

# EUROPEAN PARLIAMENT



*s e s s i o n d o c u m e n t s*

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## REPORT

on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament

Committee on Institutional Affairs

Rapporteur: Mr Georgios Anastassopoulos

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PE 224.331/fin.

- Consultation procedure  
simple majority
- \* I Cooperation procedure (first reading)  
simple majority
- \*\* II Cooperation procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to reject or amend the common position
- \*\*\* Assent procedure  
majority of Parliament's component Members to give assent  
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

- \*\*\* I Codecision procedure (first reading)  
simple majority
- \*\* II Codecision procedure (second reading)  
simple majority to approve the common position  
majority of Parliament's component Members to adopt a declaration of intended rejection of the common position, and amend the common position or confirm its rejection
- \*\*\* III Codecision procedure (third reading)  
simple majority to approve the joint text  
majority of Parliament's component Members to reject the Council text

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Following a request by the Conference of Committee Chairmen, the President of Parliament announced at the sitting of 5 November 1997 that the Committee on Institutional Affairs had been authorized to draw up a report on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament.

The Committee on Institutional Affairs had appointed Mr Anastassopoulos rapporteur at its meeting of 30 September 1997.

At its meeting of 28 April 1998 it decided, pursuant to Rule 45(2), to include in its report the motion for a resolution by Mr De Vries on the uniform electoral procedure for the election of Members of the European Parliament (B4-0723/96) which had been referred to it as the committee responsible on 22 October 1996 and to the Committee on Legal Affairs and Citizens' Rights for an opinion.

It considered the draft report at its meetings of 3 and 4 November, 24 and 25 November 1997, 26 and 27 January, 16 and 17 March, 21 and 22 April, 27 and 28 April and 25 and 26 May 1998.

At the last meeting it adopted the motion for a resolution by 26 votes to 3 with 3 abstentions.

The following were present for the vote: De Giovanni, chairman; Corbett, second vice-chairman; Berthu, third vice-chairman; Anastassopoulos, rapporteur; Aglietta, Blokland (for Bonde), Bourlanges (for Maij-Weggen), Brok, Cardona, Delcroix, Dell'Alba (for Saint-Pierre), Dimitrakopoulos (for Salafranca, pursuant to Rule 138(2) of the Rules of Procedure), Ferrer (for B. Donnelly, pursuant to Rule 138(2) of the Rules of Procedure), Frischenschlager, Hager (for Vanhecke), Herman, Herzog, Malangré (for Rack, pursuant to Rule 138(2) of the Rules of Procedure), Martens (for Capucho), Méndez de Vigo, Neyts, Paasilinna (for Manzella), Papayannakis (for Sjöstedt), Puerta, Read (for Barton), Rothley (for Tsatsos), Schäfer, Schlechter, Spaak, Spiers, Valverde (for D'Andrea) and Voggenhuber.

The opinion of the Committee on Legal Affairs and Citizens' Rights is attached.

The report was tabled on 2 June 1998.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A**  
**MOTION FOR A RESOLUTION**

**Resolution on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament**

The European Parliament,

- having regard to the motion for a resolution by Mr De Vries on the uniform electoral procedure for the election of Members of the European Parliament (B4-0723/96),
  - having regard to its reports on a uniform electoral procedure, and in particular the resolutions of 10 October 1991<sup>(1)</sup> and 10 March 1993<sup>(2)</sup>,
  - having regard to the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to the Council Decision of 20 September 1976,
  - having regard to the proposal of 22 October 1996 on a uniform electoral procedure which was tabled by the Government of the Federal Republic of Germany at the Intergovernmental Conference and which reproduces the key aspects of the resolution of 10 March 1993,
  - having regard to Article 138(3) of the EC Treaty and the modification thereof effected by the Treaty of Amsterdam,
  - having regard to Rule 148 of its Rules of Procedure,
  - having regard to the report of the Committee on Institutional Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0212/98),
- A. whereas the Treaty of Amsterdam introduces the concept of 'principles common to all Member States', following the guidelines set out by Parliament in its resolution of 10 March 1993, which did not explicitly propose a uniform electoral system but merely general guidelines;
- B. whereas the Government of the United Kingdom has tabled a bill in Parliament, introducing regional proportional representation for the European elections in 1999,
- C. whereas the negotiations on enlargement will probably lead to ten new Member States joining the European Union,
- D. whereas a very broad consensus has emerged among the Member States on determining a number of common principles,

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<sup>(1)</sup> OJ C 280, 28.10.1991, pp. 141-143

<sup>(2)</sup> OJ C 115, 26.4.1993, pp. 121-122

1. Welcomes the agreement reached by negotiators at the IGC establishing a number of common principles; is convinced that some of the provisions can enter into force by the next European elections, particularly a system of proportional representation, the minimum threshold and incompatibilities, whereas others should be phased in;
2. Considers that there is a general consensus on introducing voting based on a system of proportional representation, and that this should be incorporated into the European electoral system;
3. Notes that it is impossible to establish a system of territorial constituencies in a uniform manner and that there has to be a distinction based on the population of each Member State; emphasizes, however, that a system of territorial constituencies must not affect the principle of proportional representation as per Article 2 of the draft Act;
4. Considers that, with a view to a European political awareness and the development of European political parties, a certain percentage of seats should be distributed on a proportional basis within a single constituency formed by the territory of the Member States;
5. Observes, where the use of a threshold is concerned, that this should remain optional and in any event should not exceed 5% of the votes cast nationally;
6. Notes the stimulus to participation represented by preferential voting, which should, however, remain optional for each Member State;
7. Considers that when Union-wide lists of candidates are drawn up account should be taken of the objective of equality between men and women and that it is primarily a matter for the political parties to achieve this objective directly;
8. Proposes that European elections should be held during the month of May, so as to maximize the turnout by avoiding the school summer holidays, which start at the beginning of June in several Member States;
9. Recommends that the number of days on which elections can be held should be reduced to the absolute minimum, with a view to reaching a consensus on a single voting day, or, if this is not possible, no more than two days (e.g. Saturday and Sunday);
10. Calls for the Council to examine the following draft Act and to adopt it speedily so as to enable it to enter into force as soon as possible;
11. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.

THE COUNCIL,

Formed by representatives of the Member States and acting unanimously,

Having regard to Article 138(3) of the Treaty establishing the European Community (Article 190(4)),

Having regard to Article 21(3) of the Treaty establishing the European Coal and Steel Community,

Having regard to Article 108(3) of the Treaty establishing the European Atomic Energy Community,

Having regard to the proposal by the European Parliament,

Having regard to Parliament's assent,

Intending to implement the Treaty provisions concerning the electoral procedure,

HAS ADOPTED the provisions annexed to this decision and recommends that they be adopted by the Member States in accordance with their respective constitutional rules.

This decision and the provisions annexed thereto shall be published in the Official Journal of the European Communities.

The Member States shall without delay notify the Secretary-General of the Council of the European Union that they have carried out the procedures required under their respective constitutional rules for the provisions annexed to this decision to be adopted.

This decision shall come into force on the day of its publication in the Official Journal of the European Communities.

**DRAFT ACT PURSUANT TO ARTICLE 138(3)**  
**OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY**  
**(Article 190(4) of the consolidated Treaty)**

with a view to enabling the Members of the European Parliament to be elected by direct universal suffrage in accordance with principles common to all the Member States

Article 1 - In each Member State, Members of the European Parliament shall be elected by a list system of proportional representation. The Members of the European Parliament shall be elected by direct universal suffrage through an equal, free and secret ballot.

