

COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DIRECTIVE
ON VOTING RIGHTS FOR COMMUNITY NATIONALS
IN LOCAL ELECTIONS IN THEIR MEMBER STATE OF RESIDENCE
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(Presented by the Commission)

I. EXPLANATORY MEMORANDUM

A. The need for a directive

1. As far back as 1974, the highest political authorities in the Member States, the Heads of State or Government, called for a study on the granting of "special rights" to citizens of the Member States. In its 1975 report to the Council, the Commission considered that these should include "at least" the right to vote in local elections for citizens of Member States resident elsewhere than in the Member State of which they are nationals. Since then consideration of this issue has continued in all the Community institutions. Some Member States (Denmark, Ireland and the Netherlands) have anticipated events by granting voting rights to all foreigners resident on their territory. In Spain the 1978 constitution makes provision for this right being granted subject to reciprocity.

2. Following the Fontainebleau European Council of 25 and 26 June 1984 an ad hoc Committee was set up to study 'measures to promote and strengthen (the Community's) image both for its citizens and for the rest of the world'. This Committee recommended that action be taken "to pursue in more depth the discussions begun previously on voting rights and eventually eligibility in local elections for citizens from other Member States under the same conditions as for citizens of the host country,"² subject to a certain period of prior residence in the host country".² The conclusions of the Presidency recorded approval of these recommendations by the Milan European Council.

As long ago as 1983 Parliament had expressed its commitment to this idea; its resolution of 8 June 1983³ asked the Commission to table a proposal for a directive and this position was confirmed in two resolutions adopted on 13 November 1985, when the Commission was once again asked to propose Community legal instruments recognizing the right to vote in local elections. Mr Ripa di Meana confirmed⁵ that he would first make a full report on the situation to Parliament.

¹ Bulletin EC 6-1984, point 1.1.9, para. 6.

² Supplement 7/85 - Bull. EC, p. 21.

³ OJ C 184, 11.7.1983.

⁴ OJ C 345, 31.12.1985.

⁵ Debates of the European Parliament, OJ Annex No 2-232, Sitting of 14 November 1985, p. 126.

3. On 7 October 1986, in response to a request by Parliament, the Commission sent Parliament and the Council a report on "Voting rights in local elections for Community nationals".⁶ The report, on which this explanatory memorandum is based, describes the current situation in the Member States and analyses the demographic, legal and political factors which any development in this area would have to take into account.

There is no need to go back over all the ground covered by the report, which provides valuable background to the present proposal. However, three important lessons may be learned from it:

(a) the first is political: at present over four million community citizens are deprived of the right to vote in local elections simply because they are no longer resident in their Member State of nationality. In a Community of Member States whose basic common characteristic is that they are democracies, implementation of one of the four fundamental freedoms provided by the Treaty, has, by virtue of national legislation, led indirectly to the loss of certain political rights. This paradox in the building of Europe cannot be allowed to continue if the principles underlying the democratic political systems of the Member States are to be respected;

(b) the second is legal: although Denmark, Ireland and the Netherlands already grant voting rights to non-nationals, there are constitutional objections to moves in this direction in Belgium, France, Germany, Greece, Italy, Luxembourg and Portugal, where voting rights are reserved for nationals. This does not constitute an insuperable obstacle because all constitutions include review procedures designed to establish whether there is political consensus in favour of change. This means that the problem is a political one, a matter of establishing whether consensus exists in the Member States. Recent experience in the Netherlands demonstrates that institutional reform is feasible;

(c) the third relates to the functioning of the Community: after more than 12 years of debate it is clear that progress will be achieved only if the Commission takes a legislative initiative. Study of the analysis has revealed a shared view-point and demonstrates a willingness to initiate the legislative procedure.

⁶Supplement 7/86 - Bull. EC.

4. The Commission's report came to two main conclusions:

- one was political: keeping to the line it had adopted in 1975, the Commission confirmed "its commitment to the granting of local voting rights in the country of residence". There can be no doubt therefore about the Commission's determination to make progress in this area;
- the other related to further action: the Commission indicated that it would require a clear political signal from Parliament before taking any initiative. This, far from being a sign of reluctance, was designed to clarify the starting point for any Commission proposal for legislation.

