II

(Preparatory Acts)

COMMISSION

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

(94/C 105/09)

COM(94) 38 final — 94/0034(CNS)

(Submitted by the Commission on 28 February 1994)

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 States 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 IV

Final provisions

Article 14

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the 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 20th day following that of its publication in the *Official Journal of the European Communities.*

Article 16

This Directive is addressed to the Member States.

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

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

— *in Denmark:*

  — amtskommune, Københavns 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,

  — entidad de ámbito territorial inferior al municipal,

— *in France:*

  — commune,

  — arrondissement dans les villes déterminées par la législation 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:*

— conselhos, municípios,

— freguesias,

— *in the United Kingdom:*

— counties in England und Wales, regions in Scotland,

— districts, metropolitan districts, London boroughs, isles authorities,

— parishes in England, communities in Scotland and Wales.

Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 3438/92 laying down special measures for the transport of certain fresh fruit and vegetables originating in Greece with regard to its period of application

(94/C 105/10)

(Text with EEA relevance)

COM(94) 89 final — 94/0075(CNS)

(Submitted by the Commission on 23 March 1994)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Council Regulation (EEC) No 3438/92 of 23 November 1992 (1) lays down special measures for the transport of certain fresh fruit and vegetables originating in Greece to Member States other than Italy, Spain and Portugal in 1992 and 1993;

Whereas, given that the conflict in the territories of the former Yugoslavia is continuing, the measures providing for temporary assistance for operators having to avoid those territories should be extended for a maximum of one year,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2 (1) of Regulation (EEC) No 3438/92, the words 'in 1992 and 1993' are replaced by the words 'in 1992, 1993 and 1994'.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply from 1 January 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

(1) OJ No L 350, 1. 12. 1992, p. 1.