Article 2 - Each Member State shall establish territorial constituencies without generally violating the proportional character of the system. This provision shall apply with effect from the elections to the European Parliament scheduled for 2004. Member States whose population does not exceed 20 million inhabitants are not required to establish such constituencies.

Article 3 - Where a country decides to establish several electoral constituencies on its territory, the Members of the European Parliament that it elects shall remain, in accordance

with Articles 137 and 138 (189 and 190 new) of the Treaty, the representatives of the people that has elected them, as a whole, and not the representatives of their constituencies.

- Article 4 - Special arrangements may be made to take account of specific regional characteristics but may not violate the principle of proportional representation.
- Article 5 - A threshold for the distribution of seats may be set and at national level may not exceed 5% of the votes cast.
- Article 6 - Member States may permit preferential voting in accordance with procedures that they shall lay down.
- Article 7 - Ten per cent of the total number of seats within the European Parliament shall be filled by means of list-based proportional representation relating to a single constituency comprising the territory of the European Union Member States with effect from the European elections to be held in 2009. The implementing provisions shall be adopted by 1 January 2008 on a proposal from the European Parliament by the Council acting unanimously, following receipt of Parliament's assent.
- Article 8 - The office of Member of the European Parliament shall be incompatible with the office of Member of a national parliament.
- Article 9 - Each Member State may set a limit for candidates' expenditure linked to the conduct of the election campaign.
- Article 10 - The provisions of this Act shall come into force on the first day of the month following receipt of the last of the notifications referred to in the decision.

## **B**

### **EXPLANATORY STATEMENT**

#### INTRODUCTION

The modification of Article 138 of the EC Treaty (Article 190 of the consolidated Treaty) effected by the Treaty of Amsterdam is a significant political development as regards the adoption of an electoral system for the election of Members of the European Parliament.

More generally, this addition to the Treaty represents a new stage along the road to endowing the European Parliament with a comprehensive constitutional status reflecting the characteristics of a democratic system at European level.

This development should be placed in the overall context shaped by the election of Parliament by direct universal suffrage with effect from 1979, the granting of legislative codecision by the Maastricht Treaty and the granting to Community citizens of the right to vote in elections to the European Parliament, and to stand for election thereto, in the Member State where they reside.

The Maastricht Treaty also contains provisions concerning the role of European political parties as a factor of European integration and as a contribution to the expression of the political will of the people of Europe.

The Treaty of Amsterdam continues this process by setting a ceiling of 700 Members, by extending the codecision procedure and making it even-handed and by empowering the European Parliament to confirm the President of the Commission in office.

With a view to forthcoming enlargements it is becoming increasingly desirable that the electoral procedure issue should be settled once and for all on the basis of the aspects of that procedure which enjoy wide support within the Member States.

#### BACKGROUND

As early as 1957, the Treaty establishing the European Community provided for the European Parliament to draw up proposals for its election by direct universal suffrage in accordance with a uniform procedure in all the Member States.

##### 1. Before election by direct universal suffrage

Without wishing to present a detailed history of all the proposals which were drawn up between 1960 and 1979, it is worth recalling that a number of proposals were adopted, without success, during that period. The reasons for the impasse were, in fact, more to do with the issue of the direct election of Members, which was deemed inopportune, particularly by General de Gaulle.

As early as October 1958 a working party on European elections was set up within Parliament's Committee on Political and Institutional Affairs. In March 1960 it submitted a draft agreement on the election of the European Parliamentary Assembly by direct universal suffrage, which was adopted unanimously (the rapporteurs being Mr Battista, Mr Dehousse, Mr Faure, Mr Schuijt and

Mr Metzger). This report prepared the ground for the election of MEPs by direct universal suffrage, although it did not put forward any proposals for a uniform electoral system.

Other proposals to enable Parliament to be directly elected in accordance with a uniform procedure followed between 1960 and 1975, the most recent being the report by Mr Patijn<sup>(1)</sup> adopting a draft agreement establishing the election of the Members of the European Parliament by direct universal suffrage. The rapporteur had chosen a pragmatic approach based on three principles:

- to make it possible for Parliament to be elected directly on the basis of national electoral systems,
- to put forward proposals of restricted scope in order to enable the desired objectives to be achieved,
- to propose a step-by-step approach with the ultimate aim of introducing a uniform electoral procedure.

The Act of 20 September 1976 opened the way to the first direct elections to the European Parliament in 1979, which was undoubtedly a huge step forward towards European integration in so far as it enabled the people to become directly involved in the process. The Act constitutes a framework for direct election but does not provide for a uniform electoral procedure. Article 7 of the Act stipulates that, pending the entry into force of a uniform electoral procedure, the electoral procedure will be determined in each Member State by means of national provisions.

The French President, who at the time was Mr Valéry Giscard d'Estaing, was directly behind the European Council decision which led to elections by direct universal suffrage for a Parliament of which Mr Giscard d'Estaing would himself become a member a few years later

## 2. The Seitlinger report

After 1979 the European Parliament drew up a proposal for a uniform electoral procedure which was adopted on 10 March 1982<sup>(2)</sup> (the Seitlinger report, adopted by 158 votes to 77, with 27 abstentions). In that proposal, Parliament suggested a system of proportional representation, with the seats being distributed according to the d'Hondt system. Multi-member constituencies, with between three and 15 representatives, would be established. No electoral threshold was set. The Council considered this text several times within Coreper, but no further action was taken.

## 3. The Bocklet working document

Following the 1984 elections, the European Parliament decided to put forward a new proposal with the aim of reviving the debate within the Council and it appointed Mr Bocklet (PPE) rapporteur. Just before the Committee on Political Affairs voted on the report the Committee on Legal Affairs adopted an opinion which was in very close agreement with almost all the basic items in the draft report adopted by the Committee on Political Affairs. However, the Committee on Legal Affairs wished the electoral procedure to be genuinely uniform and it pointed out that, from the legal point of view, the existence of a uniform procedure did not just mean that the principles, objectives and results obtained by the electoral systems should be uniform but that the actual procedures used to achieve those principles, objectives and results should be uniform as well. It also took the view that

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<sup>(1)</sup> Resolution of 14 January 1975, Doc. 368/74.

<sup>(2)</sup> OJ C 87, 5.4.1982, p. 61

the draft report by the Committee on Political Affairs should merely regulate the right to vote and it proposed that a joint working party should be set up, comprising members of the Committee on Political Affairs and the Committee on Legal Affairs, with a view to securing an agreement on a uniform electoral procedure, so that the draft report would receive the backing of the largest possible majority of Parliament's Members.

The rapporteur, Mr Bocklet, realizing the extent to which views within the European Parliament concerning the actual electoral procedure diverged, accordingly felt that it was inadvisable to invite Parliament to vote on his draft report, which had been adopted by the Political Affairs Committee on 28 February 1985<sup>(1)</sup> (by 16 votes to 8, with 13 abstentions). In that proposal, the rapporteur considered that the goal of a uniform electoral procedure should be attained in stages, and that the concept of 'uniformity' did not mean absolutely identical electoral procedures, but rather concordance between the key elements of those procedures (electoral system, entitlement to vote and eligibility to stand for election). The method of voting proposed was the proportional system using the d'Hondt method. The Member States would have had the possibility of establishing a single national constituency or regional constituencies, and also of setting a threshold of not more than 5%.

