

The Right to Vote and Stand for Election to the European Parliament

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Introduction

The elections of the European Parliament will be held in June 1994; these elections are the first direct elections to be held in the framework of the European Union. For the first time the citizens of the Union residing in a Member State of which they are not nationals will have the right to vote and stand as candidates in those elections in the Member States in which they reside. Furthermore, the creation of political parties at supranational level will enable Union citizens to express freely their ideas and undertake political action.

Granting voting rights in the elections to the European Parliament to Union citizens who reside in another Member State tackles not only a theoretical problem but also a very practical one, as the number of Union citizens who have benefited from the freedom of movement and establishment provided for by the EEC Treaty are estimated at five million.

The number of resident non-nationals who are citizens of other Member States is approximately 1.3 million in Germany and France, 880,000 in the United Kingdom, 541,000 in Belgium, 240,000 in Spain, 163,000 in The Netherlands, 150,000 in Italy, 105,000 in Luxembourg, 62,000 in Ireland, 50,000 in Greece, 29,000 in Portugal and 27,000 in Denmark.¹ Approximately 1.2 million Italians, 840,000 Portuguese, 630,000 Irish, 470,000 Spaniards, 400,000 Britons, 360,000 Greeks, 300,000 French, 290,000 Germans, 240,000 Dutch, 130,000 Belgians, 40,000 Danes and 11,000 Luxemburgers are established outside their home Member States.

Before the Maastricht Treaty came into effect, residents who were nationals of other Member States could also vote in the Member States of residence only if they were residing in Belgium, Ireland and The Netherlands, subject to certain conditions. Furthermore, all Irish nationals and Commonwealth citizens have the right to vote in the United Kingdom. On the other hand, the right to stand as a candidate is reserved in ten Member States for nationals only. In Italy, nationals of other Member States may stand for election, even if they do not live in Italy, while the same applies in the United Kingdom to Irish nationals and Commonwealth citizens.

Historical Background

The political debate on granting voting rights to nationals of Member States who are residing in another Member State of the European Community traces its origins as far back as 1960 when the European Parliament proposed, in its draft convention on election by direct universal suffrage, that Member States should grant voting rights to their nationals living in another Member State. As this draft was not favourably received by the Council, the European Parliament backed down and replaced it in 1975 by a new draft which did not deal with the right to vote and stand for election of European citizens living in a Member State of which they were not nationals.

The Act concerning the election of the representatives of the European Parliament by direct universal suffrage, which was adopted by the Council in 1976, was based mainly on the latter 1975 European Parliament draft and did not foresee any voting rights in this respect either. In 1977, the European Parliament called upon the Member States to ensure that their nationals living in another Member State could exercise their right to vote in the direct elections of the European Parliament and urged them to agree on voting *in loco* by allowing their citizens to

vote in the country in which they were residing on the date of the elections to the European Parliament.

In 1982, the European Parliament adopted its draft act on certain provisions relating to a uniform electoral procedure for the elections to the European Parliament. To this extent, it proposed that Member States should grant their nationals the right to vote, irrespective of their place of residence, provided that this is in a Member State.

In 1988, the Parliament urged the Community to adopt measures providing nationals of any Member State with the right to stand for election to the European Parliament in each and every Member State.

The Intergovernmental Conference on Political Union

The debate on voting rights in the elections to the European Parliament was continued in the framework of the Intergovernmental Conference on Political Union. With respect to the problem of the democratic deficit in the Community, the Belgian Memorandum on Political Union stated that the European Parliament should be encouraged to draw up a uniform procedure for the European elections, which could enable all Community citizens living in the Community to take part in the elections whatever their nationality.

Responding to the dialogue on Political Union, the Greek Memorandum emphasized that a People's Europe with a common legal system was expected to strengthen its citizens' feeling of belonging to one legal community aimed at the harmonious development of their potential. To this end, the Greek Memorandum urged for recognition by the Treaty of the concepts of European citizen and basic human rights. Accordingly, citizens living in another Member State should gradually be granted the right to vote in elections to the European Parliament in conjunction with the adoption of a uniform electoral procedure.

