

EUROPEAN PARLIAMENT



session documents

ENGLISH EDITION

15 November 1993

A3-0357/93/Part B



REPORT

of the Committee on Institutional Affairs

on the Commission proposal for a Council directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence

Rapporteur: Mr François FROMENT-MEURICE

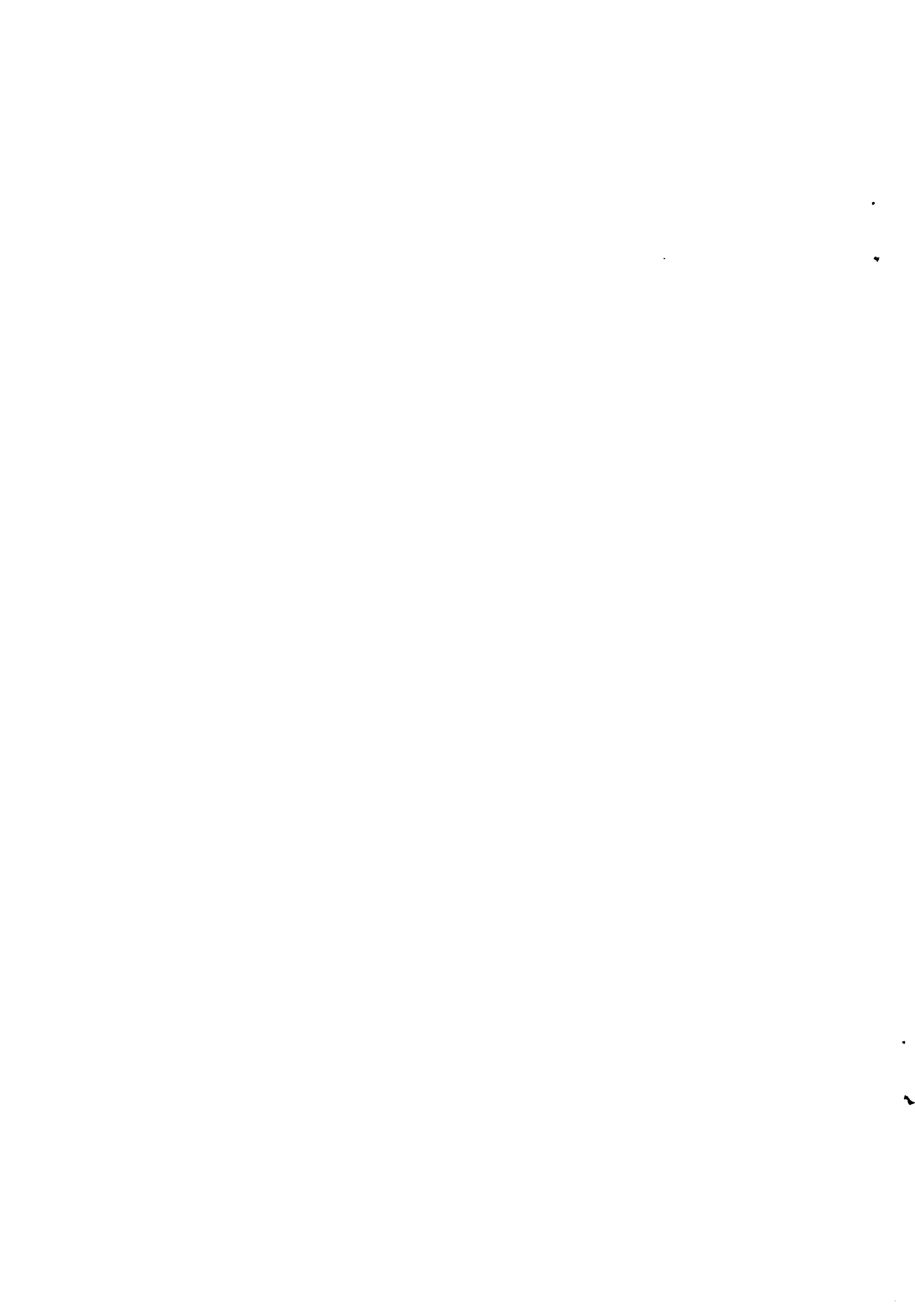
PART B: EXPLANATORY STATEMENT

DOC_EN\RR\239\239367

PE 206.621/fin./Part B
Or. FR

* Consultation procedure requiring a single reading
** Cooperation procedure (first reading)

**i] Cooperation procedure (second reading) requiring the votes of a majority of the current Members of Parliament
*** Parliamentary assembly requiring the votes of a majority of the current Members of Parliament



COMMISSION PROPOSAL FOR A COUNCIL DIRECTIVE LAYING DOWN
DETAILED ARRANGEMENTS FOR THE EXERCISE OF THE RIGHT TO VOTE
AND TO STAND AS A CANDIDATE IN ELECTIONS TO THE EUROPEAN PARLIAMENT
IN THE MEMBER STATE OF RESIDENCE

Part B: Explanatory Statement

I - ORIGINS OF THIS PROPOSAL FOR A DIRECTIVE

At the 1974 summit, the heads of state and government decided that it was necessary to study the question of possible special rights for citizens of the Member States. This notion of a citizens' Europe appeared in parallel to the idea of a European Union.