5. Following the Commission's report, Parliament's Legal Affairs Committee appointed Mr Heinz Oskar Vetter⁷ as rapporteur. On 15 December 1987, on the basis of his report⁷ and a concurring opinion⁸ by Mr Robles Piquer on behalf⁹ of the Political Affairs Committee,⁸ Parliament adopted a Resolution⁹ urging the Commission "once again, as categorically as it is able, to submit a proposal for a directive in the first half of 1988". This Resolution was significant in two respects:

- it provided the political signal which the Commission had made a condition for moving from discussion to action;
- it demonstrated that Parliament and the Commission were agreed on the nature of the proposal, which was to be limited to citizens of the Member States and confined to local elections.

With this support from Parliament, Mr Ripa di Meana stated during the debate in the House¹⁰ that he would submit a proposal for a directive to the Commission in the first half of 1988.¹¹ This demonstrates that since the 1986 report the Commission has been working steadily to move from theoretical discussion to legislative action the only way of turning the idea into reality. The present proposal is the end result and proof of this. More than any other initiative, it reflects the political will to ensure that a People's Europe becomes a political and human reality.

⁷ Document A2 - 197/87; PE 115.057/fin of 6 November 1987.

⁸ Document A2-197/87 Annex; PE 115.057/fin/Am. of 26 November 1987.

⁹ OJ C 13, 18 January 1988, p. 33.

¹⁰ Debates of the European Parliament, Sitting of Monday, 14 December 1987, pp. 12-28 and Tuesday, 15 December 1988, pp. 60-62.

¹¹ Sitting of Monday, 14 December 1987, bottom of p. 27.

6. In the programme for 1988 presented to Parliament the Commission indicated that it intended to consider the terms of a proposal for legislation on voting rights in local elections.¹² This demonstrates the Commission's determination to stick scrupulously to its own timetable for presenting a proposal for legislation.

7. The creation of a People's Europe must do away with the remaining discrimination against nationals of one Member State who live in another. As far as local elections in the Community are concerned, residence appears to be a more appropriate criterion for determining the place of voting than nationality. Actually living in a municipality means that various aspects of daily life are influenced by decisions taken by the elected body which runs the municipality. Examples are education, planning, local amenities and voting on local taxes which apply equally to nationals of other Member States resident in the municipality. What is more, nationals of other Member States will integrate between into the economic and social life of their country of residence if they enjoy the same rights as nationals.

This is the logic, indeed the justification, for nationals of another Member State taking part in elections in the municipality of residence rather than continuing to vote in a municipality in which they no longer reside in the Member State of nationality. There are therefore practical considerations arguing in favour of residence rather than nationality as a qualification.

8. These considerations have led a number of Member States to extend voting rights gradually to resident non-nationals even where this step required prior constitutional reform, as it did in the Netherlands. The idea is gaining ground in other Member States too and proposals for legislation have been tabled. Full details are given in the Commission's 1986 report.

It is significant that the idea returned to the agenda in France following discussions of reform of the nationality code. The Committee set up by the Prime Minister considered this legislation from a Community point of view, with particular reference to completion of the internal market. In its report it concluded that it would be desirable for the Member States to limit the exercise of political rights by individuals holding dual nationality to a single country, normally the country of residence,¹³ and this idea was in fact incorporated in proposal number 45.¹⁴ The Chairman of the Committee subsequently stated that these considerations should apply in future not only to

¹² Supplement 1/88 - Bull. EC, p. 56, point 52.

¹³ "Etre français aujourd'hui et demain", Report of the Committee on Nationality presented by Mr Marceau Long to the Prime Minister. Documentation française, Collection 10/18, Vol. 2, page 183.

¹⁴ idem, page 227.

residents holding dual nationality but also that voting rights in local elections in the Member States of residence should be extended to all nationals of the Member States so as to lay the foundations for the emergence of Community nationality.

