

Bulletin
of the European Communities

Supplement 7/86

**Voting rights
in local elections
for Community nationals**

**Report from the Commission
to the European Parliament transmitted
for information to the Council
in October 1986**

Supplement based on COM(86) 487 final, 7 October 1986

EUROPEAN COMMUNITIES

Commission

This publication is also available in the following languages:

ES ISBN 92-825-6843-1
DA ISBN 92-825-6844-X
DE ISBN 92-825-6845-8
GR ISBN 92-825-6846-6
FR ISBN 92-825-6848-2
IT ISBN 92-825-6849-0
NL ISBN 92-825-6850-4
PT ISBN 92-825-6851-2

Cataloguing data can be found at the end of this publication

Luxembourg: Office for Official Publications of the European Communities, 1987

ISBN 92-825-6847-4

Catalogue number: CB-NF-86-007-EN-C

© ECSC-EEC-EAEC, Brussels • Luxembourg, 1987

Reproduction is authorized, except for commercial purposes, provided the source is acknowledged.

Printed in Belgium

contents

<i>Summary</i>	5
<i>Introduction</i>	6
I – <i>A European rationale</i>	7
Analysis in European terms	7
The Community contribution	9
II – <i>Demography</i>	14
Foreign residents and intra-Community migration	14
Countries granting the right to vote	15
Countries with a large foreign population	16
Tables	20
III – <i>Legal and political considerations</i>	29
Right to vote in country of residence	29
Right to vote in country of nationality	38
IV – <i>Common principles governing the right to vote in local elections</i>	39
The right to vote	39
The right to stand for election	41
An overall approach	42
<i>Conclusion: The dynamic of European elections</i>	42
Bibliography	45

Page 4 in the original is blank.

Summary

On 15 November 1985 the European Parliament came out in favour of voting rights in local elections being granted in the country of residence to Community nationals living in a Member State other than their own. In the course of the debate the Commission undertook to produce a report on the subject for the European Parliament.

The creation of a People's Europe argues in favour of the granting of local voting rights. However, the right to vote can be granted to Community nationals only and would have to be confined to local elections. The Community institutions have been considering this issue since 1974. The Council abandoned discussions in 1979 but the Commission has continued to stand by the principle, notably in the context of the work of the Adonnino Committee.

The problem of local voting rights must be viewed against the background of the demographic situation, highlighting the specifically Community aspects. The demographic analysis shows that foreign residents account for less than 1% of the population in Spain, Greece, Italy and Portugal. The three Member States (Ireland, Denmark and the Netherlands) who have granted local voting rights to all foreign residents have a very small foreign population. More than 4 million Community nationals have been disenfranchised in local elections by virtue of living in a Member State other than their own.

The legal analysis revealed that a reform along these lines would entail amendments to the constitution

in Greece, Italy, Luxembourg, Belgium, Germany and France. The political analysis showed that resistance to reform is strongest in countries with the largest foreign population (Belgium, Luxembourg, France and Germany). However, experience in the Netherlands has shown that even constitutional obstacles can be overcome provided there is political will.

The reform, which must create rights rather than obligations, should include supplementary measures modelled on national systems. In the case of the right to vote the residence requirement should correspond to the term of office of a municipal council. This should be doubled in the case of the right to stand for election. The two rights need not necessarily be introduced at the same time.

A similar problem arises in connection with the uniform procedure for direct elections to the European Parliament. The 'Europeanization' of these elections should precede the 'Europeanization' of local elections. Indeed, a formal commitment to this effect on the part of the European Parliament in the context of the Article 138 EEC procedure is a political precondition to progress.

The Commission concludes by confirming its commitment to the granting of local voting rights in the country of residence which it sees as being consistent with the logic of a People's Europe. However, before any initiative is taken the Commission will need a clear political signal from the European Parliament. This could take the form of a Parliament committing itself to this principle in the framework of the uniform procedure for direct elections.

Introduction

The municipality is the oldest surviving local administrative unit in the Member States. It would be wrong however to regard it as a direct descendant of the cities of the ancient world. The cities of ancient Greece, though few in number, were fully fledged states, possessing all the attributes which this involves. Similarly the Roman *civitas* was not just a town, but encompassed a larger area within a province. And although administered by a municipal senate (*curia*) and two magistrates (*duumvirs*), it was in fact under the close control of an imperial official, the *curator republicae*.

The rebirth of municipal life sprang from the economic revival of the Middle Ages. From the eleventh century onwards the feudal system brought a greater degree of security, fostering the growth of industry, the settlement of traders and the repopulation of the towns. The various crafts and trades developed into powerful associations, grouping behind them the remainder of the inhabitants, who swore fealty to the public cause — hence the name *conjuratio*, or sworn community.

This broad communal movement, which had steadily won more and more freedoms, began to lose momentum in the fourteenth century. As enthusiasm waned, difficulties started to emerge. In many cases co-option took the place of elections. The result was that a bourgeois oligarchy, that did not always possess the necessary ability or impartiality, came to prominence.

The natural medium for the conquest of political rights and liberties was the nation state. These origins are clearly indicated in the expression 'Rechtsstaat' to designate a formal system which guarantees subjective individual rights. Under the *ancien régime* it was never considered incompatible with the principles that were supposed to govern the workings of the state for foreigners to exercise public office, whether at the head of governments (e.g. Mazarin in France, Alberoni in Spain, or the Dutch entourage of William of Orange in England) or armies (e.g. Prince Eugene of Savoy, or Duke Maurice of Saxony, known as the 'Maréchal de Saxe').

As the boundaries of local authorities came to be defined in the nineteenth century, their powers grew and the method of appointing their officers

changed. These developments have to be seen in the context of the general extension of democratic freedoms that was reflected in a broader interpretation of voting rights. The nature of the powers exercised by local authorities was such as to justify allowing those affected by their decisions to choose the officers who ran them. As in the case of other institutions, the power to raise taxes was a decisive argument in favour of universal suffrage.

The widening of the electorate thus went hand in hand with the emergence of universal suffrage. The right to vote was gradually extended to all citizens irrespective of wealth, education or sex. The only restrictions imposed related to age and, in some cases, residence. However, a link was established between nationality and voting rights. The time may have come to reconsider this link.

Population movements since the nineteenth century have wrought a profound change in the make-up of local populations. The advent of the European Community and affirmation of freedom of movement and the right of establishment have made it quite normal for people who are nationals of one country to live in another.

Direct elections to the European Parliament have highlighted the fact that nationals of some Member States residing abroad are not entitled to vote. The same is true of local elections. Most of the Member States restrict voting rights to their own nationals. Others make residence a requirement, with the result that only resident nationals are entitled to vote.

This situation — seemingly incompatible with the idea of European Union — has given rise to two conflicting positions:

- foreign residents are campaigning for voting rights in the municipality of residence since they have the same duties and obligations as national residents;
- Member States are refusing to drop nationality as the essential criterion for granting the right to vote.

This is the paradox with which we are faced today. Unless we tackle the problem, there is a danger that the disparity between the electorate and the population will increase. Indeed this is already such in some areas that we might reasonably ask whether the suffrage is still universal.

The question assumes even greater significance in the context of European integration. The creation of 'a People's Europe' provides an opportunity of considering whether new criteria are needed which would allow all Europeans, regardless of nationality, to vote in local elections. This, then, is the purpose of the present report, which has been drawn up in response to two resolutions adopted by Parliament on 15 November 1985.¹

But this reflection cannot be conducted *in abstracto*. The report is therefore divided into four chapters:

(i) first, an attempt is made to determine whether there is a European rationale and, if so, how far it extends;

(ii) secondly, the demographic scale of the problem is examined, care being taken to highlight the Community aspects;

(iii) thirdly, an attempt is made to examine the legal and political framework in each Member State within which reform will have to operate;

(iv) lastly, to stimulate the process of reflection, the report lists a number of common principles to guide reform in all the Member States.

In conclusion the timing of any such initiative is discussed. In particular the report considers whether the adoption of a uniform electoral procedure for the European elections, based on the residence criterion, would provide a political signal that the Member States are prepared to embark on reform.

I — A European rationale

The cornerstone of democracy is the right of voters to elect the decision-making bodies of political assemblies at regular intervals. If the right to vote is to be truly universal, it must be granted to all residents of the territory concerned. An analysis of electoral law reveals that, in practice, only those who satisfy a number of legal requirements qualify, thereby reducing the size of the electorate. The principle of universal suffrage is recognized by all Member States of the Community; indeed it is one of the common pillars of their political systems. Despite the fact that the right to vote is termed 'universal' it is being gradually extended. For instance the minimum voting age has been reduced to 18 or 19 over the last 10 years.

Given the growing disparity between the number of residents and the number of registered voters, can we still talk of universal suffrage? Universality, in the original sense of the word, would imply that all residents, irrespective of nationality, are included in the electorate. Denmark and the Netherlands are interesting in this respect. Membership of the European Community calls for a new approach to the issue.

The most important considerations here are those of morality and justice. There is no doubt that non-nationals contribute to the economic development and prosperity of their country of residence. Added to which their presence contributes to the cultural life of the local community. Church leaders have been moved to adopt a stance on the issue to stimulate further discussion. In a democratic society, does the fact that people are disenfranchised, even at local level, marginalize them still further when the aim should be to integrate them? Or to put it in another way, could the grant of voting rights contribute to the integration of foreigners?

Such questions are justified by a desire for justice and concern for the democracy of institutions. It was in this spirit that Monseigneur Jacques Gaillot, Bishop of Evreux (France) spoke out on 27 December 1985 in favour of giving immigrants the right to vote. However, the size of the foreign population in some Member States has a paradoxical effect: on the one hand, it highlights the need to consider the matter but, on the other hand, it tends to increase awareness of the possible effects of extending the electorate. Without knowing exactly what the consequences might be, people fear that the traditional political balance could be upset.

The debate takes on a new dimension in the context of a People's Europe. The concept of Community, which is purely economic in the Treaties, raises the question of whether or not a People's Europe necessarily involves the granting of political rights, at least at local level.

Analysis in European terms

According to the Preamble to the EEC Treaty the aim of the European venture is to 'lay the foundations of an ever closer union among the peoples of

¹ OJ C 345, 31.12.1985; Bull. EC 11-1985, point 2.5.11.

Europe'. Since 1958 this has led to the introduction of certain freedoms for nationals of the Member States within the Community. A specific analysis of the problem is therefore in order.

A People's Europe

The Treaty of Rome and legislation derived from it have created a unique legal framework which allows citizens to plan their professional lives without regard to national frontiers. This is quite new in that the fact of being a citizen of one Member State confers rights in the other Member States too. Citizenship is thus disassociated from the national limits on rights attached to a given nationality.

Thus freedom of establishment for wage-earners and the self-employed has been recognized within the Community. Right of residence is granted to anyone who wants to take advantage of it and is becoming a civil right which is no longer at the discretion of the State. The Court of Justice ensures that exercise of this right is limited solely by considerations of public order or public health.

European citizens therefore enjoy considerable freedom to establish themselves in the Member State of their choice. The Commission, in presenting a proposal for a directive on generalized right of residence, for nationals of Member States in the territory of another Member State,¹ hoped to take this to its logical conclusion so that these freedoms are no longer viewed in economic terms but are generally available to all citizens. There is no doubt that Community legislation has had the effect of breaking the link between national territory and the legal implications of nationality. The gradual achievement of a People's Europe will consolidate the trend.

This is consistent with the Community's objectives as laid down in the EEC Treaty, notably Article 7 'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'.

Citizens do in fact avail themselves of freedom of establishment and regard it as one of the main achievements of the Community. However, closer examination shows that the disassociation between national territory and the legal implications of nationality does not extend to political rights, even

at local level. Undoubtedly, there are legal and political difficulties which will be analysed in the next chapter. But it must be acknowledged that in most cases and particularly in Member States with high levels of immigration from other Community countries (France, Germany and Belgium), individuals can only take advantage of the freedom of establishment and residence introduced by the Community by forfeiting their political rights. That may seem surprising in a Community which sees itself as a Community of citizens whose basic common characteristic is that they are nationals of democratic Member States.

But should European integration go so far? This central question is a delicate one in that, in contrast to economic and social rights, the Treaties impose no obligation to introduce political rights. Nevertheless, Article 3(c) of the EEC Treaty, which sets a very broad unqualified objective, provides for 'the abolition, as between Member States, of obstacles to freedom of movement for persons'. It is unclear whether disenfranchisement could constitute a sufficient obstacle to deter citizens from taking up residence in another Member State. Nor is it obvious that the granting of voting rights is an essential element in establishing an ever closer union among the peoples of Europe.

Thus, while there is no express obligation, such action cannot be excluded from the possibilities opened up by the spirit rather than the letter of the Treaties. How the spirit of the Treaties is interpreted depends on the political will — indeed the unanimous political will — of the Member States.

However, it is possible at this stage, without reaching any definite conclusions, to determine the parameters for such action.

Two-fold limitation

In a Community based on the rule of law, any proposals made must be consistent with its legal system. There can be no question of proceeding solely on the basis of political principles. Factors such as feasibility and political logic must be taken into account too. It would, for instance, be unrealistic to propose, on the basis of the Treaties, that voting rights be granted to all residents irrespective of nationality in all elections.

¹ OJ C 207, 17.8.1979; OJ C 188, 25.7.1980.

There are two limitations here:

Nationals covered

Since the Community consists of a specific number of States and the legal framework binds them alone, any measures taken by the institutions would clearly be limited to nationals of these States. This limitation is not really restrictive. Firstly, it is difficult to legislate for nationals of non-member countries since the country of nationality takes precedence over the country of residence in the matter of political rights. The position adopted by King Hassan II of Morocco, when he asked Moroccan nationals not to vote in the recent local elections in the Netherlands, shows that sovereign States fear that they will be deprived of their traditional role. Secondly, the notion of fundamental reciprocity in international public law is not established if rights are granted unilaterally to nationals of another country. By contrast reciprocity is central to a Community instrument, giving it all its credibility.

It is therefore clear that the reference framework in the Community context is limited to nationals of the Member States. The primacy of the residence criterion in determining voting rights can be justified in the interests of creating a People's Europe. Clearly this must bring benefits in the first instance to citizens of the Member States because their shared achievements underpin freedom of movement and establishment. It would be illogical if extension of a People's Europe to political rights were to apply equally to nationals of non-member countries who do not enjoy more basic rights. For that reason, the position of nationals of non-member countries resident in the Member States must be left out of account.

