph 1, to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the five years preceding the elections.

(2) However, a Contracting State may declare, when depositing its instrument of ratification, acceptance, approval or accession, that it intends to confine the application of paragraph 1 to the right to vote only."

Member State" annexed to the Treaty, but the concept of residence is not further clarified in the Treaty itself. In the absence of any alignment of Member States' legislation on the point, there is no need for this Directive to provide a uniform definition of residence; leaving it undefined will ensure the greatest possible measure of equality in the requirements for nationals and non-nationals.

(e) Given the profusion of administrative and electoral arrangements in the Member States, the term "municipal elections" is in need of clarification. In fact the different language versions of the Treaty do not correspond exactly. The versions in English *(municipal elections)*[22], Spanish *(elecciones municipales)*[23], French *(élections municipales)*[24], Italian *(elezioni comunali)*, Dutch *(gemeenteraadsverkiezingen)*[25] and Portuguese *(eleições municipais)* refer only to the first tier of local government. But the versions in Danish *(kommunale valg)*[26], German *(Kommunalwahlen)*[27] and Greek *(dimotikes kai koinotikes ekloges)* cover not just that level but a second, higher tier of local government as well.

Definitions accordingly have to be provided of the type of election, the offices to be fille d and the level of local government.

. As far as the type of election is concerned, it is clear that paragraph 1 of Article 8b, like paragraph 2, refers only to elections by direct universal suffrage. It is not concerned with elections inside the local council - a

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[22] See the UK Representation of the People Act 1983, s 191(1). Legislation in the UK and Ireland usually distinguishes between "parliamentary elections" and "local government elections", which include elections at all levels of local government, including parishes, districts and counties. Under the Municipal Reform Act 1835, "municipal corporations" were formed by the population of a "borough". Under the UK Local Government Act 1972 the "boroughs" were absorbed by "districts".

[23] See Title III (*Disposiciones especiales para las elecciones municipales*) of the *Ley Orgánica* of 19 June 1985; the election of provincial representatives is governed by Title V of the same law (*Disposiciones especiales para la elección de diputados provinciales*).

[24] See Title IV of the Electoral Code, *Dispositions spéciales à l'élection des conseillers municipaux et des membres du Conseil de Paris;* however, the election of representatives to sit on the councils of departments is dealt with in Title III. Belgian legislation distinguishes between elections at parliamentary, provincial and *commune/gemeente/Gemeinde ("municipality") level.*

[25] See part II of the Dutch Electoral Act (*Kieswet*): "*De verkiezing van de leden van de Tweede Kamer der Staten Generaal, van de provinciale staten en van de gemeenteraden.*"

[26] The Local Elections Act applies both to municipalities (*primærkommuner*) and counties (*amtskommuner*), and in fact entitles all foreigners resident in Denmark for at least three years to vote and to stand for election.

[27] The *Kommunalwahlgesetz* of North Rhine-Westphalia is a good example of the legislation of the German *Länder* on the subject, which always applies both to municipalities (*Gemeinden*) and counties (*Kreise*). When it ratified the Treaty Germany amended the constitution to this effect (Article 28(1).

French mayor, for example, is elected by the municipal council - or with elections within executive boards such as exist in Belgium or Germany. There is no "municipal election" within the meaning of the Article where the municipal council designates special delegates to take part in the election of the upper house of Parliament, as happens in certain Member States, or where members of municipal councils vote in their capacity as special delegates of this kind.

- It follows that Article 8b(1) is concerned with those offices whose holders are elected directly by the local voters. Local councillors are directly elected in all Member States, and the head of the local executive, and other members of the executive too, are directly elected in some places.

- As to the level of local government, Article 8b(1) must refer to elections at the basic level which exists in all Member States. Participation in elections at that level is the heart of the rights which the Article confers on citizens of the Union. In those Member States where there are subordinate local authorities, the Treaty also applies to any elections for representatives at that level by direct universal suffrage.

2. Derogations

Under Article 8b(1) any derogation must be warranted by problems specific to a Member State; it must relate only to the detailed arrangements for the exercise of the rights conferred by the Article, and must be of a provisional nature.

Specific problems of the kind referred to essentially arise where there is a particularly high proportion of nationals of other Member States. More precisely, there may be a problem where there is a high proportion of citizens of the Union who are not nationals and who have reached voting age. The statistics to be looked at, therefore, are those for non-national Community residents of voting age, and for the proportion of those voters in the potential electorate as a whole. The average proportion is currently between 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 that Member State there are 21 municipalities where the proportion of Community residents is between 30% and 54%, and another 38 where it is between 20% and 30%. In the capital city the proportion is 41.2%. The proportion of Community residents is over 20% in more than half the municipalities.