9. The present proposal is therefore based on the Commission's view that the political and legal preconditions for such an initiative have been met. The proposal is noteworthy in four respects:

- (a) it demonstrates the consistent attitude of the Community institutions: they have remained constant in their support for this idea since 1975, although the Commission did not accede to Parliament's request for proposals for legislation. Indeed, the idea was also featured in the December 1974 action programme on behalf of migrant workers and their families. The fact that an initiative is being taken now shows that concrete steps on voting rights are needed. The Commission would have a long-term credibility problem if it failed to take the first steps towards enacting Community legislation;
- (b) it demonstrates a desire for progress: the 1986 report called for a political signal and Parliament gave this in December 1987. It would be inconsistent for the Commission to ignore it;
- (c) it confirms that the Community legislator listens to Parliament: there was majority support in Parliament for this measure in June 1983, November 1985 and December 1987. Failure to act would suggest that the Commission pays no heed to the views expressed by the elected representatives of the people of Europe;
- (d) it demonstrates commitment to a People's Europe: the proposal gives a spectacular boost to a People's Europe and testifies to the desire to make decisive progress. This confirms the statement in the concluding section of the Commission's 1986 report:

"Such a development would demonstrate better than any other that a People's Europe is in the making. The move from building the Community to specifically political decisions would be important, proving that any steps towards European union would be consistent with democracy."

B. The Community's powers

1. One of the fundamental aims enshrined in the Treaty - freedom of movement for individuals - is being implemented on both the economic and legal fronts but it has yet to be extended to other areas, including political activity. As the Commission showed in its report on voting rights in local elections, this means that four million Community nationals who have availed themselves of the opportunities offered by the Treaty are being deprived of the right to vote and to stand for election, notably at local level. The fact is that national laws and constitutional provisions often restrict voting rights to nationals.

However, as long ago as 1968 when it adopted Regulation (EEC) No 1613/68 of 15 October 1968,¹⁵ the Council found that, if freedom of movement was to be exercised, by objective standards, in freedom and dignity, there would have to be equality of treatment in fact and law to facilitate integration into the host country. There can be no better indication of integration than that of being allowed to participate in the election of local councils, whose decisions are equally binding on the citizens of other Member States.

The preamble to the Single European Act states that the Member States are "determined to work together to promote democracy and that they are "convinced that the European idea ... and the need for new developments correspond to the wishes of the democratic peoples of Europe ...". These new provisions are highly political, adding a political dimension rooted in democracy to the Community's activities.

There is no doubt that at present the integration process is indirectly eroding the democratic rights of some Community nationals. This runs counter to the objectives of a Community based on democracy, as set out in the preamble to the Single European Act, making action at Community level a political duty and a legal necessity.

2. There is no need to consider whether this "voluntary forfeiting" of democratic rights has a decisive influence on those who wish to avail themselves of freedom of movement. It is sufficient to note that the de jure situation is incompatible with the declared objective in the Single European Act of promoting democracy, the key component of which is the right to vote.

Recognition of the right to vote in local elections would set the seal on the rights now enjoyed by all Community citizens, regardless of the Member State in which they are resident. It is the political complement to economic and social integration.

¹⁵OJ L 257, 19.10.1988.

This imperative is further underlined by the goal of creating a European area paving the way to a People's Europe. A socio-economic approach is not sufficient. The objective of promoting democracy must be included too. This will involve a radical new approach to demonstrate that Community citizens, as participants in the democratic process, must be allowed to play a full part in the European venture.

3. The main task of municipal councils is to manage and administer the municipality on the basis of powers granted by law. They intervene only in areas which have a direct bearing on the life of the municipality, that is, on the living conditions of its residents. The improvement of living conditions is one of the Community's declared objectives. Promoting democracy therefore means that all those covered by the Treaty must be able to participate democratically in the election of bodies responsible for improving living conditions.

4. In addition to these practical powers, the Community institutions have operational powers. Article 235 states "if action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures". Community theory and practical experience in using this legal basis show that four conditions have to be satisfied.

(a) Achievement of "one of the objectives of the Community". The objectives of the Community are to be found not only in express provisions but also in Part One of the Treaty (Principles) and in the preamble. Recognition of the right to vote in local elections in the Member State of residence would assist freedom of movement. Since the Single European Act, an improvement in the conditions under which democracy operates has become one of the Community's declared objectives. A comprehensive analysis of all the Community's objectives is not compatible with the "voluntary forfeiting" of the democratic rights of individuals availing themselves of freedom of movement. The Community must therefore remedy the situation.

(b) Limitation imposed by "operation of the common market". Equal treatment of nationals of the Member States in the matter of voting rights in local elections does not exceed this limitation because it is an essential complement to the free movement of persons. This is confirmed by the Single European Act, which recognizes the need to have

regard to democracy because pursuit of these objectives is also seen as a precondition for European Union.