Elections covered

The municipality is undoubtedly closest to the individual, who is in direct and daily contact with it. Decisions taken by a local council (on schools, town planning, local taxes etc.) affect all residents irrespective of nationality. The municipality is embodied in the mayor but it does not end there. He or she is backed by a council representing all viewpoints in the local community so that it can translate their aspirations into reality. Non-representation of residents on grounds of nationality poses a problem where residents are nationals of a Community Member State precisely because speci-

fic relations have been established between these States with a view to creating a shared future. It would be paradoxical, to say the least, to exclude certain Community nationals from this process. Residents who are nationals of non-member countries pose different problems which cannot be solved within the Community framework since they remain subject to the sovereignty of another State. The municipality, by its nature and purpose, must, as far as possible, represent the views of a maximum number of residents.

The same case cannot be made for 'political' elections (parliamentary and presidential elections, referenda) since these play a part in determining national sovereignty. The national aspect of these elections is clearly incompatible with the participation of non-nationals, even nationals of other Community countries, since the Community is not intended to impinge on national sovereignty, or replace States or nations. That would come from a federalist process which is not provided for in the existing Treaties. There is no contradiction, therefore, in considering the possibility of broadening the electorate for local elections but not for other elections.

What may appear as limitations simply reflect the content of the Treaties. Indeed, avoiding precipitate action, which the maximalist approach could entail, lends credibility to proposals stemming from a rigorous analysis of the Community rationale. The real obstacle is that this rationale lies as much in the spirit as in the letter of the Treaties.

This stumbling block has not, however, prevented the Community institutions from reflecting on this issue for a long time now and making an effort to have political rights recognized. The fact that this has not been achieved does not imply failure, since it has enabled a body of doctrine to be established.

The Community contribution

The issue of voting rights in local elections in the country of residence for all Community nationals is not a new one for the institutions. The idea goes back to the Summit of Heads of State or Government held in Paris in 1974.

It was recognized that a qualitative leap forward in Community integration was needed, that the Community should concern itself not just with

economic endeavours but also with the individual citizen. Citizens of the Member States should be made to feel that they were citizens of the Community too. The idea gradually emerged – in line with the European rationale – that the right to vote in local elections could be granted to citizens of the Member States in their country of residence. The efforts made since 1974 have shown the difficulties involved in achieving this. Because of the effect of the economic crisis on public opinion, ideas which had been approved in theory were gradually quashed by the realities revealed by a more pragmatic approach.

There have been three distinct phases since 1974:

- (i) 1974-77: formulation and definition of the concept and its contents;
- (ii) 1977-83: awareness of the realities and consequent definition of other priorities;
- (iii) since 1983: the new topicality of a People's Europe.

From the Paris Summit to the Scelba Report

The decisive impetus came from the highest political level. At the Paris Summit held on 9 and 10 December 1974 the Heads of State or Government announced that a 'working party will be instructed to study the conditions and the timing under which the citizens of the nine Member States could be given special rights as members of the Community'.¹ The approach was still general but the central idea had been defined: identical rights were to be granted to all citizens of the Member States to demonstrate that they belonged to a single Community. The hypothesis was that equal treatment in the economic sphere should be extended to other areas including the political.

The Commission, which had been instructed to consider the question, sent a report² on the granting of special rights to the Council as early as 3 July 1975. This document is vital. Apart from fleshing out the concept defined by the Paris Summit, it highlights a number of limitations and difficulties.

In its covering letter to the Council the Commission came to the conclusion that the working party to be set up 'should study the possibility of granting to everyone at least the right to vote and to stand for election at municipal level'. The right to vote in

local elections was an essential element of the special rights.

However, the report identified two major legal problems which needed to be resolved if any progress was to be made. Firstly, there was the constitutional problem since 'in six of the nine Member States the right to vote and eligibility for election are dependent on fulfilment of a condition as to nationality which is contained in the constitution'. This finding was a good indication of the political difficulties to be overcome. But this obstacle was not insurmountable since all constitutions provide for revision procedures. Then there was the question of where the necessary impetus was to come from. In its report the Commission put a strict limit on the role of the institutions, making the point that 'at present there are no provisions in the Community Treaties, even including Article 235 of the EEC Treaty, which grant the power to act on political rights'. However, the Commission did not exclude the possibility of something being achieved outside the Community framework, stating that 'the legal instrument chosen will have to be an *ad hoc* one, possibly a new treaty under international law or an amendment to the EEC Treaty based on Article 236'.

It was immediately clear that only unanimous political will would allow the idea to make progress. The legal obstacles outlined by the Commission could be overcome but they were such that considerable determination on the part of the Member States would be required to finalize the necessary procedures.

That is why the opinion to be formulated by Parliament was to prove an important political indicator. Following through preparations, Parliament discussed the report drawn up on behalf of the Political Affairs Committee by Mr Scelba on 16 November 1977.³ The report came out in favour of granting the right to vote in local elections but gave no precise indication of the procedure to be followed. Global reference was made to Articles 235 and 236 of the Treaty without specifying which article constituted a proper legal basis in each area referred to. In fact, the resolution adopted by Parliament merely requested the Commission 'to draw up proposals relating to special rights' and 'to consider

¹ Bull. EC 12-1974, point 1104.

² Supplement 7/75 – Bull. EC.

³ Doc. 346/77 of 25 October 1977, PE 45.833 final.

(...) among the rights to be granted as a matter of priority to Community citizens, (...) the right to stand for and vote at elections (...) at local authority level'.¹

In point of fact, no agreement could be reached on the procedure to be followed. Mr Bayerl, rapporteur for the Legal Affairs Committee, agreed that 'the concept of equal treatment of all citizens in the member countries necessarily entails the granting of political rights' and that 'the most important of these is the right to vote'. But he imposed limits by excluding applications of Article 235 of the EEC Treaty, following the Commission's lead in favouring application of Article 236.² At the debate in the House a political majority, made up principally of groups on the Left, the Liberals and the Christian Democrats as a whole, came out in favour of this principle.

Speakers who raised the question of principle were concerned about the legal basis. Only Mr Davignon, for the Commission, felt on the issue of special rights in general that Article 235 should not be dismissed out of hand. However, on the specific issue of voting rights in local elections, he stated that 'it is up to the Member States to grant these rights, irrespective of any convention that might be signed at a later date enshrining them in the Treaty. It will be up to each Member State to make provision in its legislation for the rules of eligibility at local or regional level'.³

The debate confirmed that there was a consensus on a theoretical goal but doubts as to how it was to be achieved. The matter was discussed at length at the Round Table Conference organized by Parliament in Florence from 26 to 28 October 1978 on 'Special Rights and a European Community Civil Rights Charter'. The question of the legal basis was considered in depth. Application of Article 235 could be justified by 'the evolution of the Community in accordance with constitutional practice'.⁴ The pattern of political consensus combined with legal doubts as to the means available to the Community was becoming clearer.

Facing political realities

The two-fold political impetus provided by the Summit and Parliament was maintained by discussions within the Council. It is essential, firstly, to realize that discussions did take place and, secondly,

to analyse why agreement could not be reached.

In November 1976 the Permanent Representatives Committee was sent a report on voting rights in local elections, which began by discussing the constitutional problem which would arise in six Member States. There was unanimous agreement in Coreper that the Treaties did not provide an adequate legal basis for the adoption of an instrument on voting rights. Only an instrument under international law or a Treaty amendment would suffice. A political act along the lines of a resolution found most favour. Despite these difficulties, a preliminary draft resolution by the Representatives of the Governments of the Member States meeting within the Council was prepared. This simply called for recognition of the principle of the right to vote in local elections. A clause allowing Member States to make this right subject to a minimum period of residence of five years was included.

Although it did not solve all the problems connected with the grant of voting rights, this preliminary draft had the great merit of removing the debate from the realms of theory, forcing Member States to face up to their responsibilities. This signalled the beginning of a more active phase to establish whether the will expressed at the 1974 Paris Summit was to be translated into action.

The realities predominated. The delegations spent most of their time outlining the political and legal difficulties, which such a move would create in their country. Such were these difficulties that in June 1977 the Permanent Representatives Committee did no more than 'take note' of the report presented to it. Adoption by Parliament of the Scelba resolution a few weeks later failed to provide sufficient impetus. Indeed some delegations even went so far as to claim the Commission could not make a proposal since the question of special rights was a matter for political cooperation.

Nevertheless, a new preliminary draft resolution by the Representatives of the Governments of the Member States was prepared in 1979. This time rejection was clearer. Given the political difficulties

¹ OJ C 299, 12.12.1977, pp. 26 and 27.

² Scelba Report, pp. 15 and 19.

³ Debates of the European Parliament, OJ Annex No 223, Sitting of 16 November 1977, p. 123.

⁴ Proceedings of the Round Table, p. 67.

associated with the grant of voting rights, consideration of the text was abandoned. Since then the matter has not been discussed by the Council.

Two observations are called for at this point:

(i) firstly, discussion has taken place within Council, which means that the issue has been raised;

(ii) secondly, these discussions revealed so many problems that, despite the best efforts of a number of Presidencies, the matter was left in abeyance; the Ministers themselves were never called upon to taken a decision despite the fact that preliminary documents had been prepared.

Failure within the Council was to have serious consequences for the future. In-depth discussions have never been resumed in the absence of evidence of a new political will on the part of the Member States. This can be seen from the answers to various written questions to the Council which simply say that the Council is studying the matter.¹

The Commission for its part has continued to advocate the introduction of local voting rights. As regards the legal basis a change of heart can be discerned in the written reply to Oral Question No H-87/79 by Mr Bettiza, which states that 'Articles 2, 3(c) and 235 of the EEC Treaty could provide the legal basis for introducing the right to vote and to be elected in local elections. These articles could enable the European Community bodies to draw up a legal instrument introducing active and passive voting rights'.² This significant shift was never denied even if the statement was not expanded upon. This also applies to the answers to Written Nos 312/79 by Mr Glinne³ and 779/79 by Mr Jurgens.⁴ And the position was reaffirmed in 1981 in the written reply to an oral question by Mr Psmazoglou.⁵

Nevertheless, this new stance did not lead the Commission to present appropriate proposals to the Council. The matter remained in limbo until 1983. Parliament and the new stimulus given to citizens' rights by the Fontainebleau European Council brought it into the limelight again.

A new impetus

Failure within the Council did nothing to diminish the enthusiasm of MEPs who continued to submit motions for resolutions. Then, on 8 July 1980, Mrs

Macciocchi was appointed rapporteur for the Legal Affairs Committee.

The Macciocchi Report and the debate of 7 June 1983

The report drawn up by the Legal Affairs Committee deserves detailed consideration. The original motion called on the Commission to present a formal proposal on voting rights in local elections by the end of 1983. During discussions within the Legal Affairs Committee, adoption of an amendment tabled by a German Christian Democrat changed the request for formal proposal to a request for a report.

However, the Legal Affairs Committee felt in its report that a formal proposal should be based on Articles 3(c) and 235 of the EEC Treaty since the granting of voting rights was one of the aims of the Community (corresponding to the objective set out in the Preamble to the EEC Treaty: 'the constant improvement of the living and working conditions of their peoples' and coming under action taken by the Community to achieve it, as defined in Article 3(c): 'the abolition, as between Member States, of obstacles to freedom of movement for persons'). It further argued that the application of Article 235 was not discretionary; once the institutions acknowledged that the conditions for application of that provision were fulfilled, they were under a duty to act accordingly.⁶

Asked for its views, the Political Affairs Committee, in a report drafted by Mr Mommersteeg, stated that 'migrant workers from other Member States of the Community must have the right to stand for and vote in local elections in so far as such elections do not in any way directly affect the composition of the national parliament' and that 'such a proposal should be based on the Preamble to the EEC Treaty'.⁷

¹ Reply to Written Question No 313/79 by Mr Glinne; OJ C 7, 9.1.1980.

² Debates of the European Parliament, OJ Annex 245, Sitting of 27 September 1979, pp. 268 and 269.

³ OJ C 74, 24.3.1980.

⁴ OJ C 105, 28.4.1980.

⁵ Debates of the European Parliament, OJ Annex No 1-268, Sitting of 11 March 1981, p. 145.

⁶ Macciocchi Report, doc. 1-121/83 of 29 April 1983, PE 81.688 final, pp. 13 and 14.

⁷ *Idem*, pp. 20 and 21.

The political split within the Legal Affairs Committee was reproduced at the debate on 7 June 1983. While the Socialist, European Democrat, Communist and Liberal speakers were in favour of a formal proposal, the German Christian Democrats and European Progressive Democrats felt that it would be premature to say the least. Nevertheless, an amendment tabled by Mr Tyrell, Mrs Veil and Mrs Cassanmagnago Cerretti,¹ was adopted in plenary session calling upon the Commission to present a formal proposal. The political significance of this amendment must be emphasized. It was tabled by MEPs from three different groups (European Democrats, Liberals and Christian Democrats) and three different nationalities (British, French and Italian). Thus Parliament's resolution of 7 June 1983 confirmed its traditional position in favour of a proposal for a directive² but revealed a new political divide on the issue.

The Commission reacted cautiously during the debate. Mr Narjes, after referring to discussions within the Council, said that 'when choosing the moment for producing a proposal along these lines, one thing we have to consider is whether that moment is politically opportune'.³ He nevertheless agreed to the Legal Affairs Committee's request, indicating that the Commission would prepare the report asked for by Parliament.

The Adonnino Committee

Following the Fontainebleau European Council 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'.⁴

This Committee, best known as the Adonnino Committee after its Chairman, recommended in a report approved by the Milan European Council in June 1985, 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, subject to a certain period of prior residence in the host country. This question falls within national jurisdiction. Special arrangements should be possible where particular circumstances in a Member State militate in favour of these'.⁵

The report, although providing fresh impetus to the idea, sets limits on what could be achieved by

affirming the competence of the Member States. This aspect was also stressed by the Greek representative who stated that no arrangement of this kind could be valid in Greece because the Constitution at present in force stipulated that only Greek citizens had the right to vote and stand for election.

That was why Mr Ripa di Meana, representing the Commission, pointed out that, as far as the Commission was concerned, the participation of European citizens in local elections, wherever they lived in the Community, was an essential feature of a People's Europe. He considered that an effort had to be made to grant local voting rights at an early date.

The Intergovernmental Conference

The premise of intergovernmental competence referred to since 1974 and confirmed by the Adonnino Committee was to receive its first application in 1985.