Thus underlying the 1985 proposal is the intention that the various electoral systems used by the Member States for European elections should be gradually harmonised on the basis of a proportional electoral system with lists. The electoral procedure may essentially be said to be uniform in so far as the votes cast have the same value everywhere when it comes to counting them and allocating seats. The Member States retain a certain degree of latitude as regards the other aspects of the electoral system (national or regional constituencies, preferential vote, minimum threshold, etc.).

Faced with a situation in which there was only a small majority in favour of the proposal adopted by the Committee on Political Affairs and a difference of opinion on the part of the Committee on Legal Affairs, the coordinators of the two committees concerned decided to set up an intergroup working party which would be responsible for finalizing a proposal for an electoral system which would receive the support of the political groups and be acceptable to the twelve Member States.

As early as its first meetings (March to July 1986) the intergroup working party agreed on the following basic principles:

- (a) Parliament's proposal must provide for the highest possible degree of uniformity;
- (b) the uniform electoral procedure must involve a balanced compromise between list-based proportional voting and the constituency-based voting for individual candidates;
- (c) Parliament should endeavour to represent the various national, regional and ideological trends in evidence within the Community on the basis of their relative numerical importance;
- (d) the Member States should retain only the power to regulate the division of their territory into constituencies (exceptions and derogations included) and the admission of candidates from new parties or electoral alliances;
- (e) the basic territorial unit of the electoral system should be the constituency (possibly a regional one), which provides a link between Members and their constituencies;
- (f) electors should have only one vote, which they may cast only for the candidate of their choice (compulsory preferential vote);
- (g) the votes should be counted at Member State level;
- (h) the introduction of a minimum threshold should not be allowed.

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<sup>(1)</sup> Doc. PE 132.437, 13.7.1989

The working party tried to gain the support of its UK colleagues by submitting a proposal which combined constituencies and voting for individual named candidates with the distribution of seats on the basis of lists and the percentage of the votes secured. For most Member States this proposal would therefore mean abandoning the principle of closed lists, whilst the British would have to drop their system of single-member constituencies for the purpose of the European elections.

The detailed rules to be laid down in the proposal were finalized towards the end of 1986 and the text was adopted on 10 December of that year. To clear the way for unanimous adoption the problems created combining voting for individual named candidates with proportional voting had to be solved. To do this the working party opted for the Hare-Niemeyer counting system which, according to the experts who were consulted on the matter, had the advantage of being less complicated than the d'Hondt system.

As regards the division of a country into constituencies, the working party set the minimum number of Members per multi-member constituency at five. For the few cases in which a candidate came first in a constituency but did not obtain a seat as a result of the allocation of votes on a proportional basis at national level, a provision was introduced which to ensure that such a candidate would in any event secure a seat.

Lastly, the working party incorporated into its text a number of provisions relating to the admission of candidates from new parties or new electoral alliances and to the reimbursement of electoral campaign expenses.

In December 1986, after about 10 meetings, the intergroup working party adopted a revised version of the uniform electoral system provisions as proposed in the report by the Committee on Political Affairs. The working party had endeavoured to secure the agreement of the UK representatives by submitting a proposal which represented a half-way house between UK and continental practices.

This proposal combined the division of a country into constituencies and voting for a specific candidate (characteristic of the UK system) with the distribution of seats on the basis of lists and the percentage of the vote obtained (in accordance with the continental system). However, this proposal would require most of the Member States to abandon closed lists and the United Kingdom to drop its system of single-member constituencies for the purpose of European elections.

Although the members of the working party adopted each article of the proposal by a large majority and although all the permanent members of the group supported the proposal in its entirety, the reaction of most of Parliament's political groups was somewhat reserved. Consequently, Parliament was unable to submit a proposal for a uniform electoral procedure to the Council early enough for it to be implemented in time for the June 1989 Parliament elections.

In November 1988 the Enlarged Bureau considered the results of the intergroup working party's activities and the subsequent procedure to be followed thereafter. Following a thorough exchange of views the Enlarged Bureau noted that the political groups had not yet come to an agreement and that the discussion only had any practical value if the uniform electoral procedure could be introduced before the next elections. The political groups were called upon to give further consideration to the matter.

#### 4. The De Gucht reports

Following the 1989 elections, Mr De Gucht was appointed rapporteur. The preparation of his report was a long-term operation (it took nearly three years), and necessitated the creation of an informal working party within the Committee on Institutional Affairs, comprising the chairman, the rapporteur and a representative of each political group.

After lengthy, patient negotiations, thanks to the tenacity of the rapporteur, the Committee on Institutional Affairs managed to reach a consensus and tabled an interim resolution which was adopted on 10 October 1991<sup>(1)</sup> by 150 votes to 26, with 30 abstentions, and subsequently a final resolution which was adopted on 10 March 1993<sup>(2)</sup> by 207 votes to 79, with 19 abstentions.

The approach adopted was based on the idea that the initiative should be taken up again and that a broad consensus should be sought in order to achieve a satisfactory outcome. To do this a process was needed which would advance in stages.

The rapporteur also took the view that the concept of uniformity did not require the electoral procedure to be uniform in every respect but merely that the basic features of the procedure should be harmonized.

This idea prefigures to some extent the concept of common principles which would subsequently be incorporated into the Amsterdam Treaty.

In the De Gucht report, Parliament called for the uniform electoral procedure to be based on a system of proportional representation, taking account of the votes cast throughout the territory of each Member State. Preferential voting was provided for, as was the possibility of setting a threshold of between 3% and 5% of the votes cast.

In order to take account of the question of the United Kingdom, Parliament proposed that, if a Member State used a single-member constituency system, not more than two-thirds of the seats could be distributed according to that system, with the remaining third being distributed in such a way as to ensure that the overall distribution of seats was in proportion to the total votes cast.

Following the 1994 elections, Parliament called for this proposal to be examined by the Member States. The Council, pressed by Members of the European Parliament, responded by means of parliamentary questions. During Question Time on 14 December 1994 the Council President, Mr Von Ploetz, stated that he was minded to take the European Parliament's proposal further, whereas his immediate successor, Mr Lamassoure, considered that Parliament's text was too general in nature to constitute a proposal within the meaning of Article 138 of the Treaty, and was insufficiently specific to enable the Council to draw up a full proposal for an electoral system (Question Time, 17 January 1995).

This last statement of position was a skilful move, because if the resolution had turned out not to satisfy the conditions laid down in Article 138, an action for a declaration of failure to act, as had

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<sup>(1)</sup> OJ C 280, 28.10.1991, p. 141

<sup>(2)</sup> OJ C 115, 26.4.1993, p. 59

been suggested by Mr De Vries, Chairman of the ELDR Group, would not have been admissible in the absence of a statement of position by the European Parliament.

The doubts about this point, despite it being of only theoretical interest at that juncture, would emerge during the IGC, as we shall see below.

At least in respect of their own Member State, a number of prominent figures have called for a voting method which brings elected representatives closer to the general public. Thus on the eve of the Turin European Council in March 1996 Mr Chirac, the French President, called for a regionally-based method of proportional voting, which would increase the legitimacy and the representativeness of MEPs.

In June 1996, following the work of a committee set up to reform the European election voting procedure, the Mouvement Européen (France) published a report which called unambiguously for this kind of voting method, a choice which it justified by means of arguments based on the Community's tripartite structure (Council, Commission and Parliament) and the requirement for a compromise based on interinstitutional needs<sup>(1)</sup>.