(c) The need for action is dictated by the Single European Act, which calls for the promotion of democracy. Once it has been established that the voting rights of individuals exercising one of the fundamental freedoms laid down by the Treaty - freedom of movement - are under threat, action must be taken to ensure respect for the objectives set out in the Single European Act. If the conditions for Community action are satisfied, this is the only method that can be used. This is why Community action is required (a) to ensure democratic participation by and equal treatment for Community citizens and (b) to promote European Union and the establishment of a People's Europe.

(d) Lack of the necessary powers. The analysis has shown that the Treaty contains no express provision for attainment of the objective.

5. (a). The decision to choose a legal instrument provided for in the Treaty is determined by operational considerations. A reform along the lines envisaged can be introduced only if it applies equally to all Community citizens, regardless of the Member State in which they are resident. It would be illogical and would create inequalities among Community citizens if a national of Member State A could vote in Member State B while a national of Member State B could not vote in Member State A. This would be an affront to the principle of equal treatment. A legal instrument provided for in Article 189 of the Treaty is the only way of ensuring equal treatment.

(b). However, the Community instrument option is appropriate only if it can be applied, despite the constitutional problems it could create in certain Member States. The Court of Justice has ruled that Community law always takes precedence over national law, constitutional or otherwise. This doctrine was first sketched out in the Court's order of 22 June 1965,¹⁶ and subsequently clarified in the Internationale Handelsgesellschaft judgment when the Court stated that "the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to ... the principles of its constitutional structure."¹⁷ The principle of the primacy of Community law, even where it conflicts with a subsequent law, as affirmed in the Costa v ENEL judgment,¹⁸ was confirmed in 1978 in the Simmenthal judgment where it was stated that "a national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those

¹⁶Case 9/65 San Michele (1967) ECR 1.

¹⁷Case 11/70 Internationale Handelsgesellschaft (1970) ECR 1125.

¹⁸Case 6/64 Costa v ENEL (1964) ECR 1141.

provisions, if necessary withdrawing its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means."¹⁹

This means that the directive is the only legal instrument which, once adopted, has the necessary legal force and allows each Member State to make the constitutional changes required before it is transposed into national law.

6. Since the conditions required for recourse to Article 235 have been met, the present proposal does not need to be based on any other specific provisions of the Treaty.

C. Content of the proposal

1. Chapter IV of the Commission's 1986 report, "Common principles governing the right to vote in local elections",²⁰ listed the various points that could be incorporated in a directive. Parliament regarded them as "positive" and they form the basis of the present proposal.

2. The first principle is the right to vote: the right to take part in local elections in the municipality of residence. This is clearly set out in Article 2.

Since certain expatriates retain the right to vote under the law of their country of origin, it would have been foolish to attempt to deprive them of this right. What is granted therefore is "a right but not an obligation". This means that the right is conditional on the individual applying to exercise it. However, the Member State of residence is required to enter on its electoral register those nationals of the other Member States who apply. The purpose of this provision is to respect individual preferences and to avoid imposing rights that people do not want. However, in no circumstances can a Member State be exempted from applying the directive once the conditions laid down have been satisfied.

In addition to the requirement that individuals must apply for entry on the electoral register, proof of a minimum period of residence must be produced. This period is to be regarded as applying to the Member State of residence rather than the municipality, unless national law lays down a minimum period of residence for its own nationals. To avoid becoming embroiled in a discussion about the minimum period, it seemed sensible to choose a period which would not exceed the term of office of a municipal council. This would have the advantage that the

¹⁹Case 106/77 Simmenthal (1978) ECR 629.

²⁰Supplement 7/86 - Bull. EC, pps. 39-42.

future voter would have seen one municipal council in operation. In any event the minimum period would not exceed seven years. The reform introduced in the Netherlands provided for a five-year period. This period should be a maximum so that shorter, more favourable periods could remain in operation or be introduced.

The other conditions, relating to age and electoral disqualification, reflect the legislation of the Member State of residence to ensure that no non-national is placed in a more favourable position than nationals by virtue of the legislation of his country of origin. The overriding consideration here is equal treatment of all voters.

As a corollary to the right to vote in his Member State of residence, the new voter will be required to vote where national provisions make this compulsory. If a non-national does not accept this requirement he can simply refrain from applying for entry on the electoral register. Here again the guiding principle is equal treatment of all voters.