On 16 October 1985 the Danish delegation proposed that new Articles 66a and 66b be inserted into the EEC Treaty. The text read as follows:

'Workers, the self-employed and their families shall be entitled to vote and stand in local and regional elections in their country of residence if they have lived there for at least three years.'

The Council, acting on a proposal from the Commission and after consulting the Assembly, shall unanimously adopt the requisite directives so as to grant the above citizens the same rights as citizens in their country of residence in other spheres of social life.'

An exchange of views on the Danish proposal was held at the seventh preparatory meeting for the Intergovernmental Conference on 30 and 31 October 1985. It was supported by the Commission and welcomed with interest by the delegations. But there were some reservations, several Member States referring in particular to constitutional problems.

¹ PE 85.054/Am. 2 of 2 June 1983.

² OJ C 184, 11.7.1983, pp. 28 and 29.

³ Debates of the European Parliament, OJ Annex No 1-300, Sitting of 7 June 1983, p. 77.

⁴ Bull. EC 6-1984, point 1.1.9, para. 6.

⁵ Supplement 7/85 - Bull. EC, p. 21.

In any event, the provision was omitted from the Single European Act signed in Luxembourg.¹ The conclusion must be that the intergovernmental path proved no more effective in achieving the desired objective. Once again it would appear that genuine legal objections raised by certain Member States are a smoke screen for significant political opposition.

For its part, Parliament's Committee on Institutional Affairs, in a working document drafted by Mr Croux, noted that 'the institutional framework suggested and the procedural context proposed by Article 66b are inappropriate and unsuitable'.²

The debate of 13 November 1985

While the Intergovernmental Conference was still sitting, Parliament had another opportunity to state its views in connection with two oral questions with debate. One of these, submitted by the Socialists and certain Christian Democrats, had been drawn up with the agreement of the intergroup of local and regional representatives from all political groups.

The debate confirmed even more clearly the new political situation which had emerged in June 1983. The groups on the Left and the Rainbow Group remained in favour of voting rights but the Christian Democrats were divided, the Italians for and the Germans against as can be seen, in particular, from the explanations of vote given by Mr Bocklet and Mr Pirkl.³ These attitudes can be traced back to the demographic situation in the Member States concerned. A speaker for the European Democratic Alliance confirmed that the group did not consider local voting rights a priority issue and that in any event it was a matter for the Member States. The European Right was firmly opposed.

The Commission, through Mr Ripa di Meana, confirmed its intention of submitting the present report to Parliament. On the substance of the report, Mr Ripa di Meana noted that 'my personal preference is clearly in favour of a legislative type of solution'.⁴

The two resolutions adopted on this occasion called on the Commission to present 'proposals' and 'Community legal acts' without specifying when the precise nature of these should be.⁵ Nor was there any clear indication of what the legal basis for such proposals should be. The main thing is that the objective remains intact.

The two resolutions are content to state an abstract principle. A complete study demands that reality, i.e. the demographic situation, be analysed too. Only then will it be possible to determine whether there is a link between the level of immigration and the commitment to grant voting rights in local elections in the country of residence.

II – Demography

If we are to give dispassionate consideration to the problem of the voting rights of Community citizens living in a Member State other than their own, we must have the facts. We need to know the numbers involved, not only in global terms but also by nationality. It is very enlightening to compare figures for Community nationals with figures for nationals from non-member countries. With sound information we can assess the scale of the problem.

This approach will have to be adopted for some Member States and a breakdown of these figures produced to see if there is any correlation between the size of the foreign population and socio-political resistance to the idea of giving Community nationals the right to vote in local elections.

Foreign residents and intra-Community migration

Almost 13 million people living in the Community (4.1% of the population) are not nationals of their Member State of residence, being either nationals of another Member State or of a non-member country. Table 1 gives figures for foreign residents in each Member State.

Two points should be made at the outset:

(i) firstly, this population is concentrated in Northern Europe, 87% of the total foreign population being found in Germany, France, the United King-

¹ Supplement 2/86 – Bull. EC.

² PE 101.517/7 of 23 October 1985, p. 6.

³ Debates of the European Parliament, OJ Annex No 2-232, Sitting of 14 November 1985, pp. 180 and 181.

⁴ Debates of the European Parliament, OJ Annex No 2-232, Sitting of 14 November 1985, p. 106.

⁵ OJ C 345, 31.12.1985.

dom and Belgium. The southern Member States (Spain, Portugal, Italy and Greece) account for no more than 5% of foreign residents in the Community;

(ii) secondly, foreign residents represent less than 4% of the total population everywhere except in Belgium, Germany, France, Ireland and above all Luxembourg.

Only 39% of foreigners living in the Community are Community nationals, or 5 million out of a total foreign population of almost 13 million. Four of the northern countries (Belgium, Germany, France and the United Kingdom) attract almost 85% of Community nationals living in a Member State other than their own. The percentage in other Community countries is much lower. In four Member States (Belgium, Spain, Ireland and Luxembourg) Community citizens are more numerous than nationals of non-member States.

Finally, it is quite striking that in the three Member States where all foreigners are entitled to vote the number of foreigners remains modest, 100 000 in Denmark, 200 000 in Ireland and 500 000 in the Netherlands. In none of these countries do foreign residents represent more than 4% of the total population.

These preliminary observations confirm the existence of a North-South divide in relation to migration. Given this very uneven distribution of the foreign population, it is possible to proceed with a more detailed analysis, putting the Member States into three categories:

(i) countries in which foreigners account for less than 1% of the population: Spain, Greece, Italy and Portugal. No specific analysis will be made for these Member States since the demographic factor does not appear to be of critical importance;

(ii) countries which have granted the right to vote to all foreign residents: Ireland, Denmark and the Netherlands. An analysis of demographic data will demonstrate whether there is a positive correlation with the granting of voting rights. Although foreign residents account for 6.8% of the population, Ireland has been placed in the category of countries where the demographic factor does not seem to be significant, since 80% of these foreign residents are British nationals, usually of Irish origin;

(iii) countries which have a high proportion of non-nationals: the United Kingdom, Belgium,

Luxembourg, France and Germany. It will be necessary to go into greater statistical detail for these five countries to establish whether demographic factors have a major bearing on the voting rights issue.

The impossibility of harmonizing statistics and major differences in the structure of the foreign population argue in favour of a country-by-country analysis. No attempt will be made to assess future trends as regards the structure of the foreign population or its geographical distribution.

Given the relative stability established since 1975, it seems likely that, in time, the percentage of foreign residents of voting age will gradually come into line with the demographic model for the indigenous population.

Countries granting the right to vote

The percentage of foreign residents in these countries lies between 2% and 4% of the total population, which is lower than in the countries of the next category.

Ireland is a case apart since 80% of the foreign population comprises British nationals of Irish origin. If these are left out of account, Ireland is left with a mere 47 000 foreign nationals, or 1.5% of the total population. This figure, which is close to that of the countries in the first category, means that, as with these countries, a more detailed demographic analysis can be dispensed with.

Denmark

Denmark has slightly more than 100 000 foreign residents, representing 2% of the total population. Of these, one quarter are Community nationals. Another quarter is made up of Nordic Union nationals and a further quarter are immigrants from other European countries, notably Turkey and Yugoslavia. This highly specific structure is revealing. Non-European countries (in the continental sense of the term) represent less than one quarter of non-nationals (0.5% of the population). This undoubtedly influences the local perceptions of immigration, at least in cultural terms.

More than 60% of foreign residents live in Copenhagen or its environs. This is double the percentage

of Danish nationals living there (30%). It is the only concentration of this size, which means that the foreign population does not reach the national average of 2% in any other part of the country.

Netherlands

There are 546 000 non-Dutch people living in the Netherlands, representing 3.8% of the population. Only 32% (175 000) are Community nationals. This figure is partly explained by the relative ease with which Dutch nationality can be acquired. Over 200 000 people have been resident for more than 5 years, the qualifying period for the acquisition of voting rights.

The structure of the foreign population is remarkable in two respects:

- (i) firstly, the size of the two main communities from non-member countries (Turkey and Morocco), neither of which exceeds 1% of the population;
- (ii) secondly, the fact that the other sizeable communities come from other Member States (Germany, United Kingdom, Belgium, Spain and Italy).

Although non-member countries predominate in absolute terms, there is a large Community presence.

As for geographical distribution, Table 2 shows that over half the foreign population of the Netherlands (53%) lives in the Western provinces where only 37% of the native population is to be found. Approximately 35% of the foreign population live in the major cities, Amsterdam, Rotterdam, The Hague and Utrecht; some 14% of the population of Amsterdam and over 10% of the population of Rotterdam are foreign nationals. Even higher percentages are to be found in some peripheral districts.

Countries with a large foreign population

These are the Member States in which the question of voting rights provokes heated debate since the foreign population is relatively large. For this reason the demographic data must be studied in greater detail to see what lessons can be learned.

United Kingdom

The study was complicated by the fact that many immigrants to the United Kingdom are entitled to British nationality. Moreover, the results of the 1981 census provide information on the place of birth of heads of household rather than their current nationality. For this reason a strict comparison with the other Member States was not always possible.

However, it was possible to put a figure on the geographical origin of over two million foreigners (3.9% of the population).

Community nationals represent a mere 1.3% of the population. It should be remembered that more than 600 000 Irish residents have the right to vote. Other Community nationals are very few in number. If the right to vote were to be extended to all Community nationals it would affect a very small proportion of the population indeed – just over 100 000 people. Almost a million and a half people (over 2.5% of the population) are nationals of non-member States.

As for geographical distribution, over 50% of foreign residents live in London and the South-East, where only 30% of the native population live. Ninety per cent of Commonwealth and Pakistan nationals and their families live in the regions which have 60% of the general population. Local concentrations with a foreign population of over 20% occur in some districts of Greater London (average 14.8%). There are not many areas of high concentration outside Greater London, relatively few constituencies recording a Commonwealth population of more than 10% (Blackburn, Leicester, Bradford, West Midlands, Wolverhampton and Birmingham).

Two features are typical of the foreign population in the United Kingdom:

- (i) it is highly concentrated geographically and of minor importance outside these areas;
- (ii) there are very few Community nationals, and of these the nationals of one country – Ireland – predominate.

France

According to official statistics, France has between 3 680 000 and 4 470 000 foreign residents. On

31 December 1983, the Ministry of the Interior reported that 4 470 495 foreign nationals held a valid residence permit or were children under sixteen. The Institut National de la Statistique et des Études Économiques (INSEE) and the Ministry of Social Affairs, working from the 1982 census, put the number of foreign nationals living in France at 3 680 100. This is the figure which should be used, since the Ministry of the Interior figures do not allow for departures or deaths. This means that foreign nationals represent 6.8% of the total population.

There are over a million and a half Community nationals representing almost 3% of the total population. However, nationals of non-member States total over 2 million (3.9% of the total population) and thus represent over 57% of the foreign population.

A breakdown by nationality shows that the biggest single group are the Portuguese (20% of foreign residents and Community nationals since 1 January 1986). The Algerians come next with just under 20%, followed by the Italians, Moroccans and Spanish, each accounting for 10% to 11%. With the exception of the Tunisians and Turks, the other foreign communities are running at about 100 000 inhabitants. Although the southern Member States of the Community are strongly represented, they only account for 42% of non-nationals because of the extreme diversity of foreign residents in France. Refugees and Stateless persons (of all nationalities) total 150 000.

The geographical structure reveals a large concentration in certain metropolitan areas. Table 3 shows that in only a few regions does the proportion of foreign residents reach 5%. Indeed, 71% of foreigners (75% of those from non-member countries, and 65% of those from other Community countries) live in the Ile-de-France, Nord-Pas-de-Calais, Alsace, Lorraine, Rhône-Alpes, Provence-Alpes-Côte d'Azur regions, where less than half of the population of metropolitan France lives.

Table 4 shows that this concentration is even greater in the major urban centres: around 12% in Lyon and Grenoble-St Etienne, 11.5% in Cannes-Grasse-Antibes. In the municipalities these figures rise to 15.8% in Grenoble, 12.2% in Toulon and current estimates suggest 20% in Marseille, or one inhabitant in five.

The same phenomenon can be seen in the case of Community nationals, who account for more than 5% of the population in the Paris region and the conurbations of Lyon, Toulouse, and Grenoble, etc. A more detailed breakdown of the statistics gives even higher figures for the heavily industrialized peripheral communes (e.g., Levallois-Perret, Aulnay-sous-Bois or Mantes-La-Jolie, in the Paris region), smaller communes in semi-industrialized areas or with a concentration of a particular ethnic group (e.g., the 37% Portuguese residents in the commune of Chanteloup-les-Vignes lying in the bend of the river Seine), the poorer suburbs (e.g., the communes of Saint Fons, Vénissieux or Villeurbanne in the Lyon conurbation) and the coal and steel producing areas in border regions (e.g., Thionville or Forbach in the Moselle).

The phenomenon is even more apparent in a study of the foreign population of the city of Paris *arrondissement* by *arrondissement*, as set out in Table 5. First of all, it is striking that of the 360 000 foreigners (16.6% of the total population) only a third are Community nationals, representing 5.5% of the total population. When this figure is broken down by nationality it can be seen that enlargement of the Community has wrought a profound change in the pattern of Community immigration. The Portuguese alone, with over 50 000 individuals, represent 44.4% of Community nationals (14.7% of foreign nationals and 2.4% of the total population). The Spanish, with 35 000 individuals, represent almost 30% of Community nationals (9.6% of foreign nationals and 1.60% of the total population). The 12 000 Italians represent over 10% of Community residents (9% of foreign nationals and 0.56% of the total population). These three Member States alone account for almost 84% of Community nationals. There is therefore a very marked concentration, with a preponderance of Portuguese.

The *arrondissement* by *arrondissement* study shows that Community nationals constitute a majority of foreign residents in four *arrondissements* only (some of the least densely populated). Only in exceptional cases do they reach the threshold of 10% of the population, the average being between 5% and 8%. The Portuguese community predominates in all *arrondissements* (except the 2nd), Portugal having more nationals than the Ten combined. The Spanish exceed the 10% threshold in 14 *arrondissements*.

Enlargement has profoundly changed the pattern of Community immigration, bringing with it a striking

increase in numbers because of the large Portuguese presence.

Federal Republic of Germany

In absolute terms, Germany has the largest number of resident non-nationals (over 4.5 million, or 7.3% of the population). It is also the Member State with the largest population from non-member countries (over 3 million, or more than 5% of the population). Although there are almost one and a half million Community nationals, they represent only 2.3% of the population. The percentage of Community nationals seldom reaches 5% of the total population, with the exception of certain large cities (Frankfurt-am-Main, Stuttgart), other towns in the same regions (Offenbach, Mannheim, Ludwigshafen), certain towns which can be described as 'frontier towns' (Krefeld, Saarbrücken), and new industrialized towns developed with the assistance of an immigrant workforce of Community origin (Wolfsburg).