In its Resolution of 11 July 1990 on the Intergovernmental Conference, the European Parliament called for provisions to be incorporated into the Treaties providing for the development of common forms of European citizenship through measures such as voting rights for Community citizens in European elections in the Member States of residence.

On 24 September 1990, the Spanish Delegation issued its note entitled 'The Road to European Citizenship', stating *inter alia* that in the case of political participation in elections to the European Parliament, this right would have to involve two processes: on the one hand, adoption of a uniform electoral procedure throughout the Community as indicated in Article 138(3) of the EEC Treaty and, on the other hand, gradual recognition of the right of all citizens to vote in their place of residence.

Expressing its views on political union, the Portuguese Delegation paid much attention to European citizenship and attached particular importance to the free movement of persons without hindrance, the right to abode for all Community citizens and the right to participate in European elections.

On 14 and 15 December 1990, the European Council was held in Rome. It expressed its satisfaction on the consensus reached among Member States that the concept of European citizenship should be examined. It therefore asked the Intergovernmental Conference to consider the extent to which civic rights, such as participation in elections to the European Parliament in the country of residence, could be enshrined in the Treaty.

Following this European Council decision, the Spanish Delegation presented its proposal on European citizenship. Article 7 of the Spanish draft text on European citizenship provided that

every citizen should have the right to take part in the political life of the place where he lives and, in particular, the right to vote and stand for local elections and the elections to the European Parliament.

Article X5 of the Commission draft text on Union Citizenship also envisaged that any Union citizen will have the right to vote and stand as a candidate at municipal elections and European elections held in the place in which he has habitually resided for a certain number of years, albeit not specified exactly in the draft, without prejudice to the option of exercising those rights, if he so wishes, in the Member State of which he is a national, providing he enjoys them under national law.

On the bases of these proposals, the Luxembourg Presidency incorporated provisions on Union Citizenship in Articles A, B, C, D, E and F of the draft Treaty on European Union. Voting rights for the elections to the European Parliament were provided for in Article C(2), which later became Article 8b(2) of the EC Treaty. Article 8b(2) of the EC Treaty provides that: Without prejudice to Article 138(3) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.'

The Council Directive

Aims and Scope

On 6 December 1993, the Council issued Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and 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.²

The Directive is based on the following policy options:

- minimum rules, avoiding any harmonization of national electoral systems;
- non-discrimination between nationals and non-nationals;
- free choice by the citizen of the place in which he wishes to vote or to stand as a candidate;
- no one to vote twice or stand as a candidate in two places;
- mutual recognition of rules on disqualification.

The aim of the Directive is to implement Article 8b(2) of the EC Treaty and to ensure the effective exercise of the Union's fundamental right to vote and stand as a candidate in elections to the European Parliament. To this extent, it strengthens the democratic legitimacy of the European Parliament and contributes to reducing the democratic deficit in the Union. On the other hand, it is very clear that the Directive is not aimed at harmonizing the electoral laws of the Member States and, in this respect, it does not cover the right to vote of Union citizens residing in their home Member States, the right to vote of Union citizens wishing to vote in a Member State which is neither that of origin nor that of residence, etc.

Moreover, pursuant to Article 1(2) of the Directive, this Directive does not affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory. This provision is very important as all Member States, with the exception of Ireland, have adopted laws entitling their nationals living abroad to vote. Yet the solutions pursued by national laws are far from being uniform. While Denmark, The Netherlands and Portugal grant such voting rights only to those of their expatriate nationals who are living in another Member State, Belgium, Greece, Spain, France, Italy and Luxembourg continue to allow their nationals to vote in the elections to the European Parliament even if they are living outside the Community.