Given the principle of equal voting rights any derogation ought to apply to all municipalities in the Member State it covers. It does not appear permissible to apply arrangements which differ from one municipality to another, particularly in view of the proportion of electors within the scope of Article 3 to the electorate as a whole.

IV. Subsidiarity and proportionality

In presenting this proposal for a Directive, which comes under the Community's exclusive powers, the Commission is aiming to discharge its obligations under the second sentence of Article 8b(1) of the Treaty at the earliest opportunity. In keeping with the principle of proportionality, the Commission proposes that the detailed arrangements referred to in Article 8b(1) 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 stated objective.

B. Comments on individual articles

Article 1: Scope

Spelling out the scope of Article 8b(1) of the 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 of its own nationals on its own territory.

   This paragraph also makes it clear that the Directive is concerned with municipal elections, and not with regional or national ones. The municipal elections referred to in Article 8b(1) are those in the basic local government units and their subdivisions.

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(1) of the Treaty guarantees the right to vote and to stand as a candidate in municipal elections in the Member State of residence, without taking away the right to vote and to stand as a candidate in the home Member State if that right is retained under the law of that country. The purpose of paragraph 3 is to ensure that citizens of the Union are free to decide whether or not they wish to take part in municipal elections in their Member State of residence.

   If a citizen of the Union retains his right to vote and to stand as a candidate in his home Member State, despite the fact that he is living outside the country, he may take part in municipal elections both in his Member State of residence and in his home Member State. To allow citizens to vote in separate elections is no infringement of the principle "one man one vote", which is concerned with voting rights at a single election. The elections involved here are legally and politically separate proceedings in different Member States, and "parallel voting" of this kind does not affect their validity.

Politically speaking it is desirable not only to encourage the integration of non-national residents into the societies in which they live, but also to respect the links they maintain with their home Member States. The proposal avoids imposing a pointless deterrant and facilitates as far as possible the exercise of voting rights in the Member State where the citizens concerned are actually living.

However, the laws of all Member States usually require specific and stable links between a basic local government unit and citizens of the Union claiming the right to vote or to stand for election there on grounds of residence, so that the practical importance of parallel voting will remain very limited. The impact will also be reduced by Article 4, which states that for the purpose of determining principal residence account is to be taken of any residences in other Member States.

Furthermore, any attempt to prevent parallel voting would involve the establishment of administrative machinery for the exchange of information between Member States. Given the decentralized way in which municipal elections are organized, it would be very difficult to establish such machinery and to ensure that it worked properly. Only four Member States, Greece, France, Italy and Spain, allow their nationals to vote if they are resident outside the country, and it would hardly be in accordance with the principle of proportionality to set up administrative machinery of that kind covering the whole European Union. Elections take place in a large number of municipalities on different dates throughout the Member States, and there is no rapid and effective way of preventing citizens from voting both in their Member State of residence and their home Member State.

3. As Article 8b(1) of the Treaty confers a right to vote and to stand as a candidate only on citizens of the Union, paragraph 2 also states that the Directive is not concerned with the right of nationals of non-Community countries to vote and to stand as candidates at municipal elections. The Directive in no way affects that right where it exists in domestic law, that is to say in Denmark, Ireland and the Netherlands. The same applies to the right of nationals of independent Commonwealth countries to vote and to stand as candidates in the United Kingdom. The Directive in no way obliges Member States to grant this right to such persons, nor does it prevent them from doing so.

Article 2: Definitions

1. To clarify the scope of the rights laid down in Article 8b(1) of the Treaty, a definition has to be provided of the level of local government in the Member State of residence at which the citizens of the Union concerned are to exercise these rights. The Directive therefore avoids the words used in national legislation, such as "district," "commune," or "municipality."

For the sake of consistency, particularly with Article 198a of the Treaty, the Directive uses the term "basic local government unit" to designate that administrative body which under the domestic legislation forms the basic level of government in the particular Member State.

In all Member States these bodies are given a measure of political and administrative independence from central government by the constitution or by legislation. There is usually a clause conferring certain powers on them either in general terms or over certain specified matters. Within their own sphere they manage certain public affairs of local interest on their own responsibility. Obviously their powers are confined to their own territory. There is an important distinction between these basic local government units and the decentralized agencies of central government which may provide some services at local level. It has to be borne in mind, though, that the territory a local government unit will often be an administrative unit for central government purposes too, and that the municipal executive may represent the central government there or exercise certain central government powers.