Unlike France, the breakdown by nationality reveals that the foreign community comes predominantly from Turkey (33.9% of all foreign residents) and to a lesser extent Yugoslavia (13.5%). Of Community nationals: the Italians account for only 12.9% of foreign residents, the Greeks 6.4%, the Spanish 3.7%, and the Portuguese and the Dutch 2.3% each. The predominance of one nationality is even more marked than in France and the Community population is far smaller.

The geographical distribution reveals a concentration in absolute terms in certain *Länder* such as North Rhine-Westphalia, Baden Württemberg or Bavaria. Table 6 shows that in relative terms this foreign population ranges in most cases between 8% and 10%, with a maximum of 12.8% in Berlin.

The relative size of the foreign population increases with the size of the conurbation. Only 5.4% in towns of 20 000 to 50 000 inhabitants, it reaches 13% in cities of more than a million inhabitants. Table 7 reveals that 48.5% of the foreign population live in the cities with more than 100 000 inhabitants, whereas only 31.3% of the native population live in these cities.

Table 8 gives details of these percentages for cities with a population of 250 000 or over. Almost all have at least 8% foreign residents. Concentrations

of over 20% are still the exception. Of the cities only Frankfurt-am-Main and Offenbach have a foreign population in excess of 20% (23.9% for Frankfurt, 20.6% for Offenbach).

However, Community nationals only account for a small proportion of this foreign population. Except in Frankfurt, they never represent more than 5% of the population, the average being between 2% and 3%. This confirms the dominant trend in Germany, in other words, high levels of immigration with a small Community presence, fairly thinly spread in geographical terms. In political terms, this means that there are no concentrations of Community nationals liable to lead to major changes in election results.

Belgium

Although in absolute terms foreign residents number less than a million, they represent 9% of the population. In contrast to France and Germany, Community nationals are in a clear majority, representing two-thirds of the foreign population. Table 9 gives a breakdown by nationality. In Belgium, unlike France, enlargement has not unduly altered the number of Community residents. The Italians, many of whom have lived in Belgium for a long time, form the largest national group, followed by the French and Spanish. The next largest groups in terms of numbers are nationals of non-member States (mainly Moroccans and Turks).

Geographical distribution is very uneven. Table 10 shows that over 70% of the foreign population has settled in the Brussels region and Wallonia, where less than 40% of the indigenous population live. The Brussels region alone accounts for more than 25% of the country's foreign population. High percentages are also to be found in the Provinces of Hainaut (15.8%), Liège (14%), and Limbourg (10%), in certain industrial towns (Charleroi, Liège, Mons) and in some frontier areas, for example, the German-speaking area around Eupen (13.9%).

Even higher percentages are to be found within these regions and conurbations. This is particularly true of the Brussels region, which is a special case being a large conurbation still divided into separate communes. Thus the Brussels commune of Saint-Josse has a foreign population of 51%, Saint-Gilles has 46%, Molenbeek-St-Jean and Schaerbeek have

35% and Forest has 28%. The percentage of Community nationals is considerable, rising to 27% for the commune of Saint-Gilles.

Belgium is therefore host to a large number of Community nationals concentrated in the Brussels region and Wallonia. There is no doubt that the percentage presence is such as to have a definite impact on the political balance in the event of the right to vote being extended.

Luxembourg

The Grand-Duchy is a country of contrasts. Because it is small it has the fewest foreign residents in absolute terms. In relative terms, however, it has the highest proportion of foreigners: 26.3% or almost a quarter of the population. Moreover, almost all these foreign residents are Community nationals (92.7%). Enlargement has had a major impact, since, as Table 11 shows, the Portuguese are by far the largest single group. Nationals of non-member States are therefore few in number.

The foreign population is spread throughout the country. It includes a large number of migrant workers and their families from the Mediterranean countries (approximately 56%), but also nationals of adjacent countries (approximately 31%).

Politically the situation in the Grand-Duchy is very delicate, since any extension of the electorate would tend to alter the traditional political balance. There is no doubt that in Luxembourg, more than anywhere else, demography has a decisive bearing on the political and legal approach to the problem.

*
* *
*

This analysis has therefore revealed that there is a correlation between demographic factors and the political problem. The fact that the Member States which do not grant the right to vote are those with the largest percentage of foreign residents cannot be ignored. This analysis has also shown that any extension to Community nationals of the right to vote in local elections would not have the consequences which the figures for total foreign population would suggest. This is particularly true of Germany and France and to a lesser extent of Belgium.

On the other hand, Table 12 reveals that under the present system over four million Community nationals, who for a variety of reasons live in a Member State other than their own, exercising their freedom of establishment and right of residence guaranteed by the Treaty and secondary legislation, are not entitled to vote in local elections.

Clearly, from the point of view of European integration in general and the creation of a People's Europe in particular, the fact that a sizeable group of citizens do not enjoy full democratic rights raises a problem of principle.

But the problem of principle is modulated by the legal and constitutional guarantees governing exercise of the franchise. These undoubtedly hold the key to a political approach to the problems. We must therefore look carefully at the legal and political considerations influencing any developments in this field.

Table 1

Foreign residents in the Member States of the Community

Member States	Total foreign population			Community nationals			Nationals of non-member States		
	Number (× 1 000)	% of total population	% of Community's foreign population	Number (× 1 000)	% of foreign population	% of total population	Number (× 1 000)	% of foreign population	% of total population
Belgium	891	9	6.9	589	67.4	6	290	32.6	3
Denmark	103	2	0.8	25	24.3	0.5	78	75.7	1.5
Germany	4 535	7.4	35.2	1 433	31.6	2.3	3 102	68.4	5.1
Greece	84	0.9	0.6	23	27.4	0.2	61	72.6	0.7
Spain	210	0.6	1.6	126	60	0.4	84	40	0.2
France	3 680	6.8	28.5	1 578	42.9	2.9	2 102	57.1	3.9
Ireland	232	6.8	1.8	196	84.5	5.7	36	15.5	1.1
Italy	312	0.6	2.4	75	24	0.2	237	76	0.4
Luxembourg	96	26.3	0.7	89	92.7	24.4	7	7.3	1.9
Netherlands	546	3.8	4.2	175	32	1.2	371	68	2.6
Portugal	63	0.6	0.5	17	27	0.2	46	73	0.4
United Kingdom	2 137	3.91	16.6	708	33.2	1.3	1 429	66.8	2.6
Total	12 889	4.1	100	5 034	39	1.6	7 855	61	2.4

Table 2

The Netherlands – Distribution of foreign population (1980)

Provinces	Foreign population (× 1 000)		% of total population	Regional population as % of total population	
	Total	of which Com- munity citizens		Foreign	Dutch
<i>North</i>					
Groningen	7.2	2.7	1.3	1.5	4.1
Friesland	4.8	1.6	0.8	1.0	4.3
Drenthe	3.3	1.2	0.8	0.7	3.0
<i>East</i>					
Z. I. Polders	2.0	1.0	3.1	0.4	0.5
Overijssel	30.6	9.0	3.0	6.5	7.3
Gelderland	35.3	11.4	2.1	7.5	12.2
<i>West</i>					
Utrecht	32.5	7.6	3.6	6.9	6.3
Noord-Holland	112.5	34.2	4.9	23.8	16.1
Zuid-Holland	137.7	45.8	4.5	29.1	21.6
<i>South-East</i>					
Zeeland	11.5	7.9	3.3	2.4	2.5
<i>South</i>					
Noord-Brabant	55.0	19.7	2.7	11.5	14.6
Limburg	41.0	25.9	3.6	8.7	7.5
	473.4	168	3.4	100	100
Amsterdam	66.4		9.3	14.0	4.8
Rotterdam	48.3		8.3	10.2	3.9
's-Gravenhage	31.7		6.9	6.7	3.1
Utrecht	17.1		7.2	3.6	1.6

Source: Regionaal statistisch zakboek 1982 – Table 67.

Table 3

France – Concentration of foreign population at regional and departmental level (1982)

Regions	Total population	Foreign residents		Community nationals		Non-Community nationals	
		Number	% of total population	Number	% of total population	Number	% of total population
<i>Île-de-France</i>	10 064 840	1 335 060	13.26	527 660	5.24	807 400	8.00
of which Ville de Paris	2 188 960	366 660	16.75	121 320	5.54	245 340	11.21
Seine-Saint-Denis	1 327 080	225 960	17.03	70 260	5.29	155 700	11.74
<i>Nord-Pas-de-Calais</i>	3 919 240	186 160	4.80	59 400	1.52	126 760	3.28
of which Nord	2 512 900	152 040	6.05	51 080	2.03	100 960	4.02
<i>Lorraine</i>	2 334 740	186 320	7.98	92 800	3.97	93 520	4.01
of which Moselle	1 007 420	103 900	10.31	54 400	5.40	49 500	4.71
<i>Alsace</i>	1 553 740	125 140	8.05	51 880	3.34	73 260	4.71
of which Haut-Rhin	645 020	65 200	10.11	27 920	4.33	37 280	5.78
<i>Rhône-Alpes</i>	5 022 800	458 020	9.12	184 040	3.66	273 980	5.46
of which Isère	937 940	94 320	10.06	42 440	4.53	51 880	5.53
Rhône	1 444 000	157 220	11.00	52 680	3.65	104 540	7.35
<i>Provence-Alpes-Côte d'Azur</i>	3 942 980	322 820	8.19	114 880	2.91	207 940	5.18
of which Alpes-Maritimes	876 980	84 100	9.59	40 540	4.62	43 560	4.97
Bouches-du-Rhône	1 708 580	142 340	8.33	34 480	2.01	107 860	6.32
(a) Metropolitan France	54 273 200	3 680 100	6.78	1 577 900	2.91	1 102 200	3.87
(b) Regions 1 to 6	26 838 340	2 613 520	9.74	1 030 660	3.84	1 582 860	5.90
(c) % of total population	49.45		71		65.32		75.30
(d) 16 other regions	27 434 860	1 066 580	3.89	547 240	1.99	519 340	1.9
(e) % of total population	50.55		29		34.68		24.70

Source: INSEE – 1982 Census. 5% survey following structure of population as a whole.

Table 4

France — Breakdown of nationalities in large towns and cities (1975)¹

Conurbations	Total population	Foreign residents		By nationality ²	
		Number	% of total population	Spanish, Portuguese, Italian	% of total population
Paris	8 547 625	1 025 240	12.00	453 070	5.09
Lyon	1 172 035	138 810	11.84	57 400	4.90
Marseille	1 074 390	85 580	8.00	23 565	2.19
Lille	934 325	75 870	8.12	27 600	2.95
Bordeaux	611 650	31 390	5.13	20 740	3.39
Toulouse	507 785	36 325	7.21	20 650	4.07
Nantes	452 070	7 615	1.68	2 910	0.64
Nice	437 120	38 340	8.77	17 160	3.93
Grenoble	389 775	49 970	12.82	28 605	7.34
Rouen	389 855	15 250	3.91	7 620	1.95
Toulon	378 235	22 295	5.89	8 390	2.22
Strasbourg	365 075	30 910	8.47	14 105	3.86
Valenciennes	350 185	27 475	7.85	8 920	2.55
Saint-Étienne	338 090	37 795	11.18	13 125	3.88
Lens	328 055	22 170	6.76	4 060	1.24
Nancy	281 435	15 530	5.52	7 365	2.62
Le Havre	264 210	10 305	3.90	2 795	1.06
Grasse-Cannes-Antibes	257 940	29 745	11.53	14 240	5.52
Clermont-Ferrand	252 635	23 805	9.42	17 935	7.10

Source: INSEE 1975 Census.

¹ 1975 Census: Total foreign population 3 442 415, compared with a total population of 3 680 100 in 1982, the difference being largely attributable to a 178 965 increase in the Paris region.

² These three nationalities account for 91% of non-French Community nationals.

Table 5

France – Foreign population of Paris in 1982

Arrondissement	Population					
	Total	Foreign residents		Community nationals		
		Total	% of the total population	Number	% of foreign population	% of population
1st	19 000	3 532	18.6	2 012	57	10.5
2nd	21 368	5 056	23.7	1 988	39.3	9.3
3rd	35 632	7 756	21.8	2 380	30.7	6.6
4th	33 880	4 408	13.0	1 812	41.1	5.3
5th	62 128	8 556	13.8	3 460	40.4	5.5
6th	49 184	6 272	12.8	3 244	51.7	6.6
7th	67 204	9 600	14.3	5 252	54.7	7.8
8th	45 800	8 988	19.6	5 052	56.2	11
9th	64 560	11 064	17.1	4 788	43.2	7.4
10th	86 940	19 216	22.1	5 448	28.3	6.2
11th	145 776	30 496	20.9	8 700	28.5	5.9
12th	139 144	16 860	12.1	5 184	30.7	3.7
13th	170 320	25 172	14.8	5 688	22.6	3.3
14th	139 788	20 356	14.6	6 668	32.7	4.8
15th	225 628	25 888	11.5	10 116	39.1	4.5
16th	178 696	31 140	17.4	15 204	48.8	8.5
17th	168 600	24 844	14.7	10 504	42.7	6.2
18th	187 760	37 892	20.2	9 088	24	4.8
19th	163 356	31 856	19.5	6 424	20.1	3.9
20th	171 888	32 624	19.0	7 328	22.5	4.2
Total	2 176 652	361 576	16.6	120 340	33.3	5.5

Source: INSEE 1982 Census.

Table 6

Germany – Distribution of the foreign population by region (1983)

Land	Foreign population (× 1 000)	% of total population	Regional population as % of total population	
			Foreign	German
Schleswig-Holstein	92.5	3.4	2.0	4.4
Hamburg	173.1	10.5	3.8	2.6
Lower Saxony	290.7	4.0	6.4	12.2
Bremen	50.3	7.3	1.1	1.1
North Rhine-Westphalia	1 403.0	8.3	30.9	27.3
Hessen	516.1	9.3	11.4	8.9
Rheinland-Palatinate	166.5	4.7	3.7	6.1
Baden-Württemberg	874.8	9.4	19.3	14.7
Bavaria	686.7	6.3	15.2	18.0
Saarland	45.0	3.8	1.0	1.8
Berlin (West)	236.2	12.8	5.2	2.9
Total	4 534.9	7.4	100.0	100.0

Source: Statistisches Jahrbuch 1984 für die Bundesrepublik Deutschland Table 3.19 (Date 30.9.1983).