The Tindemans report on European Union (1975) also set out a number of lines of action concerning citizens' rights. The concept of a citizens' Europe acquired further impetus following the first direct elections to the European Parliament. Parliament, as a directly elected body, has on several occasions expressed its support for the construction of Europe on the basis of direct involvement of the citizens.

The European Council held in Fontainebleau in June 1984 adopted a similar approach, with a view to endowing the Community with a new dimension. To this end, it decided to set up an ad hoc committee, chaired by Mr Adonnino and consisting of representatives of the heads of state and government and a representative of the Commission President. The task of this committee was to define the measures which would permit the Community to respond to what was felt to be the expectation of the peoples of Europe, on the basis of measures considered suitable for the strengthening and promotion of its identity and image among its citizens and in the world at large. This ad hoc committee drew up two reports, in March and June 1985.

In March 1985, the European Council, meeting in Milan, approved the proposals of the ad hoc committee and called on the Community institutions to adopt the necessary measures for their implementation. The Single European Act took account of virtually none of these proposals. They have, however, now been partially incorporated in the Treaty on European Union, which contains a section specifically concerned with citizenship.

In 1990, Spain, with a view to the intergovernmental conference on political union, had proposed to the other Member States that the future Treaty should include provisions concerning European citizenship, in particular the right to vote and to stand as a candidate for election in European Parliament elections in the Member State of residence.

The conference of parliaments of the Community held in Rome from 27 to 30 November 1990 also, in its final declaration, called for the intergovernmental conference to consider granting Community citizens the right to vote and to stand for election in European Parliament elections in the Member State of residence.

The European Council, meeting in Rome on 14 and 15 December 1990, welcomed the Spanish initiative and called on the intergovernmental conference to examine, inter alia, to what extent certain civic rights, in particular the right to participate in European Parliament elections, could be enshrined in the Treaty.

In 1991, Parliament, in its resolutions on Union citizenship¹ and on guidelines for the draft uniform electoral procedure² reaffirmed its positions on the matter.

The Treaty on European Union, which institutes Union citizenship, guarantees to the citizens of the Union, in Article 8b(2), the right to participate in European Parliament elections in the Member State in which they reside even if they are not nationals of that Member State. The calendar set out in that article was decided by the intergovernmental conference on the supposition that the Treaty would come into force at the beginning of 1993. In political terms, the deadline of 31 December 1993 implies that the arrangements to be adopted by the Council should apply already to the fourth direct elections to the European Parliament to be held in 1994; this would enable the citizens of the Union to exercise these new rights for the first time and to become aware of the reality of the European Union.

II - LEGAL BASIS AND PROCEDURE

- 1 - The full text of the relevant provisions of the Treaty on European Union is as follows:

Article 8b(2)

'Without prejudice to Article 138(3) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1993 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.'

Article 138(3)

'The European Parliament shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.

The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.'

2 - Procedure

2.1. As is clear from the text of the above two articles, the procedures for drawing up and adopting the directive under Article 8b(2) and the 'proposals' referred to in Article 138(3) are markedly different from each other.

¹ Resolution of 14 June 1991, OJ No. C 183, 15.7.1991, p. 473; resolution of 21 November 1991, OJ No. C 326, 16.12.1991, p. 205.

² Resolution of 10 October 1991, OJ No. C 280, 28.10.1991, p. 141.

The directive under discussion follows a procedure specific to the present case, i.e.: Commission proposal - consultation of Parliament - adoption by unanimous vote in Council. This procedure places the directive outside the field of application of Rule 58 of Parliament's Rules of Procedure, concerning legislative proposals. In fact, the 'arrangements' for implementation of Article 8b of the Treaty on European Union represent the direct application of a constitutional provision. It follows that the Commission proposal should be considered an act.

It is highly regrettable that, in view of the major political significance of this directive for Parliament, Parliament should only be consulted on the matter. The Treaty should be modified on this point in 1996.

2.2. In view of the delayed entry into force of the Treaty, the Commission adopted, on 23 June 1993, a proposal for a Council directive (SEC(93) 1021 final). This working document was forwarded to the Council and Parliament. On this basis, the latter two institutions undertook, between July and October 1993, informal discussions with a view to the entry into force of the future directive after the elections to the European Parliament of June 1994. The Commission has therefore been enabled formally to submit its proposal for a directive immediately following the entry into force of the Treaty.