3. The proposal also covers the right to stand for election: to be a candidate and to be elected to a municipal council. It would have been possible to introduce this in a second stage. However, a decision was taken to act on both fronts simultaneously because it would have been illogical to separate two facets of a single right. In any event experience to date (in Denmark and the Netherlands) shows that it is preferable to adopt a global approach.

The period of residence required is double that for entry on the electoral register. Similarly the conditions relating to age, eligibility and disqualification reflect the national law of the country in which the election is being held.

4. The logic of the proposal means that non-national municipal councillors can be excluded from offices involving duties which extend beyond the municipality, such as Mayor or Deputy Mayor in certain Member States, and from participation in the elections of a parliamentary assembly. Such positions, which involve more than leadership of the municipality, should remain reserved to nationals. In choosing this option, the Commission is reaffirming its constant desire to present realistic proposals based on what it is both politically and legally feasible.

However, to preserve the political balance resulting from the elections, where the Mayor is elected from among municipal councillors, non-national councillors may take part in the ballot. This is also the case where the Mayor is elected directly.

Similarly, where municipal councillors have a hand in nominating parliamentary assemblies (for example the Senate in France) it would be logical to exclude municipal councillors of other nationalities since a parliamentary assembly is involved in the exercise of national

sovereignty. Technical arrangements could be made to replace these electors so that the overall balance of the electoral body was maintained.

5. Allowance must also be made for the special situation of Member States with a large proportion of Community nationals. Where this exceeds 20% of the total population, the Member State would be authorized to apply transitional measures in the interests of gradual change. Where this condition was met, the Member State would be entitled to waive application of the directive to the first general local elections to which it would otherwise apply under Article 14. After these elections the Commission would report to the Council and propose whatever measures might be needed for gradual application of the directive.

In addition, at the first two local elections governed by the directive, each Member State could limit the number of seats held by non-nationals on a local council to 25%. The provisions of the directive would apply in full to the third local elections.

6. The Commission would report on implementation of the directive three years after the end of the transitional period.

II. ANALYSIS OF THE PROPOSAL FOR A DIRECTIVE

Article 1: Definitions

- (a) The expression "nationals of the Member States" means nationals of a Member State who enjoy the civic rights stemming from their nationality.
- (b) "Local elections" are those leading to the constitution of bodies elected by direct universal suffrage (municipal councils or mayors) to administer municipalities, the first tier of government in the Member States. Different terms are used in different countries but in no case do these refer to parts of municipalities or groups of municipalities. The main criterion is the appointment by direct universal suffrage of bodies at the lowest administrative and political level.
- (c) "The right to vote" means the possibility of participating as a voter in an election, that is exercising the right to vote.
- (d) "The right to stand for election" means the ability to stand as a candidate for election to the body being elected.

Article 2: The right to vote

This Article defines the principle that not only nationals but also nationals of the other Member States resident in the municipality may take part in local elections subject to the conditions set out in Articles 3 to 6. This Article specifies the new right granted by the directive.

Article 3: A right but not an obligation

This Article sets out the conditions for implementing the principle defined in the previous Article. The potential new voter must indicate his desire to exercise the right and is therefore required to apply to the appropriate authorities in the municipality of residence for entry on the electoral register. There is no provision for automatic entry because in some cases voters who are entitled to vote in their country of origin may wish to retain their rights. It would be paradoxical to

attempt to deprive them of these rights. However, the authorities are required to enter all those who apply on the register, provided they satisfy the conditions laid down.

To enable nationals of the other Member States to enjoy this right to the full the authorities of the Member State of residence must inform them of their rights in the same way as they inform their own nationals. This could take the form of individual notification where this is customary or of general information in the media.

A new voter may be entered on the register only if he can prove that he no longer exercises his right to vote in his country of origin. Dual voting rights would be contrary to the spirit of the proposal. For this purpose a national of another Member State must produce a certificate from his consulate showing that, although he has not been deprived of his electoral rights in his Member State of origin he no longer exercises his right to vote there, perhaps because residence in another Member State had automatically disqualified him. If the voter remains entitled to vote in his Member State of origin but prefers to exercise this right in the Member State of residence, the consulate of the Member State of nationality must, before issuing the certificate, ask that the voter be removed from any electoral register on which he previously appeared, as is done with voters who transfer their rights within a given country. The consulate may issue the certificate only when it has received confirmation that the voter has been removed from the electoral register on which he previously appeared. This procedure will preclude the possibility of dual voting rights.