Table 7

**Germany – Distribution of foreign population in major towns and cities
(Kreisfreien Städte) – (1983)**

Population	Total population	Foreign population	As % of total population	Population by groups of towns as % of total population	
				Foreign	German
+ 1 000 000	4 754 000	619 000	13.0	13.7	7.8
500 000-1 000 000	5 537 000	741 000	13.4	16.3	9.0
200 000- 500 000	5 383 000	514 000	9.5	11.3	8.8
100 000- 200 000	3 523 000	327 000	9.3	7.2	5.7
+ 100 000	19 197 000	2 201 000	11.5	48.5	31.3
50 000-100 000	1 465 000	108 000	7.4	2.4	2.4
20 000- 50 000	630 000	34 000	5.4	0.7	1.0

Source: Statistisches Jahrbuch Deutscher Gemeinden 71, Jahrgang 1984, Ausländer 1983, Stichtag 30.9.1983.

Table 8

Germany – Population of cities with over 250 000 inhabitants (1983)

Towns + cities	Total population (× 1 000)	Foreign residents (× 1 000)	As % of total population	Main Community nationalities as % of total population ¹
Berlin	1 857	236	12.7	0.9
Hamburg	1 613	173	10.7	2.7
Munich	1 284	210	16.4	3.4
Cologne	947	145	15.3	3.9
Essen	634	36	5.6	1.3
Frankfurt am Main	612	146	23.9	6.1
Dortmund	593	56	9.4	1.8
Düsseldorf	578	89	15.4	4.0
Stuttgart	569	102	17.9	6.2
Bremen	543	40	7.4	0.8
Duisburg	539	75	13.9	2.2
Hanover	523	53	10.1	2.6
Nuremberg	475	60	12.8	3.9
Bochum	390	26	6.6	1.3
Wuppertal	385	38	10.0	3.9
Bielefeld	307	30	9.8	2.2
Mannheim	299	45	15.0	4.3
Gelsenkirchen	294	31	10.6	1.3
Bonn	292	24	8.3	1.7
Münster	273	12	4.4	0.6
Wiesbaden	272	32	11.9	3.8
Karlsruhe	270	25	9.2	2.7
Mönchengladbach	258	22	8.5	2.2
Braunschweig	256	15	6.9	1.0

Source: Statistisches Jahrbuch Deutscher Gemeinden, 71, Jahrgang 1984, Ausländer 1983, Stichtag 30.9.1983.

¹ Spain, Italy, Greece *et al*, according to the size of the population in the area; nationalities which are thinly represented are not included in the figures.

Table 9

Belgium – Distribution of foreign residents

Foreign population	Brussels		Wallonia		Flanders		Total	
	% of group	% of all foreign residents	% of group	% of all foreign residents	% of group	% of all foreign residents	% of group	% of all foreign residents
Italian	29.1	15	64.1	52.3	21.4	13.1	46.7	31.8
Spanish	22.9	11.8	5.8	4.7	7.5	4.6	9.7	6.6
French	20.9	10.8	18	14.8	12.2	7.5	17.2	11.7
Greek	7.8	4.1	2.3	1.9	2.7	1.7	3.5	2.4
British	5.9	3.1	1.7	1.3	7.3	4.5	3.8	2.6
Portuguese	3.9	2	1	0.9	1.5	0.9	1.7	1.2
Dutch	3.7	1.9	2.2	1.8	38	23.3	11.1	7.5
German	3.3	1.7	3.7	2.8	7.7	4.7	4.8	3.1
Luxembourg	1.5	0.8	1	0.8	0.6	0.4	1	0.7
Danish	0.6	0.3	0.1	0.06	0.4	0.3	0.3	0.2
Irish	0.4	0.2	0.1	0.04	0.2	0.1	0.2	0.1
Total Community		51.7		81.4		61.1		67.4
Moroccan	50.5	24.4	22.6	4.1	33.4	13	37.8	12.1
Turkish	13.8	6.7	22.5	4	34	13.2	22.6	7.3
Tunisian	2.9	1.3	2.1	0.3	2.2	0.9	2.4	1
Yugoslav	2.3	1.1	2.6	0.4	1.4	0.5	2.1	0.7
Algerian	2	0.9	11.4	1.5	1.1	0.8	3.8	1.3
Polish	0.3	0.4	6.8	1.2	1.6	0.6	2.7	0.9
Other	28.2	13.5	32.1	8.2	25.2	9.8	28.7	9.3
Total non-Community		48.3		19.7		38.8		32.6

Table 10

Belgium – Distribution of foreign residents by region/province/*arrondissement* (1981)

Region, province, <i>arrondissement</i>	Foreign residents	As % of total population	Regional population as % of total population	
			Foreign	Belgian
<i>Brussels</i>	248 000	25.1	27.8	8.3
<i>Flanders</i>	238 600	4.3	26.8	60.4
Province of Antwerp	79 800	5.1	9.0	16.7
of which Antwerp	60 200	8.7	7.3	9.6
Province of Brabant	37 200	4.0	4.2	10.0
Province of Limbourg	72 500	10.0	8.1	7.3
of which Hasselt	39 900	11.2	4.5	3.5
Province of East Flanders	32 500	2.4	3.6	14.5
of which Ghent	16 300	3.3	1.8	5.2
Province of West Flanders	16 600	1.5	1.9	11.9
<i>Wallonia</i>	404 600	12.6	45.4	31.3
Province of Brabant	26 600	9.1	3.0	3.0
Province of Hainaut	204 900	15.9	23.0	12.1
of which Charleroi	87 600	20.0	9.8	3.9
of which Mons	44 900	17.6	5.0	2.3
of which Soignies	26 900	16.2	3.0	1.6
Province of Liège	139 800	14.0	15.7	9.5
of which Liège	109 300	18.2	12.3	5.5
of which Verviers	23 400	9.5	2.6	2.5
Province of Luxembourg	10 700	4.8	1.2	2.4
Province of Namur	22 600	5.5	2.5	4.3
of which Namur	16 700	6.4	1.9	2.7
Total	891 200	9.1	100.0	100.0

Source: Annuaire statistique de la Belgique – Tome 104, 1984, Tables 4, 5, 17.

Table 11

Luxembourg – Foreign residents

Foreign population	Number	% of foreign residents (EEC)	% of foreign residents (EEC + rest of world)	% population
Portuguese	29 300	32.9	30.5	8.1
Italian	22 300	25	23.2	6.1
French	11 900	13.3	12.4	3.2
German	8 900	10.1	9.3	2.4
Belgian	7 900	8.9	8.2	2.1
Dutch	2 900	3.3	3	0.8
Spanish	2 100	2.3	2.2	0.6
Other Community nationals	3 700	4.2	3.8	1.1
Total Community	89 000	100	92.6	24.4
Yugoslav	1 500	21.4	1.7	0.4
Other non-member countries	5 500	78.6	5.7	1.5
Total	96 000	100	100	26.3

Table 12

Community nationals disenfranchised in country of residence

Belgium	589 000
Germany	1 433 000
Greece	23 000
Spain	126 000
France	1 578 000
Italy	75 000
Luxembourg	89 000
Portugal	17 000
United Kingdom	108 000
Total	4 038 000

III – Legal and political considerations

The right to vote is recognized by the International Covenant on Civil and Political Rights. Article 25(a) states that 'every citizen shall have the right and the opportunity, without any ... distinctions ... and without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives'.

Traditionally, however, the right to vote is based on two conditions, either or both being applied depending on the Member State:

- (i) nationality of the country in which the elections are being held;
- (ii) residence in that country, or in a smaller territorial unit possibly the municipality.

These conditions are the product of a constitutional and legal history which sees universal suffrage as a victory for the 'people', originally defined as all the citizens, that is to say, all the nationals, of the country in question. This concept is found primarily in continental law countries; common law countries attach more importance to residence.

The theory has evolved somewhat and both criteria are not necessarily applied in all cases. In some Member States nationality, originally the more important of the two, has been superseded by residence, which has become the sole prerequisite. It is therefore necessary to establish which Member States restrict the right to vote and stand in local elections to their own nationals and to determine the legal nature of this requirement.

Right to vote in country of residence

Four Member States allow all or some non-nationals to participate in local elections. In the other Member States where the matter is currently under discussion, the issue consistently raises serious political and legal problems. However, the fact that such a change in electoral law is never examined from a Community angle could explain why the debate is sometimes controversial.

Member States granting non-nationals the right to vote in local elections

The evolution of electoral law is part and parcel of historic tradition. The concept of 'democracy' has

also had to adapt to the emergence of multi-cultural societies and universal suffrage has been extended to new categories of voters. However, in some cases the change has been gradual rather than instantaneous. It is therefore worth looking at the problems involved and reflecting how the process of change could be given a specifically Community momentum.

Member States granting all non-nationals the right to vote

Only three Member States grant all non-nationals the right to vote in local elections, going beyond the objective sought by the European Parliament.

Ireland

In Ireland, the sole criterion to apply in matters of municipal electoral law is residence. All residents can have their names entered on the electoral register, which is updated on 15 April every year. Under the 1973 Electoral Act any individual aged 18 or over who has been ordinarily resident in Ireland for at least six months is entitled to vote in local elections. Under the 1974 Electoral Act all such persons are eligible to stand for election to the local authority in the area in which they are resident.

Nationality then is irrelevant when it comes to the right to vote and to stand in local elections: the right is granted not only to Community nationals but to non-nationals generally.

This being so, reform of municipal electoral law along the lines advocated by the European Parliament would not be necessary in Ireland as national legislation is already more liberal.

Denmark

Danish municipal electoral law changed in two stages: the right to vote was extended first to nationals of the Nordic Union and then to all foreigners. The Community can learn a lot from the first stage in terms of both principle and practice, proving as it does that it is politically possible to enlarge the municipal electorate without necessarily including all foreigners. Whether one stage inevitably leads to the next is a matter of political options.

Extension to nationals of the Nordic Union

The first extension of the right to vote was restricted to the Nordic Union, of which Denmark is a member. The Law of 18 May 1977 extended the franchise in local elections to nationals of the other member countries (Finland, Iceland, Norway and Sweden), subject to a prior residence requirement set at three years. The legal disqualifications applicable to nationals were obviously applied to this new category of voter as well.

This move placed all Nordic Union nationals on an equal footing in Denmark in matters of local electoral law. The motive force was membership of the Scandinavian group of countries with a common historical heritage providing the basis for supranational union. A Scandinavian became a citizen enjoying identical rights in local elections throughout the Union.

The first elections using the enlarged electoral register were held in 1978. Scandinavians accounted for 7 218 out of a total of 12 102 foreign residents in Denmark. 59.2% of the new voters went to the polls, a fairly high turnout particularly for a first election. However, no non-Danes were elected.

Extension of the right to vote to all non-nationals

Encouraged by this success the Danish authorities decided to extend voting rights in local elections even further. They rejected the idea of an intermediate stage (which could have involved extending the right to vote to Community nationals) and decided instead that the second stage would include all foreign residents regardless of nationality. This change was effected by Law No 143 of 30 March 1981 amending the Law governing Municipal Elections and by Decree of the Minister of the Interior No 196 of 22 April 1981 promulgating that Law. Under Article 2 of the Law and Articles 1 and 2 of the Decree non-nationals have the right to vote and to stand in municipal elections on three conditions. They must:

- (i) be at least 18 years of age;
- (ii) be ordinarily resident in the municipality;
- (iii) have been resident in Denmark during the three-year period leading up to the elections.

The first elections with this extended electorate were held in 1981. A total of 51 888 non-nationals

representing 1.4% of the total electorate, were eligible to vote. 31 787 of them (61.3%) went to the polls in a high turnout which demonstrated the interest shown by this new category of voter. This compared with an overall turnout of 71.3%. Three non-Danes were elected municipal councillors but there were no non-Danish county councillors. In Denmark, as in Ireland, resident Community nationals may take part in local elections after a slightly longer period of residence. Here again practice is already in advance of the European Parliament's desiderata.

There are two lessons to be learned from the Danish experience:

(i) firstly, electoral law can be reformed without disrupting traditional political balances on condition that foreigners do not exceed a certain percentage of the total population;

(ii) secondly, it is possible for such a reform to be partial and limited to nationals of States belonging to a geographical entity — which is precisely the case of the European Community; in this respect Denmark can be taken as a model although the special nature of Scandinavian immigration must not be forgotten.

The Netherlands

The Netherlands has legislated in this area despite the constitutional obstacle. The fact that reform was achieved without an excess of passion shows that the problem is as much political as legal.

First, Article 130 of the Constitution was amended so that the right to vote would no longer be restricted to Dutch nationals. This constitutional amendment was approved by all the political parties.

Then in 1983 the municipal electoral law was amended to give all foreigners legally established in the Netherlands for at least five years the right to vote and stand in municipal elections. Interestingly, foreigners living in the Netherlands but working for other States were excluded. Previously non-nationals could be elected to immigrant councils, which were purely advisory and did not exist in all the municipalities. The aim was to encourage the integration of foreign residents without going as far as to allow them to participate fully in the proceedings of the decision-making bodies.

This reform was first implemented at the municipal elections held on 19 March 1986. A determined effort was made to mobilize the new electorate, notably by using multilingual election propaganda. But the results were unimpressive: the turnout by foreigners was 20% to 30% lower than the overall turnout of 73%. There were several reasons for this low figure, including objections in principle by countries who considered that their nationals were in the Netherlands to work, not to become involved in politics. The Indonesian Embassy, for instance, issued a reminder to its nationals that voting abroad was forbidden under Indonesian law.

However, there were concrete results. The Netherlands' 714 municipal councils now have 20 foreigners as municipal councillors: 14 are members of the PvdA (7 Turks, 3 Moroccans, 3 Surinamese, 1 Yugoslav and 1 Portuguese); 4 are members of the CDA (2 Turks and 2 Surinamese), 1 belongs to the extreme left; and 1 belongs to a foreign party. This result, albeit modest, was seen as encouraging by many observers. However, only one Community national was elected as compared with 19 nationals of non-member countries. The results of the election will now have to be analysed further to assess the practical impact on the operation of the municipal councils.

The reform implemented in the Netherlands goes further than that advocated by the European Parliament. And the time taken is a measure of the task involved. But the fact that it has been accomplished proves that even constitutional obstacles are not insurmountable given the political will. The Dutch experience could prove valuable in bringing about the changes in electoral law sought by the European Parliament.