## NATIONAL LEGISLATION IN THE MEMBER STATES<sup>(2)</sup>

### Constituency boundaries

Eleven Member States (Austria, Denmark, Finland, France, Germany, Greece, Luxembourg, the Netherlands, Portugal, Spain and Sweden) use a single-constituency system. For some of them, this choice is attributable to their limited population and national territory. The Federal Republic of Germany has a special system in which the political parties may submit lists of candidates either at *Land* level or nationally. Finland permits the submission of lists of candidates either for the regional constituencies or nationally; in 1996 all the political parties opted for the national list system.

Three Member States (Belgium - which operates a system with special features - , Ireland and Italy) have divided their national territory into regional constituencies.

The British Parliament is preparing to consider a bill providing for a regional proportional representation system.

### Preferential voting

Nine Member States permit preferential voting: Austria, Belgium, Denmark, Finland, Ireland (the Irish system, which is also used in Northern Ireland, is a single preferential transferable voting system in which candidates are listed in alphabetical order on the ballot paper; each voter votes for one candidate and indicates in order of preference the candidates to whom his vote should be given if his first-choice candidate has already received the number of votes necessary for election; this system is

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(1) Report by the committee on the reform of the voting method for elections to the European Parliament (June 1996), p. 16.

(2) Source: 'Legislation governing elections to the European Parliament' (Political series 13/rev.2), January 1997 - EP Directorate General for Research.

de facto similar to proportional representation), Italy, Luxembourg (which also permits vote-splitting between lists), the Netherlands and Sweden.

### The electoral quotient

Five Member States operate a qualifying hurdle: Germany (5%), France (5%), Austria (4%), Sweden (4%) and Greece (3%).

For the other Member States, the hurdle sets itself according, in particular, to the system used for distributing remainders. By and large, a fairly marked convergence between the electoral systems of the Member States, based on the principles of proportional representation, may be noted.

### THE INTERGOVERNMENTAL CONFERENCE AND THE RESULTS OBTAINED IN THE TREATY OF AMSTERDAM

In a number of different resolutions addressed to the IGC, Parliament expressed itself in favour of a uniform electoral procedure and called on the Member States to implement Article 138 of the Treaty for the next European elections<sup>(1)</sup>.

On 22 October 1996, at the IGC, the Government of the Federal Republic of Germany tabled a proposed modification of Article 138<sup>(2)</sup> which reproduced in full the motion for a resolution presented in the De Gucht report, which was adopted by the European Parliament in March 1993.

In the course of the IGC the Presidents of the European Parliament, Mr Hänsch and Mr Gil-Robles, at the level of ministerial meetings, and Mrs Guigou and Mr Brok, at meetings of the personal representatives, repeatedly reiterated the European Parliament's attachment to such a system, in both their written submissions and their oral contributions.

Mr Blair's new Labour Government which was elected in the United Kingdom in May 1997 has very substantially shifted the United Kingdom's stance on this question, which had also been debated between the Labour Party and the Liberal Democrats during the election campaign, and on which those two parties have adopted a common approach.

The last few weeks of the Intergovernmental Conference saw increased willingness on the part of the Member States to achieve some progress on this issue. The various possibilities mentioned at the IGC were as indicated below. The first option was to include a deadline for the adoption of the electoral procedure in the new Treaty. The second option was based on incorporating the principles of the procedure into the Treaty itself. The third (rather unrealistic) option would have entailed adopting the electoral procedure by a qualified majority. There was even a suggestion that different solutions could be used provided that a particular procedure secured the support of a minimum number of Member States<sup>(3)</sup>.

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<sup>(1)</sup> Resolutions of 16 January 1997 (OJ C 33, 3.2.1997, p. 63), 13 March 1997 (OJ C 115, 14.4.1997, p. 165) and 11 June 1997 (OJ C 200, 30.6.1997, p. 70)

<sup>(2)</sup> CONF 3960/96

<sup>(3)</sup> Presidency report of 17 June 1996 - CONF 3860/96 rev. 1, p. 20

A consensus very quickly formed around the proposal for a reference in the Treaty to 'principles common to' all Member States. This concept takes account of the political reality of all the Member States and does not require an across-the-board harmonization of the electoral procedure.

The Treaty adopted in Amsterdam **therefore** includes the following addition to Article 138(3): '3. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.'

The situation in general seems to be sufficiently ripe to envisage, with a degree of hope, the adoption of an electoral system based on principles common to all the Member States.

## PROPOSALS

First of all, we need to consider the concept of 'common principles', initially by examining those aspects which your rapporteur believes are not included in that concept.

It seems clear that provisions concerning the entitlement to vote (age, exclusion), eligibility for election or incompatibilities, and likewise provisions concerning the conduct of election campaigns, are not included in the concept of common principles, provided that they respect the principles of liberty, democracy and human rights laid down in Article F of the Treaty on European Union (this condition appears to be met at present in all 15 Member States).

It goes without saying that the Member States retain the power to determine the way in which the right to vote is exercised (e.g. optional or compulsory).

The Act of 20 September 1976 prohibits the casting of more than one vote. The directive of 6 December 1993<sup>(1)</sup> lays down detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

Inclusion on the electoral roll is subject to a number of conditions (Article 9) and cooperation is established between the Member States in the form of an exchange of necessary information (Article 13).

This directive came into force in time for the 1994 European elections.

The incompatibilities issue has already been settled by means of the Act of 20 September 1976, Article 6 of which lists the offices at Community level which are incompatible with the office of MEP and enables each Member State to lay down incompatibility rules at national level. However, Article 7(2) of the Act states that, pending the entry into force of a uniform electoral procedure, the electoral procedure shall be governed in each Member State by its national provisions.

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(<sup>1</sup>) OJ L 329, 30.12.1993, p. 34

By introducing the concept of 'common principles' the Amsterdam Treaty will enable the Member States to retain their powers in this area if the future electoral system is based on this concept, rather than on a uniform system.

However, the development of Parliament's powers and responsibilities makes it increasingly difficult (if not impossible) for its Members to hold some other office at the same time.

In these circumstances, given the way in which the European Parliament's powers have evolved since 1976, it would now be appropriate to make the office of MEP incompatible with that of Member of a national parliament. Where other offices are concerned (mayor of a large city or Member of a regional parliament), the question remains open and should be debated.

The principles which are common to the Member States are based on the aspects set out below.

Proportionality should take account, overall, of the votes cast throughout the territory of the Member State so as to enable the full range of views within the Member States to be taken into consideration and represented.

A proportional voting scheme seems entirely suited to the current nature of the Community system since it represents a useful compromise between justice and efficiency, given the political composition of the Council and the Commission. The political majority which emerges within those two institutions generally reflects the one which emerges following elections to the European Parliament.

Until there is a proper European government in place, operating on the basis of a majority system, and also a European opposition, the proportional system will continue to perform a political function which seems broadly justified at the current stage of European integration.

Since the electoral system is based on 'common principles', each Member State must be allowed to retain its preferred type of proportional system. The indication in the Act to the effect that the chosen system of voting is the proportional one is sufficient from both the legal and the political points of view.

The distribution of remainders should continue to be governed by national electoral legislation, in that traditions differ widely on this point. However, the principles of distribution must respect the system of proportional representation.

#### 1. The 'close relationship' principle

The European Parliament's responsibility in the institutional system of the European Union, and in particular in its role as 'democratic pillar', is primarily based on its capacity to 'Europeanize' issues<sup>(1)</sup>.