Article 4: Minimum period of residence

A national of another Member State may apply for entry on the electoral register only after a minimum period of residence. The proposal does not specify a single figure to be applied uniformly in all the Member States. Instead it stipulates a maximum period which may not be exceeded so that Member States applying or wishing to apply less stringent requirements may continue to do so. This maximum period is equivalent to the term of office of a municipal council in the country of residence. The requirement relates to residence in the new Member State but residence must be uninterrupted, except of course for short absences which do not involve a change of legal residence. The reference to national practices is designed to facilitate adaptation to the system in the country of residence so that new voters have had the opportunity to judge the performance of at least one municipal council throughout its term of office.

"Residence" must be residence in the legal sense. This means that periods of less than three months spent in the country as a tourist cannot be taken into consideration. Residence must be demonstrated by a

document certifying residence issued to a national of another Member State. For the purposes of the proposal the date to be taken into account is the date on which the non-national first applied for this document even if it was issued at a later date. It would be illogical to exclude a period of residence which was not indicated on the document for purely administrative reasons.

Furthermore, any provision of national law requiring a minimum period of residence in a municipality for the acquisition of voting rights applies equally to nationals of another Member State, so placing all voters, whatever their nationality, on the same footing. However, this cannot be an additional period but must rather run concurrently with the minimum period of residence required under the previous paragraph.

Article 5: Other conditions

To ensure that all voters are on exactly the same footing, the minimum voting age must be the same as that for national voters. Electoral disqualification is also governed by national legislation. The principle of equality is essential to avoid any discrimination between voters as regards the objective conditions governing eligibility.

Article 6: Compulsory voting

The logical corollary of the fact that entry on the electoral register of the Member State of residence is a right and not an obligation is that anyone who applies for entry thereby accepts all the obligations imposed by that country on its voters. This is true in particular of the rules making voting compulsory in certain Member States. It would not be logical to exempt a non-national from this obligation if he wishes to vote in a Member State where such rules apply. In any case his application would be contradictory since he would be applying for entry on the electoral register while having no intention of voting. If the new voter does not wish to be subject to this provision, he can retain his freedom by not applying for entry on the electoral register of the country of residence. Equal treatment of all voters, of whatever nationality, must be paramount.

Article 7: The right to stand for election

This Article defines the principle that nationals of other Member States who are voters in a municipality may stand for election there in the same way as nationals, subject to the conditions and limitations laid down in Articles 8 to 12. This provision, like Article 2, specifies the new right granted by the directive.

Article 8: Minimum period of residence

As with voting rights, a minimum period of residence is required before a non-national can stand for election. It has been determined in the same way: the directive simply lays down a maximum period of residence leaving the Member States free to fix a shorter period if they wish. Again the period of residence must be unbroken. The maximum period is similarly calculated by reference to the term of office of a municipal council but in this case the period is two terms of office. This is to provide time for more complete adjustment to the customs of the host country.

Proof of residence must be demonstrated by production of a document certifying residence. The provisions of the second paragraph of Article 4(1) apply equally in this case.

Article 9: Other conditions

To ensure that all voters are completely equal as regards the objective requirements they have to satisfy to be eligible to stand for election, nationals of another Member State must respect and comply with the same conditions as regards age, incompatibility and disqualification as those imposed on nationals of the Member State of residence by national legislation.

Article 10: Elective offices reserved for nationals

This proposal is designed to ensure that municipal councillors who are nationals of the other Member States are excluded from offices, such as Mayor or Deputy Mayor, involving duties which extend beyond the municipality. However, to preserve the political balance resulting from an election, since the Mayor is elected by and from among municipal councillors, non-national councillors may take part in the vote. This is also the case where the Mayor is elected directly.

Similar considerations apply when municipal councillors have a hand in nominating a parliamentary assembly because this has a bearing on national sovereignty. Accordingly, municipal councillors who are nationals of the other Member States should not take part in the election. In municipalities where all municipal councillors are automatically electors, they should be replaced in accordance with the rules governing the appointment of additional electors. Where electors are elected by and from among municipal councillors, non-national councillors may not be appointed as electors nor may they take part in the vote.

Article 11 : Transitional measures

Given the political situation in a number of Member States with a high proportion of Community nationals, implementation of this directive should be gradual to ensure that the existing political balance is not disturbed. Accordingly, where the proportion of nationals of the other Member States exceeds 20% of the total population as given by the latest census figures available, the Member State is entitled to waive application of the directive to the first local elections to which it would otherwise apply. After these elections the Commission will draw up a report on the problem and, where appropriate, put forward proposals for any additional measures which might be needed.