Member States granting some non-nationals the right to vote

The United Kingdom and Portugal allow certain categories of non-nationals to take part in municipal elections.

United Kingdom

The law at present

Under Article 2 of the Representation of the People Act 1949, British subjects and nationals of the Irish

Republic are eligible to vote on condition that they are resident in the United Kingdom. Temporary residents are not included as the courts require a minimum period of residence, both from British subjects and from Irish nationals. At local level the long-term residence requirement takes precedence over nationality but, contrary to the situation in Ireland, nationality does still matter. Voters and candidates alike must satisfy these requirements on the qualifying date for registration, which is 10 October each year. Under Articles 1, 2 and 12 of the Representation of the People Act 1983, other foreign residents are ineligible.

The term 'British subject' can be slightly confusing. The new British Nationality Act 1981, which came into force on 1 January 1983, refers to the concept of 'Commonwealth citizen', an extremely vast notion which encompasses all Commonwealth nationals. Article 51(1) states that the terms 'British subject' and 'Commonwealth national' are to be considered synonymous. This is of major importance in terms of electoral law as it means that Commonwealth nationals resident in the United Kingdom are entitled to vote in local elections since they are considered to be British subjects.

In other words not only all Irish nationals but all Commonwealth citizens are entitled to vote in local elections in Great Britain. Here, as in Denmark, extension of the franchise reflects historical links uniting a group of countries so that they are regarded as part of the same entity.

The same applies to eligibility. Irish nationals and British subjects, including Commonwealth nationals, are eligible to stand for election on condition that they fulfil certain residence requirements. Again these requirements apply irrespective of nationality. Within the 'British' framework in the imperial sense of the term the residence criterion is decisive but once outside nationality takes precedence once again.

Special arrangements apply in Northern Ireland. British subjects have the right to vote if they were born in Northern Ireland, or have been permanently resident in the United Kingdom during the previous seven years, or were included on the Northern Ireland electoral register before 1962. There is a further three-month local residence requirement prior to the qualifying date for registration. This more restrictive approach means that between 5 000 and 6 000 Irish nationals and

British subjects resident in Northern Ireland are unable to vote.

On the question of eligibility, British subjects and persons included on the Northern Ireland electoral register before 1962 who satisfy the residence requirements may stand for election.

Legal conditions for change

It would appear that in Great Britain extension both of the franchise and of eligibility is based on special historic links forged by past membership of the same community, the same State or the same country. This could exclude citizens of a community (or the Community) to which the United Kingdom now belongs.

Legally, electoral law can be changed by legislation without any need for a more formal procedure. However, the problem is still critical in as much as the current situation has been shaped by historical factors and not by political considerations as in Denmark. There is no evidence that the Community feeling is sufficiently strong to warrant extending the right to vote.

Portugal

The law at present

Under Article 241(2) of the Portuguese constitution, as amended in 1982, the right to participate in local elections is restricted to nationals. This applies to the right to vote and the right to stand. This general provision is confirmed by Article 15(2), under which foreigners have no political rights. However, an exception is provided for in the third paragraph, which states that nationals of a Portuguese-speaking country may, by international convention and subject to reciprocity, be granted rights not enjoyed by non-nationals in general. The only treaty concluded under this Article is the Convention on Equal Rights and Obligations for Brazilians and Portuguese, which has linked Portugal and Brazil since 7 September 1971. Article IV of this Convention excluded from its scope of application rights reserved exclusively by the constitutions of the two States to their own nationals and grants Brazilians the right to vote. The following specific conditions must be met:

- (i) five years' permanent residence;
- (ii) an application to the relevant authority (Article VII.1);

(iii) and a decision by the Ministry of the Interior (Article V), which would appear to have no discretionary power in the matter.

Legal conditions for change

Although the Constitution does not close the door on extension of the franchise, it does impose criteria not met by the Community, i.e. a Portuguese-speaking country. This type of provision has its roots in Portugal's colonial history.

A change of the type sought by the European Parliament consequently presupposes a change to the Constitution extending to Community nationals concessions which already exist for nationals of Portuguese-speaking countries.

The fact that both a reference framework and a precedent already exist should facilitate such a change, particularly as an instrument agreed at Community level would be reciprocal and consequently of benefit to the large immigrant Portuguese population in other Member States. The change then would not be altogether new but would involve applying existing principles to Portuguese 'Europeanization'.

Member States restricting the right to participate in local elections to their own nationals

Most Member States restrict to their own nationals the exercise of political rights *de jure*. This view, which reflects the concept of universal suffrage as the democratic victory of the last century and this, originated in an age when the State was synonymous with the Nation. It was logical, therefore, that the right to vote, at all levels, should be reserved to nationals.

The debate on extending the right to vote is identical to the debate on democracy. At first there was a property qualification. Later the income test was removed but, in France and elsewhere, it was not until 1946 that extension of the franchise to women made suffrage truly universal.

The idea of extending the right to vote calls into question the political bases underlying it. The crucial factor was the influx of foreign labour into certain municipalities, made possible in some cases by the provisions on freedom of movement and freedom of establishment in the EEC Treaty. Inclu-

sion of the right to vote in the constitution — originally seen as a way of guaranteeing it — has become a barrier which some people do not wish to see crossed.

However, a distinction must be made here between Member States whose constitutions reserve the right to vote to their nationals in national elections only and those who apply this restriction to all elections. This may give rise to the argument that this restriction is constitutional in nature, often put forward by those who oppose extension of the right to vote.

It would be inappropriate, however, to avoid a politically indispensable debate on this basic issue since it can often complicate the legal procedure needed to extend the right to vote. An analysis of the situation in the Member States will demonstrate this.

Greece

The law at present

Article 51(3) of the Constitution of 9 June 1975 limits the right to vote in parliamentary elections to Greek nationals. Article 102(2) simply states that local authorities are to be elected by universal secret suffrage.

The right to vote in local elections is reserved to Greek citizens aged 18 and over by Articles 17 and 32 of the Municipal Code. Article 35 of the code allows Greek citizens to stand for election from the age of 23.

Nature of the legal obstacle

Although the Constitution does not specifically mention the right to vote in local elections, it would appear that Article 51 is in fact applicable. In its opinion 673/8.11.1979 the Greek Legal Council held that Article 51 of the Constitution, on parliamentary elections, applied to local elections, too. This meant that only Greek nationals can vote and that the Constitution would have to be amended to extend this right to foreign residents.

The Constitution deals explicitly with the question of the right to stand for election. Article 4(4) states that only Greek citizens may be elected to public office unless a special law provides otherwise. There

is a consensus that this general provision applies to local assemblies too.

The situation in Greece is typical in that the relatively imprecise legal nature of the texts demonstrates the need for a clear political debate. Relative imprecision can be clarified only by explicit provisions and these can only emerge from a political debate. In political terms, reform cannot be avoided by recourse to abstruse legal argument.

Italy

The law at present

The first paragraph of Article 48 of the Italian Constitution defines as electors all citizens, men and women, who have reached the age of majority. This provision is perfectly clear in that only those of Italian nationality can be citizens. The same principle is to be found in Article 1 of the electoral law of 20 March 1967, which states that all citizens are electors. Hence the link between the right to vote and Italian citizenship is clearly stated and confirmed.

The Constitution is equally clear as regards the right to stand for election. The first paragraph of Article 51 states that any citizen may be elected to public office. This means that Italian nationality is an essential qualification for both the right to vote and the right to stand for election. The second paragraph of Article 51 confirms this analysis through a single derogation covering 'Italians who do not belong to the Republic'. The basic requirement then is Italian nationality.

Although there are no formal advisory committees of foreigners involved in the management of public affairs, emigration councils have been set up at regional level. These are subsidiary to the regional body and are attached to its Giunta (Executive Council), they are responsible for promoting solidarity with and protection for emigrant and immigrant workers and their families (see for example Law No 52 of 2 November 1974 of the Emilia-Romagna region as subsequently amended, which appears to contain no provisions excluding foreigners from sitting on the Council).

Nature of the legal obstacle

There is no doubt that the provisions restricting the general right to vote are constitutional in nature.

Extension of the electorate to include non-nationals would require revision of Articles 48 and 51 of the Constitution.

A number of proposals for amending the Constitution have been tabled and are being studied at present. Some set out to grant the right to vote in all elections to Community nationals and in local elections to nationals of non-member countries. The proposals differ in some respects, notably as regards the residence qualification.

For example, Article 1 of the proposal for a constitutional law No 1607 tabled on 8 April 1974 by Mr Minnoci provides that citizens of one of the Member States of the European Economic Community who have been resident in Italy for at least five years and have attained the age of majority shall be eligible to vote in municipal, provincial and regional elections. These proposals for reform clearly pose the problem in constitutional terms, thereby demonstrating that only a constitutional amendment can lead to an extension of voting rights.

Spain

The law at present

Article 13(2) of the 1978 Constitution restricts the political rights set out in Article 23 to Spanish nationals. However, under the second paragraph of Article 3 of the general electoral law of 19 July 1985, the right to vote in local elections can be granted to foreign residents by treaty or by law on a reciprocal basis.

The municipal electoral law makes no express provision for this and so far no treaty has been concluded which would give foreign residents the right to vote.

These provisions relate solely to the right to vote. The Constitution does not allow foreigners to stand for election.

Nature of the legal obstacle

There is a constitutional obstacle to extending the right to stand for election. On the right to vote there is a constitutional obstacle to this being granted unilaterally by Spain. Since any instrument at Community level would, by definition, be based on

reciprocity, there would be no constitutional obstacle to nationals of the other Member States taking part in local elections in Spain because Spanish nationals resident in other Member States could take part in similar elections in their country of residence.

The situation in Spain would therefore allow of the change desired by the European Parliament as far as municipal electoral law is concerned without amendment of the constitution.

Luxembourg

The law at present

Article 111 of the Luxembourg Constitution clearly states that foreigners on the territory of the Grand Duchy possess civil rights and constitutional liberties identical to those enjoyed by Luxembourg citizens. This equality does however not extend to political rights.

As regards the right to vote in local elections, the first paragraph of Article 107 of the Constitution refers to Article 52, which states that only Luxembourg nationals may vote and stand for election. This unambiguous statement is also incorporated into the electoral code. Accordingly, foreigners may not take part in local elections, (because of the small size of the country, this term refers to municipal elections only).

However, the largest municipalities in the Grand Duchy have for some years had advisory bodies in which foreigners can express their opinions on local issues. Furthermore, the law of 24 July 1972 set up a national immigration council on which the largest foreign communities have been represented since 1977. Under the Grand Ducal Regulation of 29 July 1977, this is an advisory body which may give its opinion on any matter concerning immigration. It may also issue own-initiative opinions. The existence of this body and its activities make it possible to involve foreigners to some extent in the life of the municipality. A bill tabled by the Ministry of the Interior proposes that such councils should be obligatory in all municipalities where foreigners make up more than 20% of the population.

Nature of the legal obstacle

There is no doubt that in Luxembourg the legal obstacle is constitutional in nature. This is regarded

as a fundamental guarantee since more than 25% of the residents of the Grand Duchy are foreigners. Even if the right to vote were extended to Community nationals only, traditional political balances could be upset.

Such a reform would have considerable practical consequences, which is why it is being opposed by politicians. The larger the foreign population the more problematical electoral reform becomes.

The recent years, only associations for the defence of foreigners have campaigned for recognition of electoral rights. There are no concrete proposals for achieving this at present, even for Community nationals.

Belgium

The law at present

The second paragraph of Article 4 of the Belgian Constitution states that the Constitution and other laws concerning political rights determine the conditions other than Belgian nationality governing the exercise of these rights.

The constitutional principle therefore is that Belgian nationality is a precondition for the exercise of political rights in Belgium. This provision would be quite unequivocal if the second paragraph of Article 5 did not add the clarification that only second-stage naturalization can place foreigners on the same footing as Belgians as regards the exercise of political rights.

This raises questions about the political rights attached to other ways of acquiring Belgian nationality.

There are two types of naturalization in Belgium: second-stage naturalization (*la grande naturalisation*) and first-stage naturalization (*la naturalisation ordinaire*). The Constitution clearly states that only the first of these permits the exercise of political rights although it does not specifically say whether participation in local elections should be regarded as the exercise of a political right. The law on municipal elections is silent on the type of naturalization required for participation.

Article 1 of the law on municipal elections states that Belgians and those who have obtained natura-

lization shall be eligible to vote provided they have lived in the municipality for at least six months.

A candidate for election must:

- (i) be a Belgian national;
- (ii) be at least 21 years of age;
- (iii) be entered on the register of population as the occupier of his sole or principle residence.

The law therefore requires Belgian nationality but is silent on the mode of acquisition. The question is whether this ambiguity is to be interpreted as making the decision dependent on the Constitution. The 1984 law on the status of foreigners allows municipal councils of foreigners to be set up in some instances. Although purely advisory, they can be elected by universal suffrage.

Legal nature of the obstacle

There has been little discussion of the constitutional nature of the requirement for second-stage naturalization. Some commentators base their arguments on the two naturalization procedures. They deduce from the facts that:

- (i) only second-stage naturalization permits the exercise of political rights and
- (ii) participation in local elections is not dependent on second-stage naturalization,

that participation in local elections should not be regarded as the exercise of a political right. The only political rights are therefore those explicitly referred to in Articles 47, 50, 53 and 56 of the Constitution (which do not include the right to vote in local elections).

It follows that granting the right to vote in local elections to non-Belgians is not a constitutional matter and that a law would therefore suffice. However this view is not generally accepted and was in fact rejected by the Conseil d'État in 1980 when the Ministry of the Interior asked it to pronounce on a series of bills proposed by Parliament.

In its opinion of 22 October 1980, backed by extensive grounds, the Conseil d'État ruled on the constitutional nature of the right to vote even in local elections. Its arguments were based on four points:

1. The right to vote and the right to stand for election to political assemblies are political rights in the constitutional sense of the term regardless of the level of the election (and hence in the case of local elections too).

2. The Constitution restricts exercise of these rights to those having Belgian nationality. Article 4 refers to 'other laws on political rights'. The electoral law which makes Belgian nationality a requirement for participation in local elections therefore does so with reference to a constitutional obligation.

3. The two types of naturalization must be interpreted accordingly. This means that only second-stage naturalization places the person naturalized on the same footing as a person who is Belgian by birth, but this does not mean that persons naturalized by other means can exercise no political rights.