In all Member States these units have bodies to run them which are elected by direct universal suffrage. There is usually a representative council with power to take decisions, whose term of office varies between four and six years. There is also an executive, whose powers, composition and appointment are very varied.

Where a unit of this kind is subdivided under the law of the particular Member State into administrative units subordinate to it, with certain specific powers, and governing bodies elected by direct universal suffrage, the subordinate units are considered to form an integral part of the basic unit.

Basic local government units and the subdivisions referred to in Article 2(1) are listed in the Annex to the Directive.

2. Given the wide differences in local government between the Member States, and the different versions of Article 8b(1) of the Treaty in different languages, there is a need for a definition of the words "municipal elections". If necessary a uniform interpretation of these words might have to be secured from the Court of Justice. Politically speaking, the citizens concerned are to be guaranteed a hard core of political participation in the basic local government unit in their Member State of residence. This will also ensure the fundamental reciprocity which must exist between Member States.

   (a) Paragraph 2 states that the elections referred to include elections to local representative councils, and also the election of the head of the local executive and of any other members of the local executive, where there are such elections.

   (b) The municipal elections specified are all elections by direct universal suffrage, and not elections inside the local representative council or the local executive. It is interesting to note here that there are four Member States (Germany, Italy, Portugal and Spain) where the head and in some cases the members of the local executive are elected or may be elected by direct universal suffrage; they are elected by the council in six other Member States (Denmark, Germany, Greece, France, Ireland and the United Kingdom), and are appointed by the crown in three (Belgium, Luxembourg and the Netherlands).

As the definition of municipal elections does not include elections inside the local representative council, and the Directive does not affect the legislation in each Member State dealing with the powers and responsibilities of these councils and their members, the Directive does not prevent those Member States where local councillors directly or indirectly elect members of a house of parliament from providing that councillors who are nationals of other Member States are not to take part in that election.

(c) As far as the level of local government is concerned, the definition includes only elections to the basic local government units referred to in paragraph 1, which is in line with Article 8b(1) of the Treaty. In those Member States where there are subordinate local authorities, the Treaty will also apply to the election of representatives for these units by direct universal suffrage.

3. In defining the concept of the Member State of residence, Article 2(3) reproduces the relevant phrase in Article 8b(1) of the Treaty. On the other hand, the concept of the home Member State is defined in Article 2(4) on the criterion of nationality. These definitions are identical to those in Article 2(3) and (4) of Council Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals[28].

4. In defining the electoral roll, Article 2(5) 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(5) does not rule out the electoral roll being subdivided into categories of voter. This definition is identical to that in Article 2(7) of Directive 93/109/EC.

5. 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(6) refrains from any harmonization and introduces the concept of the reference date, which is defined in terms of 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. This definition is identical to that in Article 2(8) of Directive 93/109/EC.

6. In defining the concept of formal declaration, Article 2(7) 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 8 and 9 of the Directive. Furthermore, inaccuracy in the declaration must make the person concerned liable to penalties in accordance with the

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(28) OJ L 329, 30.12.1993, p. 34.

national law applicable. When they transpose the Directive, it will be for the Member States to spell out the form the declaration has to take.

This definition is identical to that in Article 2(9) of Directive 93/109/EC.

Article 3: Conditions governing the right to vote and to stand as a candidate

Within the framework established by Article 8b(1) 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 municipal elections 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 Treaty defines the concept of Union citizenship and the definition is spelled out in the Declaration on nationality of a Member State annexed to the Treaty on European Union, point (a) of Article 3 merely refers to that provision of the 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 Treaty, but of the law of each Member State.

   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 law of the Member State which has a special relationship with the overseas country or territory concerned. Consequently, persons originating in overseas countries or territories who possess, under the law 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 in municipal elections there. It is thus for the individual Member States to specify, if it is 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.

2. Within the framework established by Article 8b(1) of the Treaty, point (b) of Article 3 applies the principle of equality and non-discrimination between national and non-national voters and, at the same time, the principle of interfering as little as possible with Member States' electoral systems. Under these systems, the other conditions to be met in order to have the right to vote and to stand as a candidate concern, in particular, age and residence.