Article 12 : Composition of a municipal council

Each Member State must be free to limit the number of municipal councillors who are nationals of another Member State to no more than one quarter of the total in the first two local elections governed by the directive. However, should the elections lead to a situation in which more than 25% of local councillors are non-nationals, only the following will be declared elected :

- where there is single-member voting or any form of multi-member preference voting : those who have secured the largest number of votes subject to the 25% limit;
- where there is a straight-ticket list system : in the order of presentation on the list.

If the 25% limit is exceeded, local councillors who are nationals of another Member State would be replaced by the national candidates who obtained the next highest number of votes. Naturally, under a list system, they could be replaced only by members of the same list.

It is clearly for individual Member States to choose whether or not to apply this provision. Moreover, each Member State will have the option, when transposing the directive into national law, of limiting its application to municipalities satisfying specific criteria, determined in each Member State. This provision makes it possible to tailor application of the directive to local circumstances.

Article 13 : Report by the Commission

The Commission will report to the Council on implementation of the directive three years after the end of the transitional period. The report must cover the way in which the directive has been transposed into national law and analyse the first local elections in which nationals of other Member States were eligible to participate.

Article 14 : Implementation

A period of three years from the date of adoption is allowed for the Member States to transpose the directive into national law.

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.....

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 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 Economic and Social Committee,

Whereas Article 3(c) of the EEC Treaty stipulates that the activities of the Community include the abolition, as between Member States, of obstacles to freedom of movement for persons;

Whereas Article 8a of the EEC Treaty requires the Community to adopt measures with the aim of progressively establishing an area without internal frontiers in which the free movement of persons is ensured in accordance with the provisions of the Treaty;

Whereas if the right to move freely is to be exercised, by objective standards, in freedom and dignity, Community nationals must be integrated into the life of the host country;

Whereas the right to vote and stand for election in local elections in the Member State of residence is a necessary step towards achieving such integration, contributing to respect for democratic rights which Member States pledged themselves to promote in the Single European Act;

Whereas the need for action on recognition of the right to vote in local elections in the Member State of residence has been reaffirmed on many occasions by the highest Community bodies from the Paris Summit in 1974 to the report of the ad hoc Committee on a People's Europe approved by the Milan European Council in June 1985;

l Whereas, the right to vote in local elections is withdrawn from citizens of certain Member States residing in another Member State; whereas exercise of the right to vote in the municipality of residence should therefore be one of the objectives of Community action; whereas, to this end, steps must be taken to ensure that free movement of persons is not achieved at the expense of a loss of political rights at local level;

Whereas the right to vote in local elections should be granted in the country of residence to nationals of the other Member States on request, provided that they can demonstrate that they have been continuously resident in that Member State for at least the term of office of one municipal council; whereas other requirements applicable to nationals should apply equally to nationals of the other Member States;

Whereas the right to stand for election should be granted to nationals of the other Member States in the municipality where they are voters provided that they have been resident for at least the term of office of two municipal councils; whereas other requirements applicable to nationals should apply equally to nationals of the other Member States;

Whereas, however, provision should be made for the exclusion of non-nationals from the exercise of functions such as Mayor or Deputy Mayor which involve duties extending beyond the municipality, and from involvement in the election of a parliamentary assembly;

Whereas, account should be taken of the situation in Member States in which nationals of the other Member States account for more than 20% of the population;

Whereas, in such cases, Member States should be entitled to waive application of the directive to the first local elections to which it would otherwise apply; whereas, the Commission should draw up a report on this problem and, where appropriate, propose further transitional measures for subsequent elections;

Whereas Member States should be free, for the first two elections governed by the directive, to limit the number of seats held by non-nationals on a local council to 25%;

Whereas the Commission should report to the Council on implementation of this directive three years after the end of the transitional period;

Whereas the Treaty has not provided specific powers for this purpose,

HAS ADOPTED THIS DIRECTIVE :

TITLE I : GENERAL PROVISIONS

Article 1

For the purposes of this directive the term:

1. "nationals of the Member States" shall mean persons who have the nationality of one of the Member States of the European Community who enjoy the civic rights stemming from that nationality;
2. "local elections" shall mean elections of bodies (municipal councils or mayors) elected by direct universal suffrage and having, under national legislation, powers to manage and administer the first tier of political and administrative organization;
3. "the right to vote" shall mean the right exercised by voters when they participate in elections held by direct universal suffrage;
4. "the right to stand for election" shall mean the right of an individual to stand as a candidate and be elected by direct universal suffrage.