4. This provision is required to justify Articles 50, 56 and 86 of the Constitution, which reserve certain functions to persons who are Belgian by birth or regarded as having this status.

This line of argument clearly confirms that the right to vote is a political right and hence that restriction of its exercise to persons having Belgian nationality derives from the Constitution.

Although the opinion of the Conseil d'État is not binding, this view is now generally accepted. Hence, leaving all questions of principle aside, politically and legally speaking, extension of the right to vote in local elections to non-Belgians would require revision of the Constitution.

The debate has become constitutional, which proves that there is now a political consensus on this point. During the Parliamentary stages which preceded the statement of revision of the Constitution, some members of the special committee proposed that the second paragraph of Article 4 should be amended to remove the nationality requirement for the exercise of certain political rights. The proposal was voted down. There can be no question therefore of conferring political rights by statute, since there is a consensus on the legal and political need for prior revision of the constitution.

The political debate has ground to a halt for the moment. Some proposals have been put forward but no reform seems likely at present.

Federal Republic of Germany

The law at present

Article 20 of the Basic Law may appear relatively clear since it states that sovereignty derives from the people. Article 28(1) goes on to state that in each *Land*, district and municipality the people must be represented by universal, direct, free, equal and secret suffrage.

Since there is a specific reference to municipal elections, the debate hinges on whether 'the people' means German citizens only. The prevailing opinion is that this is certainly the case in relation to elections to the Federal and *Land* parliaments. Since municipalities are cited in the same Article as the *Länder*, it is reasonable to assume that the same rule should apply *mutatis mutandis* and that it is constitutional in nature. The local authorities are regarded as extensions of the *Land* authorities. Hence any extension of voting rights would require an amendment to the Basic Law.

The Constitutions of six *Länder* [Baden-Württemberg: Article 26(1); Bavaria: Article 2(1); Hesse: Article 73(1); Rheinland-Palatinate: the first paragraph of Article 50 and Saarland: Article 64] explicitly state that only German nationals are entitled to vote and to stand for election at all levels. The constitutions of the other five *Länder* [Bremen: first paragraph of Article 66; Hamburg: the first sentence of Article 3(2); Lower Saxony: the first sentence of Article 2(1) North Rhine-Westphalia: etc.] refer to 'the people' as the source of all sovereignty. Hence the same arguments are also used at *Land* level. In the case of Lower Saxony Article 4(2), on *Land* elections, expressly states that only German nationals are entitled to participate while Article 44(2) on municipal elections, speaks of elections by universal, direct, free, equal and secret suffrage and mentions no restrictions.

There is a minority view which holds that the provisions restricting voting to German nationals do not apply to municipal elections since the tasks of local authorities affect all inhabitants irrespective of nationality. Even if municipalities exercise State power, they do so at a lower level than the *Länder*. Furthermore, since municipal councils are not legislative bodies, there is no need to apply to them the rules which apply to the Federal and *Land* parliaments.

Nature of the legal obstacle

Despite the minority viewpoint, there is little doubt that the Basic Law would have to be amended to extend the right to vote. This at least is the view of politicians who do not believe that reform is possible by statute.

Be that as it may, there are no sustained moves to amend the Basic Law at present. The issue is being examined by the political parties, whose attitude appears to be one of caution on the whole. The constitutional obstacle can therefore be seen as a barrier, making it possible to check any movement which would be difficult to limit to Community nationals.

France

The law at present

Foreign residents in France have never enjoyed civic rights. Although Article 4 of the Constitution of 1793 reflected the universal aspirations of the revolutionaries in general terms by stating that any foreigner aged 21 or over who had lived in France for a year and lived by his work, acquired property, married a Frenchwoman, adopted a child, supported an elderly person, in short any foreigner who was considered by the legislative body to have deserved well of humanity would enjoy the same rights of a French citizen. But this Constitution was never applied.

Article 3 of the Constitution of 4 October 1958 states that adult French citizens of both sexes who enjoy their civil and political rights shall be electors as provided for by law. This provision is of general application, although no specific elections are mentioned. It applies no doubt through the expression of national sovereignty, which is defined as belonging to the people who exercise it through their representatives. Under Article L 280 of the Electoral Code, the Senate is elected by a college which includes delegates of the municipal councils. Municipal elections therefore clearly contribute, through indirect suffrage, to the expression of national sovereignty. This means that Article 3 of the Constitution applies even to local elections.

There is a minority viewpoint that no amendment to the constitution would be required since the composition of the electoral college would be changed. This argument is less than convincing

because, as we have seen, Article 3 of the Constitution can be regarded as applying to all elections without distinction.

However, various other forms of citizens' associations have been proposed. In 1983 Mr Mayoud, a UDF Member of the National Assembly, tabled Bill No 1747 to set up consultative councils for foreign communities in France. These representative, but strictly advisory bodies were to be set up in those municipalities which wished to have them to provide guidance on cultural, educational, social and economic matters of specific relevance to the foreign communities concerned. The councils were to provide a forum for dialogue and conciliation and were to be associated with attempts to speed up the integration or acclimatization of the foreigners concerned and to help them return home if they so wished. The proposal was never discussed by the Assembly.

Some local authorities undertook isolated experiments. For example, in May 1985 Mons en Barœul arranged for the foreign community to elect three 'associated' councillors. Two out of three immigrants entered their names on the electoral register and the turnout for the election was high.

This initiative provoked various reactions. It was welcomed by the Socialist Party, which hoped that local authorities would follow the lead and associate foreigners more fully with local life. However, a Government spokesman considered that, while such an arrangement might work in some municipalities, it would be impossible in others. Integration was a question of time. It was not an easy task and he welcomed any initiatives which helped matters along. But there was no point in acting without the understanding of the population as a whole. The Secretary-General of the RPR considered that the experiment bordered on the illegal.

Nature of the legal obstacle

There is no doubt, in the prevailing doctrine or in the minds of those in power, that a constitutional amendment would be necessary to extend voting rights in local elections, although the Constitutional Council, which would have the last word, has never been asked to rule on the issue. At all events, this is the line that the Government has always taken in answers to written questions, such as that tabled by Mr Amelin (No 1670 of 3 November 1981). There is almost complete agreement on the

constitutional reform which would be required. Speaking in April 1985 the President of the Republic said that, to his mind, giving immigrants who had been in France for some time rights similar to those enjoyed by French citizens to enable them to participate in the management of local affairs that affected their lives too was a fundamental reform which would have to come. However, he added, the Government had to remain aware of attitudes. The reform was just and would inevitably become law one day, but the Government could not embark on it in the face of general incomprehension.

Despite this statement, which makes a distinction between the principle and its practical application, the Government declared that it would bear attitudes in mind in determining the best solution when the time came. (Answer to Written Question No 66897 by Mrs Chaigneau of 12 August 1985). This undoubtedly puts reform off to an unspecified date.

Only the Special Committee of the National Assembly for the European Communities has raised the specific question of granting voting rights to nationals of the other Member States. In its conclusions on Mr Massat's report on a People's Europe, the Special Committee, meeting on 27 June 1985, expressed the hope that a recent proposal on the granting of voting rights to a national of one Member State of the Communities resident in another would be studied (Committee Document No 14/85, p. 13).

As in Germany, the political parties are cautious in their reactions. Demographic considerations and the growing importance of the immigration issue have combined to overshadow the European aspect. Because the granting of voting rights to Community nationals is rarely seen as a case apart, the debate has been falsified.

Right to vote in country of nationality

As an alternative to voting rights in local elections in the country of residence the retention of voting rights in the country of nationality could be seen as a praiseworthy attempt to protect the democratic rights of all citizens.

Although the logic of this approach can be challenged by questioning the purpose of voting in a municipality where by definition one no longer

lives, it would help to preserve the democratic rights of expatriates. But it does raise a double question : (a) the attitude of the host country to information and (b) legislation in the country of nationality.

The attitude of the host country is not crucial in the case of local elections because by definition the poll is linked to a territorial unit, the municipality, and cannot be held in an embassy or consulate. There would therefore be no question of organizing a foreign ballot on the territory of another country. The options are thus reduced to voting by post or by proxy.

Member States allowing their nationals resident in another Member State to vote in local elections

Very few Member States allow all their nationals resident abroad to vote in local elections.

Spaniards resident abroad may vote in local elections by post or, if this is not possible, by proxy.

French citizens resident abroad may remain on the electoral rolls of the municipality in which they were born, the municipality in which they were last resident, the municipality in which a relative in the ascending or descending line lives, or the municipality in which they pay one of the four local taxes. Once they are on the roll, they can vote by proxy in local elections. There are signs, however, that there are limits to this very liberal attitude. The explanatory memorandum to a bill in 1982 on the election of municipal councillors and entry on the electoral rolls of French citizens resident outside France noted that it was hard to see the point in allowing people who appeared to have no connection with the municipality to vote in local elections (National Assembly document No 1030, p. 5). Although the right of expatriates to vote in local elections was not questioned, this may mark the beginning of a change in attitude.

Italian citizens resident abroad retain their voting rights after they have left the country (Article 13(1) of the law on municipal elections). They must vote in person in the polling station for their municipality but are entitled to free rail travel between the frontier and the municipality. The provisions in Greece are identical. This theoretical possibility has

to be viewed in the light of the obstacle presented by the journey home, particularly if the municipality is a long way from the centres of immigration in northern Europe.

Britons resident abroad may vote in local elections if they are members of either the armed forces or the civil service. Similar provisions in Belgium disenfranchise almost all expatriates.

Member States not allowing their nationals resident in another Member State to vote in local elections

Six Member States (Denmark, Germany, Ireland, Luxembourg, the Netherlands and Portugal) do not allow their nationals normally resident abroad to vote in local elections.

Only the nationals of two Member States — France and Spain — retain all their voting rights in local elections. Only Denmark, Ireland and the Netherlands allow foreigners to vote in such elections. Nationals of the other Member States exercising the right to establish themselves in another Member State automatically lose their voting rights in local elections.

It is true that there are situations in which an individual has dual voting rights (e.g. a Frenchman resident in the Netherlands) but there are far more instances where voting rights are lost (e.g. a Portuguese citizen resident in France).

This is one of the problems which must be solved if voting rights in the Member State of residence are to be granted to all Community nationals.

IV — Common principles governing the right to vote in local elections

So far only the basic problems have been analysed. It would be a mistake, however, to suppose that resolving these would automatically lead to local voting rights being granted to all Community nationals. Their resolution should rather be seen as a preliminary to defining common principles governing the right to vote in the Member State of residence.

No attempt will be made here to draw up an exhaustive list of these problems or principles. But it does seem important to single out the most striking, to demonstrate the need for a coherent response consistent with the logic of a 'People's Europe'.

The discussion which follows is based on the following three premises:

- (i) negotiation at Community level of an instrument based on reciprocity between the 12 Member States;
- (ii) approval of that instrument by all the Member States;
- (iii) adoption of the constitutional amendments required in certain Member States.

Without agreement on these three points, further study is premature. To complete the analysis, however, it is essential to identify the main points to be incorporated in a future instrument, to make it clear that a realistic solution is possible. These suggestions are not to be taken as absolutes, but rather as points of reference designed to stimulate discussion.

The right to vote

A number of common principles must be defined to ensure comparable conditions for the exercise of local voting rights in the Member State of residence.

A right but not an obligation

There are various approaches to determining the local elections for which voting rights would be granted. Given the different administrative structures in the Member States, attention should be confined initially to the first step of the administrative ladder, which happens to be common to all the Member States: the municipality.

Any attempt to go beyond this raises difficulties, as the definition of criteria could prove to be a further point of contention. It is preferable to define the objective clearly thereby highlighting the principles involved, rather than formulate maximalist ideas which only detract from the credibility of the

exercise. The analysis should thus be confined strictly to municipal level.

A further question is whether the right to vote and the right to stand for election should be introduced simultaneously or in two stages. There can be little doubt that they are two aspects of the same right, or that some of the conditions for their exercise are similar. However, a solution to all the problems surrounding the right to vote will not necessarily open the door to the right to stand for election.

This is why a two-stage approach seems preferable. It is true that the experiments already carried out in some Member States did link the two rights to underline the extent of reform. It is equally true that logic and coherence argue in favour of granting the two rights simultaneously. But this does not preclude the possibility of adopting a two-stage procedure so that the problem can be tackled gradually. A two-stage procedure would in fact be more realistic and there is no need to fear the possibility of the second phase being omitted since only failure to grant the right to vote could justify refusal to grant the right to stand for election.

A crucial point will be to reconcile the wishes of the individual and the options open to him under the electoral law. It is quite conceivable that citizens of one Member State, residing in another Member State, may wish to maintain their links with their country of origin. For this reason they might prefer to continue voting in their country of nationality (for example France or Spain), or, if this is not possible, not to vote in the host country. This may well be a minority view, but it is one which must be respected. There can be no question of imposing a right that the individual does not want.

This means one thing only: that the right to vote in local elections in the country of residence should be a possibility, but not an obligation. To respect the wishes of the individual, the basis for local voting rights must be voluntary action on the part of the individual. This basic principle should not create any serious practical problems. It should be enough to stipulate in the implementing rules that local voting rights in the Member State of residence will be granted on request only.

Objective conditions

All electoral laws stipulate that a citizen must meet certain conditions before he can vote. In the case

of Community nationals some of these conditions could be identical to those applied to nationals, others could be specific.

Identical conditions

The main consideration is the minimum voting age. It would be inappropriate here to adopt a rule different to that applied in the country organizing the election. The close similarity in minimum voting age (18-19 years of age) suggests that the best solution would be to refer to national law. This would avoid situations where a national of another Member State could vote at an earlier age than a national of the host country or vice versa.

The same solution could be adopted on disqualification. The concept of loss of civic rights to be applied should be that current in the country organizing the election. A non-national should not be entitled to vote in circumstances where a national would be disqualified.

Specific conditions

The debate centres on the residence requirement. The minimum period of residence required for the acquisition of voting rights must be defined. It should be longer than that required of nationals, since a say in local affairs should only be given to individuals who have displayed their intention of settling by becoming permanent residents. This requirement should not be seen as discriminatory, although it may so appear at first glance.

There are two possible definitions of the period of residence:

- (i) a minimum period of residence anywhere in the Member State;
- (ii) a period of residence in the municipality.

Since the reference area is the municipality, it would appear logical to require a minimum, unbroken period of residence in the municipality, rather than in the Member State.