   After the condition of Union citizenship, that of residence in the Member State in which the right to vote or to stand as a candidate is exercised is the second key element in the guarantee provided by Article 8b(1) of the Treaty. This condition highlights the link

with the right to move and reside freely enshrined in Article 8a of the Treaty. Although, unlike the concept of citizenship, residence is not defined in the Treaty itself, it is not appropriate 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 and non-national voters and for national and non-national candidates to be complied with more effectively. At the same time, the Directive avoids interfering, in this area, with Member States' electoral systems.

Nor is it appropriate to determine uniformly a minimum period of residence in the territory of the host Member State, it being clear from the Treaty that the concept of residence is characterized, not by quantitative, but by qualitative factors. It is significant that the Intergovernmental Conference did not adopt any of the suggestions made along those lines[29]. Politically, it is important to note that any condition as to a minimum period of residence would deprive a considerable number of Union citizens of the right to vote and to stand as a candidate in their Member State of residence. Though deprived of these political rights, such citizens would still be subject to the same obligations as everyone else living in their basic local government unit, notably as regards local taxes. Like other residents there, they would be subject also to decisions taken either by the representative council or by the executive in the exercise of local autonomy and affecting their daily lives. Lastly, the smooth integration of non-national citizens requires that they be able to take part not only in the economic and social life of the local government unit in which they live but in its political life as well, and that, in this context, they be allowed to assume joint responsibility for local public affairs.

3. 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 they 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 voter or person entitled to stand as a candidate within the scope of Article 3 who wishes effectively to take part in municipal elections in his Member State of residence must comply with the relevant national rules applicable to nationals.

4. In the light of the rules on ineligibility in Article 5, Article 3 provides that the right to vote and to stand as a candidate is recognized only subject to the other provisions of this Directive.

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(29) Article C(2) of the initial Presidency draft provided that the conditions governing the exercise of the right in question, which was to be defined in accordance with Article F, should provide inter alia for a minimum period of residence. Similarly, the Intergovernmental Conference did not accept the following wording suggested by the Commission (SEC(91)500 = Conf.UP 1740/91): "Every Union citizen shall have the right to vote and stand as a candidate at municipal and European elections held in the place in which he has habitually resided for at least [...] years".

Article 4: Residence

Article 4 deals with the condition of residence. It does not define the term uniformly, however, but refers instead to the law of each Member State. This enables the principle of equal conditions for national and non-national voters and for national and non-national candidates to be complied with more effectively.

1. The laws of some Member States require that the person concerned must have completed a minimum period of residence there; Article 4 seeks to prevent any discrimination against non-national voters and 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 4 makes a period of residence in other Member States, for example in the home Member State, equivalent to a period spent in the Member State of residence.

2. Under the laws of the Member States, the condition of residence relates as a rule to the geographical location where the person concerned ordinarily resides in the Member State in question and does not take account of any further residences he may have in other Member States. This being so, Article 4 seeks to prevent any discrimination against national voters and candidates. Such discrimination could arise as a result of their having to provide proof that their principal residence is situated in the local government unit in which they wish to vote, whereas non-national citizens of the Union could vote or be elected on the basis of their only residence in that Member State, despite the fact that it is actually their secondary residence given that their permanent centre of interests is in another Member State, such as their home Member State. If, under the law of a Member State, for a person to be able to vote in a local government unit his principal residence must be located in that unit, Article 4 provides that fulfilment of this condition must be verified taking into account any other residences the person concerned may have in other Member States.

3. Since Article 4 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 paragraph does not affect any specific conditions laid down by a Member State in respect of the exercise of these rights by all voters and persons entitled to stand as candidates, whether they be nationals or non-nationals, in a particular constituency or locality at a particular municipal election, and normally linked to a minimum period of residence in that constituency or locality. Such conditions are justified as a rule by the administrative requirements of the proper drawing-up of electoral rolls and the proper organization of elections. Although such minimum periods of residence vary from one Member State to another and are sometimes longer in respect of entitlement to stand as a candidate, they do not normally exceed one year.

Article 5: Ineligibility

1. Article 5 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, which concerns the legal impossibility of combining the holding of elected municipal office in the Member State of residence with other offices in the home Member State, is for its part dealt with in Article 6.

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 since, in the absence of international conventions, such court decisions are not normally enforceable in the Member State of residence, Article 5 lays down the principle that Member States are entitled to apply both sets of rules concurrently. This possibility is not incompatible with the Community principle of equality and 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(1) of the Treaty.

   Substantively, the option of concurrent application is justified on the ground that the Member State of residence may legitimately wish to ensure 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 elsewhere. To safeguard the reputation of representative councils and, where appropriate, of municipal executives, it may be advisable to take steps to prevent a citizen of the Union who has been deprived of his right to stand as a candidate from sitting in, or even campaigning for election to, such bodies. Clearly, the risks of the reputation of elected municipal bodies being undermined are greater and more visible in the case of disqualification from standing as a candidate than in that of disqualification from voting.