TITLE II : THE RIGHT TO VOTE

Article 2

The Member States shall grant nationals of the other Member States, recognized as residing on their territory, the right to vote in local elections in the municipality in which they are resident subject to the conditions set out in Articles 3 to 6 below.

Article 3

1. Nationals of the other Member States who intend to exercise the right to vote referred to in Article 2 above shall make application to the authorities responsible for elections in the municipality of residence for entry on the municipal electoral register.

The authorities concerned shall inform nationals of the other Member States of this right in the same way as nationals are informed of their right to vote.

2. For this purpose, such nationals shall produce a document issued by a consulate of their Member State of origin certifying that:

- they have not been deprived of their civic rights in their Member State of origin, and
- they can no longer exercise the right to vote in local elections in their Member State of nationality, either by virtue of residence in another Member State or because they have asked to be transferred from the electoral register of the municipality in which they were previously registered, with a view to exercising the right to vote in their municipality of residence.

Article 4

1. Any national of another Member State may apply for entry on the electoral register of his municipality of residence following a period of continuous residence in the host Member State of not less than the term of office of a municipal council

Proof of residence shall be provided by a document certifying residence issued by the authorities of the host Member State. The period of residence shall run from the date of application for this document.

2. Application for entry on the electoral register can be made only in the municipality in which the applicant is actually resident and shall be subject to the rules laid down by national legislation, in particular as regards the minimum period of residence in the municipality and the deadlines for applying for entry on the electoral register.

Article 5

The provisions laid down by national legislation in the Member State of residence as regards the minimum voting age and disqualification shall apply equally to nationals of the other Member States.

Article 6

A national of another Member State entered on a municipal electoral register in his Member State of residence shall be subject to the electoral requirements applicable to nationals of that Member State, in particular as regards provisions which make voting compulsory.

TITLE III: THE RIGHT TO STAND FOR ELECTION

Article 7

The Member States shall grant nationals of the other Member States the right to stand and be elected in local elections in the municipality on whose electoral register they appear subject to the conditions set out in Articles 8 to 10 below.

Article 8

1. A national of one Member State may stand as a candidate in local elections in the municipality of residence in another Member State following a period of continuous residence in that Member State of not less than two terms of office of a municipal council.

2. The provisions of the second paragraph of Article 4(1) shall also apply.

Article 9

The provisions laid down by national legislation in the Member State of residence as regards :

- minimum age,
- incompatibility and
- disqualification

for the purposes of local elections shall apply equally to nationals of the other Member States.

Article 10

1. The Member States may exclude nationals of other Member States from holding an office such as Mayor, Deputy Mayor or any equivalent position.

2. If members of a municipal council are by virtue of such membership electors of a parliamentary assembly, the Member States may provide that nationals of the other Member States who are members of the municipal council may not take part in the election. They shall be replaced in accordance with national rules governing the appointment of additional electors.

If the members of a municipal council appoint the electors of a parliamentary assembly from among their number, the Member States may provide that nationals of the other Member States who are members of the municipal council may not take part in the election.

TITLE IV : TRANSITIONAL PROVISIONS

Article 11

1. If the proportion of nationals of the other Member States resident in a Member State exceeds 20% of the total population, that Member State shall be entitled to waive application of the directive to the first general local elections to which it would otherwise apply under Article 14.

After these elections, the Commission shall report to the Council and, where appropriate, propose whatever measures might be needed for gradual application of the directive.

Article 12

Member States may stipulate that, in the first two general local elections to which the provisions of this directive apply, nationals of the other Member States elected as municipal councillors may not occupy more than one quarter of the seats on a municipal council.

TITLE V : FINAL PROVISIONS

Article 13

Three years after the end of the transitional period referred to in Articles 11 and 12 the Commission shall report to Parliament and the Council on implementation of this directive.

Article 14

The Member States shall adopt the measures required to transpose this directive into national law within three years of notification.

They shall notify the Commission of these provisions.

Article 15

This directive is addressed to the Member States.

Done at

For the Council