One possible way of achieving this is dependent on having an electoral system which will mobilize the maximum number of voters.

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(1) Jean Blondel, Richard Sinnott and Palle Svensson, 'People and Parliament in the European Union: participation, democracy and legitimacy'; Oxford University Press, June 1998, p. 16

If citizens do not vote, or vote only for national political reasons relating to each Member State, such elections will have no effect on the legitimacy of the Union<sup>(1)</sup>.

Your rapporteur is convinced that one of the factors which would strengthen that legitimacy and voter turnout, and would end the 'second order' nature of the European elections, would be a change in the electoral system.

This assessment of the electoral system is tied up with a substantial strengthening of the links between the electorate and its representatives.

This can only be brought about by implementing the 'close relationship' principle.

The goal of a close relationship between European citizens and their representatives must entail (depending on the size of the Member State) the existence of territorial constituencies, so as to enable voters and Members of the European Parliament to establish a direct and effective relationship. The term 'territorial constituency' seems better suited to the different situations of the Member States, since it makes it possible to include all shades of meaning and specific characteristics while avoiding any misunderstandings regarding the term 'region'. To avoid the creation of artificial constituencies without historical or geographical links (particularly in small or medium-sized Member States), it is proposed that the establishment of territorial constituencies should be made obligatory only in the case of those Member States whose population exceeds 20 million inhabitants. Beneath this threshold the system would remain optional.

To enable the Member States concerned (those whose population exceeds 20 million inhabitants) to make the necessary changes, it is proposed that this measure should be brought into effect in time for the European elections in 2004.

The United Kingdom is preparing to adopt a system of regional proportional representation<sup>(2)</sup>, while in France, the Minister of European Affairs, Mr Moscovici, has presented to the Prime Minister a proposal to introduce a system of regional proportional representation in which the regions would be grouped in pairs (with the exception of Ile-de-France and the Overseas *Départements* and Territories).

Mr Barnier, the former Minister of European Affairs under the Juppé Government, has tabled a bill in the Senate, with the support of 50 other Senators, whereby the regions would be grouped together in eight constituencies; this plan was in the pipeline during his period as a government minister.

In April 1998 President Chirac and the Prime Minister, Mr Jospin, declared themselves in favour of a regional voting system. France's electoral legislation should be amended in time for the European elections in 1999.

Depending on the political traditions of each Member State, any Member State must be able to authorize preferential voting, so as to increase the possibility for voters to choose between different candidates on the same list or even on different lists.

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<sup>(1)</sup> Op. cit, p. 20

<sup>(2)</sup> See attached text

Your rapporteur is convinced that it is a matter of extreme importance to the European Union for the legislative functions of the European Parliament to be strengthened (even if not everyone is sufficiently aware of this yet). The same applies to the political responsibilities incumbent upon the European Parliament.

Your rapporteur believes that strengthening the European Parliament depends on four factors:

- the content of its work, which has frequently been original and of high quality,
- awareness of its responsibilities in carrying out its functions,
- deepening the relationship between European citizens and their elected representatives so as to allow the latter to take account of the aspirations of the former,
- strengthening the political representativity of its Members.

In the past, this last point has been the subject of a number of doubts expressed about the representative nature of a portion of its Members. This controversy springs from the method of voting, which fairly frequently takes the form of a system of national lists, without the possibility of preferential voting in some cases, whereas smaller constituencies are often used for national elections in some Member States.

This situation, for instance, prompted Mr de Charette, the French Minister of Foreign Affairs at the time of a disagreement with the European Parliament in March 1997, to state that Parliament had a serious problem regarding representativity.

At the Rome European Council in October 1990, the President of the European Parliament, Mr E. Barón Crespo, likewise noted, '...The atmosphere was tense. My own speech, particularly as regards "double democratic legitimacy" and the eternal question of the seat of the European Parliament, gave rise to some lively and critical reactions in the discussion that followed and which later appeared in the press. ..."Double democratic legitimacy", which, it seems, triggered a debate between the political leaders'<sup>(1)</sup>.

This was echoed by the Italian Minister of Foreign Affairs, Mr de Michelis, as was noted in the press at the time.

While regional constituencies remain an objective which it is difficult to attain at present, progress must nonetheless be made in that direction. It likewise seems highly desirable to introduce the possibility of preferential voting, in order to put an end to polemics concerning the representativity of Members of the European Parliament. Your rapporteur is convinced that everything must be done to enhance a close relationship with the electorate.

This is why a gradualist approach is extremely important, with the aim of arriving at territorial divisions for the Member States with the largest populations, while leaving them the responsibility of deciding the number and size of such constituencies.

The political differences amongst the Member States mean that preferential voting must remain an option since, in the countries in which it is authorized, the advantages outweigh the drawbacks in

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<sup>(1)</sup> Enrique Barón Crespo, 'Europe at the dawn of the Millennium' (the 'Rome I Council, p. 69), London 1997

terms of closeness to the electorate, the representativeness of those elected and electoral participation. Such a system is, however, criticised in certain quarters for encouraging excessively close links between candidates and voters and for provoking in-fighting amongst candidates on the same list.

This risk, although not insignificant, must be assessed by each Member State in the light of its own specific situation. However, this comment does not alter the firm beliefs held by your rapporteur: candidates must be chosen democratically by the political parties, whilst the expression of the electors' choice by means of a preferential vote brings the voting public closer to their elected representatives and increases the European Parliament's legitimacy.

The representation of women is a matter of major concern, justified by the fact that they constitute a majority of the population of the Member States. A specific proposal in connection with the European electoral procedure does not appear to be necessary. Any attempt to enhance their representation depends, above all, on the will of the political parties, who may introduce quotas if it proves necessary to do so. Your rapporteur endorses the guidelines adopted by the Inter-Parliamentary Symposium in New Delhi in February 1997.

In this connection it should be pointed out that candidates must be given equal treatment by all the media.

Your rapporteur believes that there should be a ban on the publication of opinion polls relating to the European elections in the last two weeks before polling day.

However, such a ban would be unenforceable in so far as modern technologies (the Internet, for example) could be used as a very easy way of getting round it.

Nonetheless, there should at the very least be a ban on the publication anywhere in the European Union of exit polls before voting closes in the Member States whose electors are the last to vote, so as not to influence electors who have not yet cast their vote.

The setting of a minimum threshold for the award of a seat is a delicate issue. In these circumstances, a threshold should remain optional, but in any event the threshold may not exceed 5% of the votes cast.

Some Member States have a number of specific regional characteristics. The Member States concerned must be able to make arrangements to take account of these, but without violating the principle of proportional representation of those various situations.

Finally, provided that they comply with the basic principles of the proportional system, the Member States may make provision for adjustments to the distribution of seats in order to avoid certain political currents not being represented. For example, if a Member State has a regional system, it could arrange to distribute seats to lists which fail to achieve the electoral quotient in certain regions by grouping together the remainders of unused votes intra-regionally or nationally.

## 2. The question of trans-national lists

The establishment of trans-national lists for the European elections was deemed Utopian a few years ago but this idea is now making some headway.

Such a system (restricted to 10% of the total number of seats within Parliament) would certainly contribute to the emergence of a genuine European political awareness and to the establishment of proper European political parties. It would also give European elections a more European dimension which would be less concerned with national political issues.

Such a change to the representation system would allow a suitable balance to be struck between the supporters and opponents of the regional proportional system.