   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.

3. To implement these rules on concurrent application, Article 9(2) permits 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 5(2) permits the Member State of residence to declare an application to stand as a candidate inadmissible where the person is unable to produce the attestation. Article 9(2) provides for a procedural requirement, and Article 5(2) allows a purely formal control measure which in most Member States will normally be carried out before the election. Article 5(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 the issue, however, it is desirable that disqualification should wherever possible be declared before the election campaign begins.

4. In view of the fact that the local executive also participates in the exercise of official authority and in the safeguarding of the general interest in the territory of a basic local government unit, as defined by the Court of Justice in its judgments on Articles 48(4) and 55 of the Treaty, Member States, in full compliance with Community law, may provide that only their own nationals may hold the offices of head or member of the

executive of a basic local government unit. Consequently, the members of the local executive are treated in the same way, whether they be elected directly or indirectly.

Article 6: Incompatibility

1. Paragraph 1 applies the principle of equality and non-discrimination between national and non-national voters and states that Article 6 does not affect the rules on incompatibility currently in force in each Member State. In particular, Article 6 leaves untouched the arrangements in some Member States where the concept of incompatibility exists legally in the form of ineligibility by operation of law, as a result of which the persons concerned are prevented from standing as candidates in municipal elections.

2. In order to apply as effectively as possible the principle of equality between citizens of the Union who are nationals and those who are non-nationals, paragraph 2 stipulates that Member States may provide that the holding by a non-national of elected municipal office is also incompatible with offices held in another Member State which are equivalent to those which, under domestic law, give rise to a problem of incompatibility. This solution is justified by the specific situation of the persons concerned. It may be necessary to avoid a situation in which the holding of elected municipal office in the Member State of residence conflicts with certain offices which the person concerned might hold in his home Member State; the question may arise whether the same person is capable of properly representing at the same time the municipal electorate in his Member State of residence and in his home Member State.

Article 7: Registration on request, obligation to vote

1. In order to respect the freedom of the Union citizens concerned to choose whether or not to take part in municipal elections in their Member State of residence, Article 7(1) provides that a voter within the scope of Article 3 can be entered on the electoral roll of the Member State of residence only if he requested it beforehand. The importance of this provision is due above all to the fact that voting is compulsory in a number of Member States.

2. In accordance with the principle of equality between national and non-national voters, Article 7(2) makes it clear that, where a voter within the scope of Article 3 has asked to be 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 8: Formal requirements concerning registration as a voter

1. Article 8(1) deals with the time within 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, voters within the scope of Article 3 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, voters within the scope of Article 3 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 voters and on the other of the need for proper organization of the election.

2. Article 8(2) deals with the documents which a voter within the scope of Article 3 must produce in support of his application: these are to be the same as those required of a national. In order that it can be verified whether the requirements of Article 3 are met, however, voters within the scope of that article have to be asked for a limited number of further documents. The aim being to facilitate as far as possible 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 be based on the principle that statements made by the persons concerned should be taken on trust, Article 8(2) requires non-national voters merely to produce a formal declaration containing a limited number of particulars enabling the home Member State to identify them easily and verify whether the requirements of Article 3 are met.

   In order to facilitate even further the identification of persons asking to be entered on the electoral roll, the Member State of residence may, under paragraph 3, require one more supporting document.

3. Article 8(3) is aimed at preserving the freedom of choice of voters within the scope of Article 3 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 voters by the Member States without imposing any unnecessary administrative formalities on voters. Consequently, once he has expressed his wish to exercise his right to vote in his Member State of residence, a voter within the scope of Article 3 will not be required to resubmit the written application referred to paragraph 1 before each election; unless he makes it clear that he wishes to be removed from it, he will remain on the electoral roll in the Member State of residence under the same conditions as national voters.

Article 9: Formal requirements concerning applications to stand as a candidate

1. Article 9(1) deals with the documents which a person entitled to stand as a candidate within the scope of Article 3 is to produce when he submits his application to stand; these are to be the same as the documents required of a national. In order to verify whether the requirements of Article 3 are met, however, Article 9(1) requires non-national candidates to produce a limited number of further documents, but these are kept to a strict minimum. The layout of Article 9(1) is identical to that of Article 8(2).