There are several possible solutions as regards the length of the period of residence. Logic would seem to argue in favour of a period corresponding to the term of office of a municipal council, plus one year. This would ensure that the potential voter was in a position to judge the performance of the municipal

council standing for re-election throughout its term of office. This would not involve an inordinately long period of residence, as the term of office of most municipal councils is between four and five years. This would give an average minimum period of residence of five years, the present qualifying period in the Netherlands. Establishment of such a link would also allow the period of residence to be adapted to the political and administrative situation in each Member State.

Double voting

Since some Member States allow their expatriates to vote, there may be a danger of double voting. This could be circumvented by requiring those who wish to vote in local elections to take the initiative themselves and apply to the competent authorities in the Member State of residence. They would have to prove that they were no longer entitled to vote in their country of nationality (e.g. by means of a certificate from the consulate), or, if they were still entitled to vote, that they were relinquishing this right (e.g. by furnishing proof that their names have been removed from the electoral register). This procedure offers two advantages: the country of residence would not need to conduct a special census or to keep a special electoral register and the individual would retain free choice, not being obliged to relinquish his national rights.

By taking the initiative the individual would automatically agree to comply with the electoral requirements of the country of residence. If he was resident in a country where voting is compulsory, he would have to accept this, even if such provision is unknown in the country of nationality. If he does not wish to comply, he could omit to enter his name on the electoral register.

The right to stand for election

Leaving aside the question of whether the right to stand should be granted at the same time as or later than the right to vote, the conditions to be met need to be outlined.

It goes without saying that the conditions discussed in connection with the right to vote apply *a fortiori* to the right to stand for election. But one of them, the residence qualification, needs to be re-examined. It is obvious that a candidate for election to a

municipal council requires a deeper knowledge of the municipality than a voter. It is time that a longer period of residence is not required of nationals. But such a condition would ensure that those elected are sufficiently well-acquainted with the life of the municipality and have had enough time to become fully integrated into the local community. They could then serve on the municipal council, not as representatives of a minority, but as spokesmen for an integral part of the local community.

The minimum period of residence should be twice as long as that required for acquisition of the right to vote. Taking national practice as a point of reference, this would mean twice the term of office of a municipal council, plus one year. The potential candidate would have had a chance of observing the work of the municipal council over two terms of office. In addition, as in the case of the right to vote, a close link would be established with national administrative and political practice.

Another point is that a future municipal councillor must have a satisfactory command of the language of the country. The practicalities of this are rather delicate, but it is obvious that a successful candidate must be able to express himself and understand working papers submitted to him. There can be no question of introducing multilingualism into municipal assemblies. Here again, reference to national customs would guarantee that the main concern was to represent a section of the population which had demonstrated that it was part and parcel of the community.

Finally, specific rules would be required in cases where there is a measure of overlapping between municipal assemblies and State functions, or where municipal councillors play a part in nominating parliamentary assemblies. Thus, if the municipal councillors participate in the nomination of members to one of the Houses of Parliament (such as the Senate in France), non-national councillors would not be allowed to vote. Nor would they be entitled to hold the post of Mayor or Deputy Mayor, where the latter represent the State in the municipality. Such provisions, which may appear restrictive, would in fact make it possible to take the specific nature of the administrative structure in each Member State into account.

The arrangements discussed above should not be viewed as an attempt to restrict exercise of the right to vote or the right to stand for election. The sole

aim is to avoid any radical change which might provoke resentment by remaining as faithful as possible to the national situation. The national population would thus be given an assurance that the local frame of reference would remain intact and that reform would be limited to the integration of individuals who have already shown that they are physically integrated into the local community. In any event these conditions could be made more flexible in time.

An overall approach

With regard to the right to stand for election, it is essential to ensure that potential candidates can take part in the electoral campaign on equal terms. This raises the problem of civil liberties, which are not always granted on an equal basis to nationals and foreigners, even when the latter are Community nationals.

The main liberties involved are freedom of association, assembly and expression and the right to join a political party. These liberties would have to be extended to Community nationals as soon as they acquired the right to stand for election. Care would obviously have to be taken to ensure that this did not lead to the creation of ethnic parties, undermining integration, the ultimate aim. Unless these liberties were extended Community nationals would be prevented from participating in the electoral debate on equal terms, thus interfering with exercise of the right. This would be tantamount to recognizing a right in principle, but failing to grant the rights essential for its exercise.

Access to public office should not be included in the same category of rights. Here again, a maximalist stance would be self-defeating.

As emphasized in the report of the Adonnino Committee, specific solutions should be sought for Member States faced with particular difficulties because they have a large population of Community nationals. The traditional political balance must not be upset by the influx of a large number of new voters. This could be avoided, where necessary, by imposing a stricter residence requirement initially, and then aligning gradually on the common standard. This would cater for situations peculiar to certain Member States.

This then is a broad outline of rules which would allow voting rights to be granted in the country of residence, without contravening national political customs or awakening public hostility by introducing dramatic reforms.

Conclusion: The dynamic of European elections

The residence qualification is not merely a problem with local elections. For European elections too the principle should be that all Community nationals can participate in the Member State of residence. For an election in the Community context, the idea that a Community national can vote in his country of nationality but not in his country of residence has been overtaken since he is in fact resident in the larger geographical entity in which the election is being held. It is only logical, in the case of European elections, to grant the right to vote in the Member State of residence.

The central question is therefore the same as that raised for local elections: can a Community national vote in an election held in the Member State of residence? It is true that the political and legal context of the European elections is quite specific but the principle is the same. It is therefore politically and legally revealing to look back and see how the problem was solved. It is natural to hope that the voting rights issue was discussed in less dramatic terms in the European context.

No solution for the 1984 elections

Although no deadline had been fixed either in the Treaty or in the Brussels Act of 1976, many parliamentarians considered that a uniform procedure should be used for the June 1984 elections to complete the transformation process. As Professor Boulouis comments, introduction of a uniform procedure was at least as important as the initial decision to elect the European Parliament by direct universal suffrage since it would mean 'a change-over from representation of the people of the States to representation of the people of the Community'.¹

¹ Droit Institutionnel des Communautés Européennes, 1984, page 89.

A fundamental point of this uniform electoral procedure was to establish how to involve Community nationals who had been disenfranchised by virtue of residing in a Member State other than their own. There were two possible approaches: to grant the right to vote in the country of nationality (as France did), or to grant the right to vote in the country of residence (as Ireland did). This point is crucial if suffrage is to be truly universal.

This issue proved to be central to discussions within Parliament and the Council. The analogy with the local elections debate is striking. It must be acknowledged that the difficulties encountered make it abundantly clear that this is a question of principle which is presented in precisely the same political terms in several Member States.

The issue was debated exhaustively by Parliament's Political Affairs Committee. The rapporteur proposed that the right to vote should be granted in the country of nationality to voters who had not been resident for five years in another Member State and in the country of residence once this period of residence exceeded five years. The right to stand for election is guaranteed but in the country of nationality only. These proposals may appear modest¹ but they are realistic and consistent to the extent (a) that they endorse the principle of universal suffrage irrespective of place of residence within the Community and (b) that they tend to make place of residence within the Community the determining factor for the exercise of voting rights. However, subsequent amendments overturned these proposals. Adoption of an amendment tabled by the European Democratic Group recognized the right to vote irrespective of place of residence, but the right had to be exercised in the country of nationality (Article 5). On the other hand adoption of an amendment from the Socialist Group recognized the right to stand for election in the country of residence after a minimum period of five years (Article 6).² Not only was the logic of the rapporteur's system destroyed but the end result was inconsistent since individuals could stand for election in a country in which they could not vote.

Discussions within the Council centred on the same points and revealed similar differences of opinion. The gulf between countries in favour of the nationality qualification and countries in favour of the residence qualification proved so wide that no solution could be found. The effect was to disenfranchise nationals of Member States who do not

allow expatriates to vote (the United Kingdom for instance) and Community nationals living in Member States which only allow their own nationals to vote (France for instance). The move to the European arena was not enough to tip the scales in favour of the residence qualification.

Reluctance on this score should make us think hard about the timing of an initiative on the adoption of identical criteria for local elections. Is it politically consistent in fact to propose giving local elections a European character not enjoyed by the European elections themselves? Would not political logic and the consistency of the European venture argue in favour of the first step being to give a European character to the elections which are intrinsically European? There is an undeniable link between these questions. It is in this spirit that Mr Karl-Heinz Narjes, a Member of the Commission, speaking to the debate on local voting rights in Parliament on 7 June 1983 said: 'It has to be admitted that a universally applicable electoral system would have made it easier to decide whether the moment was opportune for extending electoral rights in communal elections'.³

The need for political consensus

The European Parliament elected in 1984 continued to be aware of the need for progress on a uniform electoral procedure. A new rapporteur was therefore appointed with a view to producing new proposals for the Council.

On both the right to vote and the right to stand for election, the new proposals represent a retreat from the 1982 proposals in that they come down on the side of the nationality rather than the residence qualification. The draft produced by the Political Affairs Committee advocates the right to vote and the right to stand in the country of nationality (Articles 2 and 3) whereas in 1982 the right to vote in the country of residence was favoured. Under this proposal the right to vote would be an exception to the general rule in the country of residence.⁴

¹ Report on behalf of the Political Affairs Committee by Mr Jean Seitlinger on the uniform electoral procedure (Document 1-988/81/A/B/C).

² OJ C 87, 5.4.1982, p. 57 *et seq.*

³ Debates of the European Parliament sitting of 7 June 1983, OJ Annex 1-300, page 76.

⁴ Report by Mr Bocklet on behalf of the Political Affairs Committee on the uniform electoral procedure; Doc. A.2-1/85 of 22 March 1985, page 8.

Even the Committee on Legal Affairs and Citizens' Rights noted in its opinion that the right to vote in the country of residence was merely an ideal and that it would be difficult for the moment to depart from the nationality criterion.¹

These new proposals have yet to be discussed by the House. However, given developments between 1982 and 1985, we must ask ourselves whether or not they are sending a political signal that there is no longer a consensus in favour of voting rights in the country of residence. If this is so, there are implications for local voting rights. If there is no political will to extend voting rights for European elections there is even less chance of concessions for local elections.

There is no point in making a proposal on local elections in the absence of political will. Parliament could demonstrate its views by committing itself to the principle in the context of European elections under the procedure provided for by Article 138 EEC. This would imply substituting a fresh proposal for a uniform electoral procedure for the 1982 text unambiguously endorsing the residence criterion. Unless such a political signal is forthcoming, it would be unwise to embark on a venture for which there is no backing.

To sum up the Commission considers that an initiative on voting rights in local elections in the Member State of residence is a logical consequence of the desire to create 'a People's Europe'. The

political and legal difficulties do not justify abandoning this idea which could demonstrate to the man in the street that the Community is relevant and give voters identical rights irrespective of their place of residence. This leaves the question of the legal instrument to be used completely open.

However, on an issue of this kind, it is essential to establish that a political will does exist. The green light should be given by Parliament itself coming out clearly in favour of the right to vote and the right to stand for election in the country of residence, thereby endorsing the political logic of European elections. Unless the green light is given, it would be inadvisable for the Commission to proceed.

Once a European electoral procedure is adopted, local electoral law could develop on a reciprocal basis. The additional adjustments which would be necessary would ensure that the process of change was not too dramatic.

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 will be consistent with democracy.

¹ *Ibid*, page 27.

Bibliography

Community publications

'Towards European Citizenship'. Supplement 7/75 to the Bulletin of the European Communities

'A People's Europe (Reports from the *ad hoc* Committee)'. Supplement 7/85 to the Bulletin of the European Communities

Report drawn up on behalf of (Parliament's) Political Affairs Committee by Mr M. Scelba on the granting of special rights to the citizens of the European Community in implementation of the decision of the Paris Summit of December 1974

(Document 346/77 – PE 45.833/fin. 25 October 1977)

Report drawn up on behalf of (Parliament's) Legal Affairs Committee by Mrs M. A. Macciocchi on the right of citizens of a Member State residing in a Member State other than their own to stand for and vote in local elections (Document 1-121/83 – (PE 81.888/fin. 29 April 1983)

Proceedings of the (European Parliament) Round Table on 'Special rights and a charter of the rights of the citizens of the European Community' (Florence, 26 to 28 October 1978)

Other publications

Report for the Council of Europe by Professor Frowein in collaboration with Mr Ulrich Wölker on 'The civic rights of nationals of other Member States in local public life'

Proceedings of Council of Europe colloquium on 'The human rights of aliens in Europe' (Plender, Perotti and Özunay Reports) (Funchal, 17 to 19 October 1983)

Proceedings of Max-Planck-Institut seminar from 11 to 13 September 1985 on 'Die Rechtsstellung von Ausländern nach staatlichen Recht und Völkerrecht' (7 volumes) (Heidelberg, 11 to 13 September 1985)

Proceedings of a seminar on 'The participation of foreigners in municipal elections in the EEC Member States' (Louvain la Neuve, 28 February 1978) in *Studi Emigrazione*, March 1978, No 49

'Droit institutionnel des Communautés européennes' by Professeur Jean Boulouis, 1984

'Des élections européennes aux municipales: Un droit de vot limité pour certains étrangers?' by Wenceslas de Lobkowicz. *Revue Politique et Parlementaire* No 900; September-October 1982, pp. 55 to 68

'Political rights for European citizens' by Professor Guido van den Berghe, 1982

'The European Parliament: Towards a uniform procedure for direct elections' Professor Christoph Sasse et al. European University Institute, 1981

'Une élection européenne ou des élections nationales?' by Wenceslas de Lobkowicz in *Revue Politique et Parlementaire* No 909, March-April 1984, pp. 85 to 107

'Note sur le non-effet de l'élection au suffrage universel de l'Assemblée' by Professeur Jean Boulouis in *Revue Pouvoirs* No 2, 1981, pp. 111 to 118

European Communities — Commission

Voting rights in local elections for Community nationals

Supplement 7/86 — Bull. EC

Luxembourg: Office for Official Publications of the European Communities

1987 — 45 pp. — 17.6 × 25.0 cm

ES, DA, DE, GR, EN, FR, IT, NL, PT

ISBN 92-825-6847-4

Catalogue number: CB-NF-86-007-EN-C

Price (excluding VAT) in Luxembourg

ECU 3.50 BFR 150 IRL 2.70 UKL 2.60 USD 4

On 15 November 1985 the European Parliament came out in favour of voting rights in local elections being granted in the country of residence to Community nationals living in a Member State other than their own. In the course of the debate the Commission undertook to produce for the European Parliament, a report on the subject which is now reproduced in this supplement.