To enable this significant political change to be properly prepared, an appropriate provision should be brought into effect in time for the 2009 European elections.

In view of a number of reservations which were expressed during the debate in committee about the compatibility of this proposal with the Treaty, the chairman of the Committee on Institutional Affairs requested an opinion from the European Parliament's Legal Service<sup>(1)</sup>.

In its opinion, the Legal Service points out that Members of the European Parliament represent the peoples of the States brought together in the Community, but that a limited exception to the links with the framework of States was brought in by the Maastricht Treaty, which introduced the right to vote and stand in elections to the European Parliament for citizens residing in a Member State other than their own. Consequently, representation of the peoples of the Community which crosses State frontiers is possible, and is not alien to the principles of the Treaty, although Articles 189 and 190 of the EC Treaty would have to be modified, of course.

Over the years, politicians who have had a prominent career in domestic politics have also been Members of the European Parliament. France has provided a significant number of such figures, who include, amongst others, V. Giscard d'Estaing, F. Mitterrand and J. Chirac (President of France), M. Debré, E. Faure, P. Mauroy, P. Messmer, P. Pflimlin, A. Pinay, R. Pléven, P. Reynaud, R. Schuman, Edith Cresson, M. Rocard, A. Juppé and L. Jospin (Prime Minister), and also G. Marchais and J. Delors.

As far as the other Member States are concerned the following may be mentioned: K. Kiesinger, W. Brandt, W. Scheel, H. Schmidt (Germany), J. Duvieusart, P.H. Spaak and, more recently, L. Tindemans and W. Martens (Belgium), P. Schlüter (Denmark), L. Calvo Sotelo (Spain), G. Andreotti, E. Colombo, B. Craxi, A. De Gasperi, C. De Mita, A. Fanfani, G. Pella, M. Rumor, M. Scelba, A. Forlani and G. Gorla (Italy), G. Thorn, J. Santer and P. Werner (Luxembourg) and L. De Pintasilgo (Portugal), who were Prime Ministers (except for W. Scheel, who was Federal President), J. Prescott (British Deputy Prime Minister), E. Averoff-Tosizza (Greek Deputy Prime Minister) or leaders of major parties, as in the case of E. Berlinguer.

Some MEPs have expressed the wish that the elections should be held on the same day in all the Member States. So far the differences in voting traditions between the various Member States have

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<sup>(1)</sup> Opinion of 20 February 1998 (SJ - 28/98)

meant that they have been allowed to hold the election at any time between a Thursday morning and a Sunday evening (Article 9 of the Act of 20 September 1976).

It is obvious that holding the election on the same day would have a highly beneficial impact from the point of view of the political issues and hence the turnout. Most Member States have a preference for Sunday.

The difficulty arises with traditions and religious considerations which make it impossible to hold an election on Sundays in Denmark, the Netherlands, the United Kingdom and Ireland. In Germany or France, by contrast, elections are held on Sundays because polling stations are mostly located in schools.

Your rapporteur approves the idea of setting Sunday as election day. One possible compromise might be to hold the elections over a two-day period, and choosing Saturday and Sunday would enable the election period to be halved. This would also satisfy the religious requirements of the various confessions.

This second solution has certain advantages, in that it accommodates certain sensitivities, but entails other drawbacks. In any event, we must move away from the present status quo.

It would also be advisable to ensure that European elections are held during the month of May, owing to the existence of many national days or religious festivals in June (especially in Portugal). In some Member States, too, (notably in Scandinavia) the school summer holidays start as early as June.

May appears preferable to any other option. In particular, it would make it possible to hold Parliament's constituent part-session at the end of June or beginning of July and to bring forward the start of the new Parliament's work.

Holding the elections in the autumn, for example, would entail problems of timetabling with regard to adoption of the budget and the investiture of the President of the Commission.

**C**  
**ANNEXES**

Table summarizing electoral legislation on European elections in each Member State (as at 29 January 1998)

	No. of seats	Constituency boundaries	Voting method	Preferential voting	Distribution of seats	Allocation of seats	Entitlement to vote	Eligibility for election	Nomination of candidates
BELGIUM	25	Four constituencies: - Flemish - Walloon - Brussels-Hal-Vilvoorde - German-speaking	Proportional	Yes Voting is compulsory	D'Hondt method	According to the number of preferential votes received	Age: 18 Conditions: must be resident in Belgium and not have been deprived of right to vote in home Member State	Age: 21 Must be entered on a Belgian electoral roll Must speak the language corresponding to the constituency chosen	List of candidates must be endorsed: - <b>either</b> by 5 Belgian MPs belonging to the same linguistic group - <b>or</b> by 5000 voters from the constituency chosen (200 for the German-speaking constituency)
DENMARK	16	Single national constituency (minus the Faeroes and Greenland)	Proportional	Yes	D'Hondt method	According to the number of preferential votes received	Age: 18 Conditions: must be entered on the population register	Same conditions as for entitlement to vote	Rules for nominations: - parties which won seats in the last parliamentary elections (automatically) - parties whose lists are supported by at least 2% of the valid votes cast in the last parliamentary elections Maximum of 20 names per list Lists may be linked

	No. of seats	Constituency boundaries	Voting method	Preferential voting	Distribution of seats	Allocation of seats	Entitlement to vote	Eligibility for election	Nomination of candidates
GERMANY	99	Single constituency Members are elected either from <i>Land</i> or from Federal lists	Proportional	No (voting for a list only)	Hare-Niemeyer method Lists obtaining fewer than 5% of votes at Federal level do not qualify	According to the order in which names appear on the lists	Age: 18 Conditions: must be resident in Germany for the 3 months preceding the election	Same conditions as for entitlement to vote	Lists of candidates may be: - <b>either</b> submitted by <i>Land</i> - <b>or</b> grouped together on a single list for all the <i>Länder</i> Political parties and political associations may submit lists They must: - <b>either</b> have 5 Members of the Bundestag or a Landtag - <b>or</b> collect 4000 (Federal list) or 2000 ( <i>Land</i> list) signatures
GREECE	25	Single national constituency	Proportional	No (voting for a list only, preferential voting prohibited) Voting is compulsory	See 'Allocation of seats'	According to the order in which names appear on the lists Lists obtaining fewer than 3% of votes do not qualify	Age: 18	Age: 21	Only political parties or party coalitions may submit lists Maximum of 25 candidates on each list
SPAIN	64	Single national constituency	Proportional	No (voting for a list only)	D'Hondt method	According to the order in which names appear on the lists	Age: 18 Condition: must be resident in Spain	Same conditions as for entitlement to vote	Parties, coalitions and groups of voters may nominate candidates if they: - <b>either</b> collect the signatures of 15 000 voters - <b>or</b> collect the signatures of 50 elected representatives