2. For the purpose of applying the rule on concurrent application of disqualifications from standing as a candidate laid down in Article 5, Article 9(2) provides that the Member State of residence may require a person entitled to stand as a candidate within the scope of Article 3 to produce, in support of his application, an attestation from the competent administrative authorities in 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 for each Member State to decide which of its authorities are to be competent for the purposes of Article 9(2), and in particular to determine what role could be played here by its consular authorities.

The Member State of residence may also require the person concerned to produce a limited number of additional supporting documents in order to help identify him or check that he does not hold any incompatible office within the meaning of Article 6(2). This applies to those Member States which have adopted provisions under Article 6(2) and in particular those in which, under existing domestic law, persons holding such offices may not stand as candidates.

Article 10: Appeals

1. The notification required by Article 10(1) serves to enable appeals to be lodged under Article 10(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 10(2) provides that voters and persons entitled to stand as candidates within the scope of Article 3 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 11: Provision of information

As voters and persons entitled to stand as candidates within the scope of Article 3 have to meet the same conditions as nationals as well as certain specific conditions, particularly as regards supporting documents, Article 11 requires the competent authorities in 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 12: 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), (b) and (c). The proportion is to be calculated on the basis of statistics for all Union citizens of voting age residing in the Member State on the date indicated.

   Points (a), (b) and (c) in paragraph 1 limit the possible derogations, which may not go beyond the requirement that voters and persons entitled to stand as candidates within the scope of Article 3 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 representative council of the municipality is elected. As far as the right to vote is concerned, the minimum period of residence may not be longer than one such term. The Member State concerned may also take, with due regard for Community law, appropriate measures concerning the composition of the lists of candidates aimed at facilitating the integration of non-national Union citizens in the host country.

2. Furthermore, problems specific to a Member State and warranting derogations under Article 8b(1) of the Treaty can stem from the fact that, in certain Member States, nationals of other Member States already have the right to vote not only in municipal elections but also in elections to the national parliament.

   In one Member State, citizens of a neighbouring Member State are not treated as aliens and have had the right to vote and to stand as candidates in parliamentary elections and local elections since 1948 under conditions that are exactly the same in both form and substance as those applying to nationals.

   In the neighbouring Member State, persons born in the other Member State have not been treated as aliens since 1935. 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 reciprocal basis, nationals of all other Member States have the right to vote in elections to the national parliament.

   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, and on the electoral rolls for local elections, which are both established automatically in both the Member States.

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 5 to 11 of this Directive.

3. The clause in Article 8b(1) 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 12(3) accordingly establishes a system of regular reports.

   In order to enable the Commission, 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 13: Established rights

Since, in some Member States, all Union citizens or the nationals of certain other Member States already have the right to vote in local elections and may therefore be entered on the electoral rolls even this Directive enters into force, their established rights need to be recognized and it must accordingly be provided that their registration is not affected by this Directive. When the first municipal elections to which this Directive is applicable are held, those concerned need neither submit an application within the meaning of Article 7 nor produce the supporting documents required by Article 8. Under Article 8(3), this state of affairs may be prolonged beyond those elections if existing national law so permits.

Proposal for a
COUNCIL DIRECTIVE

laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 8b(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Committee of the Regions,

Whereas the Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe; whereas one of the Union's 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 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;

Whereas the right to vote and to stand as a candidate in municipal elections in the Member State of residence, embodied in Article 8b(1) of the Treaty establishing the European Community, is an instance of the application of the principle of equality and 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 application of Article 8b(1) does not presuppose complete harmonization of Member States' electoral systems; whereas the aim of that provision is essentially to abolish the nationality requirement to which most Member States currently make the exercise of the right to vote and to stand as a candidate subject; whereas, moreover, to take account of the principle of proportionality set out in the third paragraph of Article 3b of the Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b(1);

Whereas the purpose of Article 8b(1) is to ensure that all citizens of the Union, whether or not they are nationals of the Member State in which they reside, can exercise in that State their right to vote and to stand as candidates in municipal elections 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 non-nationals must not be required to fulfil any special conditions unless, exceptionally, different treatment of nationals and non-nationals is justified by circumstances specific to the latter distinguishing them from the former;

Whereas Article 8b(1) recognizes the right to vote and to stand as a candidate in municipal elections 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 Union citizen is a national; whereas the freedom of Union citizens to choose whether or not to take part in municipal elections in the Member State in which they reside must be respected; whereas if they wish to exercise their right to vote there they should manifest that wish;