It follows from the Preamble to the Directive that it takes into account the principle of proportionality set out in Article 3b(3) of the EC Treaty and it does not go beyond what is necessary to achieve the objective of Article 8b(2) of the EC Treaty.

The Directive lays down the detailed arrangements whereby the citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and stand as candidates there in elections to the European Parliament. Accordingly, any person who on the reference day is a citizen of the Union but not a national of the Member State of residence shall have the right to vote and stand for election in the elections to the European Parliament in the Member State of residence, provided he satisfies the same conditions with respect to these rights as that State imposes by law on its own nationals, and under the condition that he has not been deprived of those rights pursuant to Articles 6 and 7 of the Directive. This principle of non-discrimination between nationals and non-nationals is further safeguarded by the provision that where, in order to stand as a candidate, nationals of the Member States of residence must have been nationals for a certain minimum period, as in the case of Germany, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

It is clear from Article 1 of the Directive that two principles are laid down:

1. the requirement of citizenship of the Union, and
2. the requirement of residence.

Citizenship of the Union

The concept of citizenship is clarified by the Treaty on European Union. According to Article 8 of the EC Treaty, every person holding the nationality of a Member State shall be a citizen of the Union. As opposed to the United States' citizenship, European citizenship is contingent upon having the nationality of a Member State. According to Article XIV of the United States Constitution, all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.

In the framework of the European Union, the case is just the opposite. No one can acquire European citizenship if he lacks the nationality of a Member State.³ The right of states to determine unilaterally who their nationals are is recognized by the 1930 Hague Convention on certain questions relating to nationality laws. This was confirmed in 1955 by the International Court of Justice in the *Nottebohm* case when it held *inter alia* that it was for every sovereign state to settle by its own legislation rules relating to the acquisition of its nationality, and that nationality was within the domestic jurisdiction of the states.⁴ This solution was also followed within the context of the European Union by virtue of the Declaration on Nationality of a Member State', annexed to the Maastricht Treaty.

The current situation in the Union regarding the laws of Member States on nationality is far

from being uniform, although the Court of Justice of the European Communities paved the way towards the 'Communitarization' of nationality laws of Member States in its judgment of 7 July 1992, in the *Micheletti* case, in which it held *inter alia* that the competence of each Member State to define the conditions of acquiring and losing nationality must be exercised with due respect to Community law.⁵

Residence

Unlike the concept of Union citizenship, the concept of residence is not clarified in the Treaty on European Union. Furthermore, the Directive does not provide a uniform definition of residence.

In the absence of any alignment of the legislation of the Member States in this respect, leaving the concept of residence undefined, compliance with the principle of equal conditions for national voters and Community voters is achieved more effectively, according to the Commission, while any interference in this area with Member States' electoral systems is avoided.

The Directive also refrains from determining the voting age, although in all Member States it is currently 18 years, and the minimum age for standing as a candidate, which varies between 18 and 25 years in the framework of the Union.

Voting Rights

Article 4 of the Directive provides that Community voters can exercise the right to vote in the elections to the European Parliament, either in the Member State of residence or in their home Member State, introducing simultaneously the principle of a single vote and a single candidature'. As elections to the European Parliament are intended to produce a single Community institution, no person may vote more than once in the same election or may stand as a candidate in more than one Member State in the same election.

Article 5 of the Directive provides that if, in order to vote or stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States, including their home Member State.

Ineligibility and Disqualification from Voting

Ineligibility to stand as a candidate is dealt with in Article 6 of the Directive. It mainly concerns the state of a Union citizen who has been legally barred from standing as a candidate in elections. Disqualification from standing as a candidate is well known in the laws of the Member States, though the situation is far from being uniform. In certain Member States, criminal convictions can lead to disqualification. Such is the case *inter alia* in Belgium, Greece or Germany.