	No. of seats	Constituency boundaries	Voting method	Preferential voting	Distribution of seats	Allocation of seats	Entitlement to vote	Eligibility for election	Nomination of candidates
FRANCE	87	Single national constituency (including overseas departments and territories)	Proportional	No (voting for a list only)	D'Hondt method Lists obtaining fewer than 5% of votes cast do not qualify	According to the order in which names appear on the lists	Age: 18 Conditions: must be resident in France and registered on an additional electoral roll	Age: 23 Other conditions same as for entitlement to vote	Submission of lists by the candidate heading the list Deposit of FF 100.000, reimbursement of which is subject to conditions (election results)
IRELAND	15	Four constituencies: - Dublin (4 seats) - Munster (4 seats) - Leinster (4 seats) - Connacht/Ulster (3 seats)	Proportional	Single transferable vote	See 'Allocation of seats'	To be elected, candidates must obtain a pre-established quota of votes <sup>(1)</sup>	Age: 18 Conditions: must apply for registration on the national electoral roll	Age: 21 Other conditions same as for entitlement to vote	Candidates may: - nominate themselves - be nominated by a third party Deposit of £Irl 1000, reimbursement of which is subject to conditions (election results)
ITALY	87	Five constituencies: - North-West (23 seats) - North-East (16 seats) - Centre (17 seats) - South (21 seats) - Islands (10 seats)	Proportional	Yes (votes may be transferred from one constituency to another)	Carried out at national level (a quotient is established determining how many votes are needed to win a seat)	According to the number of preferential votes obtained (the preferential vote is subject to quotas set for each constituency)	Age: 18 Condition: must be registered on the electoral roll 90 days before the elections	Age: 25 Condition: must meet the eligibility criteria in the home Member State	Parties and political groups which won at least 1 seat in the European Parliament at the previous election may submit lists of candidates Individual nominations if endorsed by at least 3000 signatures

<sup>(1)</sup> The system for allocating seats used in Ireland is a variant of the 'Droop Quota'. To be elected, candidates must obtain a pre-established number of votes (quota) obtained by dividing the total number of valid votes by the number of seats + 1 and adding 1 to the result of that division ( $[(\text{votes} \div (\text{seats} + 1)) + 1]$ ). Vacant seats are filled by candidates on the various lists who obtain a number of votes higher than the quota, in accordance with the preferences expressed by voters (decimal places are not taken into account)

	No. of seats	Constituency boundaries	Voting method	Preferential voting	Distribution of seats	Allocation of seats	Entitlement to vote	Eligibility for election	Nomination of candidates
LUXEMBOURG	6	Single national constituency	Proportional	Yes Voting is compulsory Each voter has 6 votes	D'Hondt method Vote-splitting is permitted	According to the number of preferential votes obtained	Age: 18 Conditions: must be resident in Luxembourg and be registered on the electoral roll	Age: 21 Other conditions same as for entitlement to vote	Lists must be submitted: - by 250 voters or - by a Member of the European Parliament or - by a Luxembourg MP
NETHERLANDS	31	Single national constituency	Proportional	Yes	D'Hondt method at national level	According to the number of preferential votes obtained	Age: 18 Condition: must be entered on the population register	Age: 18 Other conditions same as for entitlement to vote	Candidates nominated by political parties Lists can include up to 40 names Deposit of Fl 18 000 required for parties not represented in the European Parliament
AUSTRIA	21	Single Federal (national) constituency	Proportional	Yes	D'Hondt method Lists obtaining fewer than 4% of votes cast do not qualify	According to the number of preferential votes obtained Candidates must have gained at least 7% of the total votes cast for their party	Age: 18 Condition: must be resident in Austria and registered on an electoral roll	Age: 19 Same conditions as for entitlement to vote	Nominations submitted by political parties endorsed by: - 5 Austrian MPs or - 2 MEPs or - 2600 signatures
PORTUGAL	25	Single national constituency	Proportional	No (voting for a list only)	D'Hondt method	According to the order in which names appear on the lists	Age: 18 Condition: must be resident in Portugal and registered on the electoral roll	Same conditions as for entitlement to vote	Lists submitted to the Constitutional Court Number of names on lists must be equal to the number of MEPs to be elected
FINLAND	16	Single constituency (the 4 constituencies - South, West, North and East - are brought together to form a single constituency for elections to the European Parliament)	Proportional	Yes	D'Hondt method	According to the number of preferential votes obtained	Age: 18 Conditions: must be resident in Finland for more than 1 year before the election, and apply to vote	Same conditions as for entitlement to vote No-one placed under supervision or on active military service may stand	Nominations submitted at either constituency or national level Must be submitted: - by a political party or - by a voters' association of at least 100 voters (putting up candidates in a constituency)

	No. of seats	Constituency boundaries	Voting method	Preferential voting	Distribution of seats	Allocation of seats	Entitlement to vote	Eligibility for election	Nomination of candidates
SWEDEN	22	Single national constituency	Proportional	Yes	Modified St Laguë method Parties obtaining fewer than 4% of votes cast nationally do not qualify	According to the number of preferential votes obtained Candidates failing to obtain at least 5% of the total number of votes cast for their party do not qualify	Age: 18 Condition: must notify the tax authorities, who keep the population register	Same conditions as for entitlement to vote	Parties and candidates are not obliged to collect a given number of signatures for their nomination Nominations submitted to the central authority
UNITED KINGDOM	87	Divided into constituencies: - 71 seats in England - 8 seats in Scotland - 5 seats in Wales - 3 seats in Northern Ireland	England, Scotland & Wales: majority vote Northern Ireland: single transferable vote (see 'Ireland')	See 'Allocation of seats'	See 'Allocation of seats'	England, Scotland & Wales: seats won by candidates with the greatest number of votes Northern Ireland: according to the number of preferential votes (transfer of preferences decides 1st, 2nd & 3rd seats)	Age: 18 Condition: must be resident in UK	Age: 21 Same conditions as for entitlement to vote	Candidates need not be nominated by a political party Nominations in constituencies must be endorsed by 30 voters

Summary of methods for distributing seats  
in a system of proportional representation

In a system of proportional representation there are many different ways of distributing seats, and a presentation of the distribution mechanisms is therefore necessary. There are two main methods, namely the **electoral quotient method** and the **method of divisors**(<sup>1</sup>).

I. The **electoral quotient** is the most commonly used method. It is obtained by dividing the number of votes cast by the number of seats to be filled in each constituency. After voting has taken place, each list will receive as many seats as the number of electoral quotients it has obtained. There is also the *adjusted quotient* method, known as the **Hagenbach-Bischoff system**. In this system, the number of voters is divided by the number of seats to be filled, plus one, with the operation being repeated until all the seats have been distributed.

Under the **uniform number** system, a law lays down in advance, for the whole country, the number of votes needed for a list to secure a seat. Each list will be entitled to as many seats as the multiple of that number - known as the uniform number - contained in the total votes that it has obtained.

The **national quotient** is calculated by dividing the total number of votes cast in all of a country's constituencies by the total number of seats to be distributed. It cannot be determined, however, until the definitive election results are available.

The use of these methods, however, produces what are known as *remainders*, in other words unused votes and unfilled seats. There is then a choice between one of the two systems which enable these remainders to be used and the seats left vacant by the first distribution operations to be filled: **integral proportional representation** and **approximate proportional representation**.

**Integral proportional representation** brings together the remainders of each of the political groupings which presented lists and allocates as many additional seats as the multiple of the uniform number contained in the total of each grouping's remainders (the *uniform number* or *national quotient* methods referred to above are used). This procedure is rarely used.

**Approximate proportional representation** has two ways of distributing remainders: to the *largest remainder* or to the *largest average*.

A. The method of the largest remainder favours small political groupings, and consists in allocating the remaining seats to be filled to the lists with the largest number of unused seats. In each constituency, the remaining seats will be allocated to each list according to the decreasing number of votes unused after the first distribution. Small political parties which have failed to achieve the electoral quotient will thus benefit from this method.