Whereas the way in which local government operates in the different Member States is a reflection of different political and legal traditions and is characterized by an abundance of structures; whereas the term "municipal election" does not mean the same thing in every Member State; whereas the object of this Directive must therefore be clarified by defining the term;

Whereas municipal elections are elections by direct universal suffrage at the level of basic local government units and their subdivisions; whereas the term covers elections by direct universal suffrage both to representative councils of municipalities and of members of a municipal executive; whereas it does not include elections within municipal bodies and elections, whether direct or indirect, of members of a parliamentary assembly by those holding municipal office;

Whereas disqualification may be ordered by an individual decision of the authorities either of the Member State of residence or of the home Member State; whereas, in view of the political significance of the holding of elected municipal office, Member States should be entitled to take the steps necessary to ensure that a person who has been deprived of his right to stand as a candidate in his home Member State is not enabled to recover that right merely by virtue of his residence in another Member State; whereas this problem, which is specific to non-national candidates, is important enough to justify a provision under which those Member States which consider it necessary are allowed to make such candidates subject not only to the rules on disqualification of the Member State of residence but also to those of the home Member State; whereas, in view of the principle of proportionality, it will be sufficient if the right to vote is made subject only to the rules on disqualification from voting of the Member State of residence;

Whereas, since the duties of the head and members of the executive of basic local government units involve taking part in the exercise of official authority and in the safeguarding of the general interest, Member States should be able to reserve these offices for their nationals;

Whereas, where Member States' laws provide that the holding of elected municipal office is incompatible with holding other offices, Member States should be able to extend their scope to include equivalent offices held in other Member States;

Whereas any derogation from the general rules of this Directive must be warranted, pursuant to Article 8b(1) of the Treaty, 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; whereas 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; whereas it is important, therefore, that this Member State be able to 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 whereas the formalities provided for in this Directive can consequently be eased;

Whereas some Member States already grant the right to vote and to stand as a candidate in local elections to all citizens of the Union or to the nationals of certain other Member States; whereas these established rights must be respected by exempting such persons from certain formalities provided for in this Directive,

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 municipal elections.

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

Article 2

For the purposes of this Directive:

1. "basic local government unit" means the administrative entities listed in the Annex which, in accordance with the laws of each Member State, contain bodies elected by direct universal suffrage and empowered to administer, at the basic level of political and administrative organization, certain local affairs on their own responsibility;

2. "municipal elections" means elections by direct universal suffrage to appoint the members of the representative council and, where appropriate under the laws of each Member State, the head and members of the executive of a basic local government unit;

3. "Member State of residence" means the 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. "electoral roll" means the official register of all voters entitled to vote in a given basic local government unit or in one of its subdivisions, 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;

6. "reference date" means the day or 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;

7. "formal declaration" means a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable.

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; and
(b) is not a national of the Member State of residence, but 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 municipal elections in the Member State of residence in accordance with this Directive.

Article 4

1. 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 territory of that State, voters and persons entitled to stand as candidates within the scope of Article 3 shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States.

2. If under the laws of the Member State of residence its own nationals may vote or stand as candidates only in the basic local government unit in which they have their principal residence, voters and persons entitled to stand as candidates within the scope of Article 3 shall also be subject to this condition. For the purpose of determining the principal residence of such persons account shall be taken of any residences they may have in other Member States.

3. Paragraph 1 shall not affect the provisions of each Member State under which the exercise by any person of the right to vote and to stand as a candidate in a given basic local government unit is subject to his having spent a minimum period as a resident in that unit.

Article 5

1. Member States of residence may provide that any citizen of the Union who, through an individual decision following within either civil law or criminal law, has been deprived of his right to stand as a candidate under the law of his home Member State, shall be precluded from exercising that right in municipal elections.

2. An application from any citizen of the Union to stand as a candidate in municipal elections in the Member State of residence may be declared inadmissible where that citizen is unable to provide the attestation referred to in Article 9(2).

3. Member States may provide that only their own nationals may hold the office of elected head or member of the executive of a basic local government unit.

Article 6

1. Persons entitled to stand as candidates within the scope of Article 3 shall be subject to the same conditions concerning incompatibility as apply, under the laws of the Member State of residence, to nationals of that State.

2. Member States may provide that the holding of elected municipal office in the Member State of residence is also incompatible with the holding of offices in other Member States which are equivalent to those which give rise to incompatibility in the Member State of residence.

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

Article 7

1. A voter within the scope of Article 3 shall exercise his right to vote in municipal elections 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, voters within the scope of Article 3 who have been entered on the electoral roll there shall be obliged to vote.