III - THE MAIN PROBLEMS RAISED BY THE PROPOSAL FOR A DIRECTIVE

1 - Introductory remarks

1.1. The **amplitude of the problem** is made clear by the Commission in its explanatory statement. Today, some 5 million citizens of the Union reside in a Member State of which they are not nationals.

1.2. The directive is aimed **exclusively** at implementing Article 8b(2) of the Treaty on European Union. It is thus not aimed at harmonizing the electoral law of the Member States, but purely at giving full effect to the possibility, guaranteed to all citizens of the Union, of voting or standing as candidates in the Member State of residence, rather than the Member State of nationality alone.

2 - The main points of the text

2.1. **Recognition of the right to vote** of citizens of the Union in elections to the European Parliament, irrespective of their Member State of residence

(the directive does not, consequently affect the electoral laws applying in individual Member States, which govern:

- the right to vote of citizens of the Union residing in their Member State of origin;
- the right to vote of citizens of the Union wishing to vote in a Member State which is neither that of origin nor that of residence;
- the right to vote granted by individual Member States to residents who are not citizens of the Union (e.g. Commonwealth citizens settled in the UK);

2.2. Recognition of the right of citizens of the Union to stand for election in either their Member State of origin or their Member State of residence under the same conditions;

2.3. Free choice of place of voting (Article 4), i.e. either the Member State of origin or the Member State of residence (accompanied by certain controls aimed at preventing double voting as far as possible, while not blocking the exercise of freedom of choice by excessive rigidity);

2.4. Freedom to stand as a candidate in either the Member State of origin or the Member State of residence, accompanied by the formal outlawing of double candidacy and strict controls;

2.5. Derogations concerning:

- UK citizens living in Ireland and Irish citizens living in Britain, who are not subject to the formalities applying to other Union citizens;
- the Grand Duchy of Luxembourg (see 3.2. below).

3 - The sensitive points at issue

3.1. 'Exporting' of a disqualification from standing for election

A citizen of the Union may be debarred from standing for election in either his Member State of origin or his Member State of residence. Where such a measure is the result of an individual decision by the administrative or legal authorities, it is essential for the preservation of Parliament's reputation that the citizen thus debarred from standing for election should not be allowed to be elected or even to campaign in either the Member State where the decision was taken or the other Member State concerned. Accordingly, Article 6(1) of the proposal obliges the Member State of residence to take account of any disqualification applying in the Member State of origin.

This doubling or 'exporting' of an electoral disqualification may appear excessively absolute, and one may also object to it on the grounds that the existing national provisions concerning disqualification remain highly disparate; Parliament cannot, however, run the risk of its credibility (and, indeed, honour) being undermined.

3.2. The Luxembourg exception

In view of the extremely high proportion (29%) of the total population of the Grand Duchy formed by non-Luxembourgish citizens of the Union, the Luxembourg government has requested and obtained a 'three-part' derogation:

- the right to vote will be limited to citizens of the Union who have lived in Luxembourg for over five years;
- the right to stand for election will be limited to citizens of the Union who have lived in Luxembourg for over ten years;
- 'appropriate measures' may be taken by Luxembourg concerning the composition of lists of candidates, 'with a view to facilitating, in particular, the integration of non-Luxembourgish citizens of the Union'.

The particular situation of the Grand Duchy of Luxembourg - which, it may be noted, is at no point directly named in the text - is a reasonable justification for a derogation. One can scarcely deny that the extremely high proportion - almost one-third - of non-Luxembourgish voters could provoke reactions likely to impede the integration of Union citizens in Luxembourg.

However, while the first two parts of the derogation may appear acceptable, both in legal and practical terms, the same cannot be said of the third part.

An incorrect legal argument is invoked, to the effect that the composition of the lists would fall under the uniform electoral procedure (Article 138a); this argument was often heard during the preparatory stage. In fact, any limitations on the rights of citizens to stand for election necessarily call in question a fundamental freedom, and not merely an electoral procedural rule.

In addition, the Luxembourg Members of the European Parliament would find themselves at risk in legal terms, should the Luxembourg legislature decide to introduce a discriminatory rule concerning the composition of electoral lists; such a rule could be brought before the European Court of Justice, and, should the Court find it contrary to Community law, the election of the Luxembourg Members would be bereft of any legal basis.

It is therefore essential that the reference to national legislative authorities should be grounded firmly in law with the rider that such authorities are not empowered to introduce any form of discrimination based on nationality.

3.3. Article 8b(1) - municipal and local elections

This article of the Treaty on European Union states:

'Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.'

The terms of this article are clearly similar to those of Article 8b(2). This textual parallel should be borne in mind at all points, to avoid creating any 'precedents' which might otherwise be invoked in a few months' time when examining the directive implementing Article 8b(1).