According to the European Parliament the preservation of its reputation makes the provision of certain conditions of ineligibility indispensable. Accordingly, the Directive employs two principles:

1. The extra-territorial effect of disqualification, and
2. The principle of concurrent application of disqualification.

In the framework of the Community, court decisions of the home Member State disqualifying persons from standing as candidates under civil or criminal law of this Member State are not normally enforceable. Employing the principle of extra-territorial effect of electoral disqualification, Article 6 of the Directive provides that any citizen who resides in a Member State of which he is not a national who, through an individual criminal law or civil law decision, 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 the Member State of residence in elections to the European Parliament. The same applies in the case of deprivation of his right to stand as a candidate under the law of the Member State of residence due to an individual criminal or civil law decision of this Member State. The Directive also employs the principle of concurrent application of disqualification by providing that both sets of rules are to be applied concurrently.

As the risk of Parliament's reputation being undermined is much smaller in the case of disqualification from voting, the Directive has pursued a more flexible approach. To this extent, Article 7 provides that it lies within the discretion of the Member State of residence to check whether the citizens of the Union who have expressed a desire to exercise their right to vote there, have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.

Applying the principle of freedom of choice, Article 8 of the Directive provides that a Community voter exercises the right to vote in the Member State of residence only if he has expressed the wish to do so. In this respect, if voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote. Community voters wishing to vote in the Member State of residence must be entered on the electoral roll sufficiently in advance of polling day.

Derogations

Lastly, the Directive provides for two sets of derogations. Though not expressly mentioned, derogations concern, on the one hand, UK citizens living in Ireland and Irish citizens living in Britain and, on the other hand, a certain small Member State of the Union where non-national citizens of the Union of voting age form an extremely high proportion (29%) of the total potential electorate.

In the first case, UK and Irish citizens will not be subject to the formalities applying to other Union citizens eligible to vote or stand as candidates for the elections to the European Parliament in the UK or Ireland respectively, as they already enjoy such rights. In the second case, the situation appears more complex. It is obvious that the Treaty on European Union has paved the way for the introduction of certain derogations. Article 8(2) of the EC Treaty provides that Community legislation implementing its provisions may provide for derogations where warranted by problems specific to a Member State. Such specific problems may arise, according to the Directive, in a Member State in which the proportion of citizens of the Union of voting age, who reside in this State but are not nationals, form more than 20% of the total electorate.

Accordingly, Article 14 of the Directive provides that, in this respect, the Member State concerned may by way of derogation from Articles 3, 9 and 10 of the Directive:

1. restrict the right to vote to Community voters who have resided in that Member State for a minimum period which may not exceed five years;

2. restrict the right to stand as candidates to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period which may not exceed 10 years.

These derogations are without prejudice to appropriate measures which the Member State concerned may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union. The latter provision of Article 14 was justified by the Directive as an attempt to avoid any polarization between lists of national and non-national candidates.

When the European Parliament was consulted on the Directive pursuant to Article 8(2) of the EC Treaty, it expressed its disagreement both on the issue of the composition of lists of candidates and on the derogation to the right to vote and proposed that the relevant subparagraphs be deleted from the text of the Directive. According to the Parliament, any limitations on the rights of citizens to stand for election necessarily call into question a fundamental freedom, and not merely an electoral procedural rule.

According to Article 17 of the Directive, Member States are obliged to adopt laws, regulations and administrative procedures necessary to comply with this Directive not later than 1 February 1994.

Apart from any shortcomings, especially regarding the derogations of Article 14, the application of the Directive marks a new stage in the creation of a Union of peoples based on solidarity, cohesion, social justice and active political participation.

1. See Eurostat population statistics, 1992.

2. *OJ L* 329/30-12-1993, 34-38.

3. On this issue see Epaminondas Marias, 'From Market Citizen to Union Citizen', in Epaminondas Marias (ed.): *European Citizenship*, EIPA, Maastricht, forthcoming.

4. *ICJ Reports*, 1955, 4.

5. *Recueil* [1992] I-4239.