Article 8

1. Member States shall take the necessary measures to enable a voter within the scope of Article 3, who has so requested, 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 voter within the scope of Article 3 shall produce the same documents as a voter who is a national. He shall also produce a formal declaration stating his nationality and his address in the Member State of residence.

   The Member State of residence may also require a voter within the scope of Article 3 to produce a valid identity document.

3. Voters within the scope of Article 3 who have been entered on an electoral roll in the Member State of residence 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. If such voters move to another basic local government unit in the same Member State, they shall be entered on the electoral roll of that unit under the same conditions as voters who are nationals.

Article 9

1. When he submits his application to stand as a candidate, a person entitled to stand as a candidate within the scope of Article 3 shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating his nationality and his address in the Member State of residence.

2. The Member State of residence may also require a person entitled to stand as a candidate within the scope of Article 3 to:

   - produce, when submitting his application to stand as a candidate, an attestation from the competent administrative authorities in 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;

- produce a valid identity document;

- state in the formal declaration he produces in accordance with paragraph 1 that he holds no office which is incompatible within the meaning of Article 6(2);

- indicate his last address in his home Member State.

Article 10

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 should his application to stand as a candidate be rejected, the person concerned shall be entitled to legal remedies on similar terms as the laws of the Member State of residence prescribe for voters and persons entitled to stand as candidates who are its nationals.

Article 11

The Member State of residence shall inform voters and persons entitled to stand as candidates within the scope of Article 3 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.

Chapter III: Derogations and transitional provisions

Article 12

1. Where, on 1 January 1996, in a given Member State, the proportion 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, by way of derogation from this Directive:

   (a) restrict the right to vote to voters within the scope of Article 3 who have resided in that Member State for a minimum period, which may not be longer than the term for which the representative council of the municipality is elected;

   (b) restrict the right to stand as a candidate to persons entitled to stand as candidates within the scope of Article 3 who have resided in that Member State for a minimum period, which may not be longer than twice the term for which the representative council of the municipality is elected; and

   (c) take appropriate measures with regard to the composition of lists of candidates to encourage in particular the integration of non-national citizens of the Union.

2. Where, on 1 January 1996, the laws of a Member State prescribe that the nationals of another Member State who reside there have the right to vote for the national parliament of that State and, for that purpose, may be entered on the electoral roll of that State under exactly the same conditions as national voters, the first Member State may, by way of derogation from this Directive, refrain from applying Articles 5 to 11 in respect of such persons.

3. By 31 December 1998 and thereafter every six years, the Commission shall present to the Council and to the European Parliament a report in which it shall check whether the grant to the Member States concerned of a derogation pursuant to Article 8b(1) 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 13

Citizens of the Union who, on 1 January 1996, already have the right to vote in municipal elections in the Member State of residence and whose names appear on an electoral roll in that State shall not be subject to the formalities laid down in Article 8 at the time of the first municipal elections to which this Directive applies in accordance with Article 14.

Chapter VI: Final provisions

Article 14

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1996. They shall immediately inform the Commission thereof.

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

Article 15

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 16

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

to the Directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals

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"Basic local government unit" within the meaning of Article 2(1) of this Directive means any of the following:

. **in Denmark:**

- *amstkommune, Kobenhavns kommune, Frederiksbergs kommune,*
- *primærkommune,*

. **in Belgium:**

- *commune/gemeente/Gemeinde,*

. **in Germany:**

- *kreisfreie Stadt bzw. Stadtkreis, Kreis,*
- *Gemeinde, Bezirk in der Freien und Hansestadt Hamburg und im Land Berlin,*
- *Stadt , Gemeinde oder Ortsbezirke bzw. Ortschaften,*

. **in Greece:**

- *κοινότης (koinotis),*
- *δήμος (dimos),*

. **in Spain:**

- *municipio,*

. **in France:**

- *commune,*
- *arrondissement dans les villes déterminées par la législature interne, section de commune,*

. **in Ireland:**

- *county, county borough,*
- *urban district, non county borough, town,*

. **in Italy:**

- *comune,*
- *circoscrizione,*

. **in Luxembourg:**

- *commune,*

. **in the Netherlands:**

- *gemeente,*
- *deelgemeente,*

. **in Portugal:**

- *município,*
- *freguesia,*

. **in the United Kingdom:**

- *counties in England and Wales, regions in Scotland,*
- *districts, metropolitan districts, London boroughs, Isles authorities,*
- *parishes in England, communities in Scotland and Wales.*

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