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(<sup>1</sup>) It will be seen, on reading these details, that while the methods presented may use different calculation processes, they sometimes produce the same results. For example, the electoral quotient method with the distribution of remainders to the largest average produces identical results to those obtained by the d'Hondt method.

B. The method of the largest average favours large political groupings. The procedure entails allocating a notional seat to each list, and the number of votes obtained by each list is divided by the number of seats that they obtained, plus one.

II. Another system is the **method of divisors**, which aims to divide the number of votes gained by parties in the constituency by a series of continuous numbers (series of divisors). The seats are allocated according to the size of the quotients obtained.

The **d'Hondt method** is an example of the method of divisors (it is based on the series of divisors 1, 2, 3, 4, etc., until the seats to be filled have all been distributed. It was in 1882 that Victor d'Hondt, a professor of law at the University of Ghent, presented a system for allocating seats to different political groups in Belgium, thus permitting proportional representation. The method had a great future ahead of it, because many Member States of the European Union now use it, in both national and European elections, to distribute seats among the different lists/candidates standing.

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Resolution on the uniform electoral procedure for the election of Members of the European Parliament

The European Parliament,

- having regard to its resolution of 10 March 1993 (A3-0381/92) on the draft uniform electoral procedure for the election of Members of the European Parliament,
- A. regretting that, three years on, the Council has still not adopted the slightest measure following up that resolution,
- B. recalling that, as it possesses the right of initiative in this area, the European Parliament has an obligation to take all necessary initiatives until a uniform electoral procedure is established,
  1. Requests the Council's cooperation to enable a uniform electoral procedure to be adopted in good time for it to be implemented, without fail, for the 1999 European elections;
  2. Instructs its President to maintain all appropriate contacts with the Council and the Member States to ensure the adoption of its draft;
  3. Instructs its committee responsible, if necessary following the contacts with the Council, to prepare a new draft uniform electoral procedure that could achieve the necessary consensus and be applied for the 1999 European elections.

**E — Act concerning the election of the  
representatives of the European Parliament  
by direct universal suffrage,  
annexed to the Council Decision  
of 20 September 1976**

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Council

DECISION

(76/787/ECSC, EEC, Euratom)

THE COUNCIL,

COMPOSED of the representatives of the Member States and acting unanimously,

HAVING regard to Article 21(3) of the Treaty establishing the European Coal and Steel Community,

HAVING regard to Article 138(3) of the Treaty establishing the European Economic Community,

HAVING regard to Article 108(3) of the Treaty establishing the European Atomic Energy Community,

HAVING regard to the proposal from the European Parliament,

INTENDING to give effect to the conclusions of the European Council in Rome on 1 and 2 December 1975, that the election of the European Parliament should be held on a single date within the period May/June 1978,

HAS LAID DOWN the provisions annexed to this Decision which it recommends to the Member States for adoption in accordance with their respective constitutional requirements.

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This Decision and the provisions annexed hereto shall be published in the *Official Journal of the European Communities*.

The Member States shall notify the Secretary-General of the Council of the European Communities without delay of the completion of the procedures necessary in accordance with their respective constitutional requirements for the adoption of the provisions annexed to this Decision.

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

Done at Brussels on the twentieth day of September in the year one thousand nine hundred and seventy-six.

For the Council of the European Communities

*The President*  
M. VAN DER STOEP

Le ministre des Affaires étrangères du royaume de Belgique  
De Minister van Buitenlandse Zaken van het Koninkrijk België

R. VAN ELSLANDE

Kongeriget Danmarks udenrigsøkonomiminister

Ivar NORGGAARD

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Der Bundesminister des Auswärtigen der Bundesrepublik Deutschland

Hans-Dietrich GENSCHER

Le ministre des Affaires étrangères de la République française

LOUIS DE GUINGAUD

The Minister for Foreign Affairs of Ireland  
Aire Gnóthaí Eachtracha na hÉireann

Geórd MAC GEARAID

Il ministro degli Affari esteri della Repubblica italiana

Arnaldo FORLANI

Membre du gouvernement du grand-duché de Luxembourg

Jean HAMILIUS

De Staatssecretaris van Buitenlandse Zaken van het Koninkrijk der Nederlanden

L. J. BIJNKHORST

The Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland

A. CROSLAND

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ACT  
concerning the election of the representatives of the  
European Parliament by direct universal suffrage

*Article 1*

The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.

*Article 2\**

The number of representatives elected in each Member State shall be as follows:

Belgium .....	25
Denmark .....	16
Germany .....	99
Greece .....	25
Spain .....	64
France .....	87
Ireland .....	15
Italy .....	87
Luxembourg .....	6
Netherlands .....	31
Austria .....	21
Portugal .....	25
Finland .....	16
Sweden .....	22
United Kingdom .....	87

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\* Article as replaced by Article 11 A/FIN/SWE in the version resulting from Article 5 of AD AA A/FIN/SWE.

*Article 3*

1. Representatives shall be elected for a term of five years.
2. This five-year period shall begin at the opening of the first session following each election.

It may be extended or curtailed pursuant to the second subparagraph of Article 10(2).

3. The term of office of each representative shall begin and end at the same time as the period referred to in paragraph 2.

*Article 4*

1. Representatives shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.

2. Representatives shall enjoy the privileges and immunities applicable to Members of the European Parliament by virtue of the Protocol on the privileges and immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities.

*Article 5*

The office of representative in the European Parliament shall be compatible with membership of the parliament of a Member State.

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*Article 6*

1. The office of representative in the European Parliament shall be incompatible with that of:

- member of the government of a Member State,
- Member of the Commission of the European Communities,
- Judge, Advocate-General or Registrar of the Court of Justice of the European Communities,
- Member of the Court of Auditors of the European Communities,
- member of the Consultative Committee of the European Coal and Steel Community or member of the Economic and Social Committee of the European Economic Community and of the European Atomic Energy Community,
- member of committees or other bodies set up pursuant to the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community for the purpose of managing the Communities' funds or carrying out a permanent direct administrative task,
- member of the Board of Directors, Management Committee or staff of the European Investment Bank,
- active official or servant of the institutions of the European Communities or of the specialized bodies attached to them.

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2. In addition, each Member State may, in the circumstances provided for in Article 7(2), lay down rules at national level relating to incompatibility.

3. Representatives in the European Parliament to whom paragraphs 1 and 2 become applicable in the course of the five-year period referred to in Article 3 shall be replaced in accordance with Article 12.

#### *Article 7*

1. Pursuant to Article 21(3) of the Treaty establishing the European Coal and Steel Community, Article 138(3) of the Treaty establishing the European Economic Community and 108(3) of the Treaty establishing the European Atomic Energy Community, the European Parliament shall draw up a proposal for a uniform electoral procedure.

2. Pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

#### *Article 8*

No one may vote more than once in any election of representatives to the European Parliament.

#### *Article 9*

1. Elections to the European Parliament shall be held on the date fixed by each Member State; for all Member States this date shall fall within the same period starting on a Thursday morning and ending on the following Sunday.

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2. The counting of votes may not begin until after the close of polling in the Member State whose electors are the last to vote within the period referred to in paragraph 1.

3. If a Member State adopts a double ballot system for elections to the European Parliament, the first ballot must take place during the period referred to in paragraph 1.

#### *Article 10*

1. The Council, acting unanimously after consulting the European Parliament, shall determine the period referred to in Article 9(1) for the first elections.

2. Subsequent elections shall take place in the corresponding period in the last year of the five-year period referred to in Article 3.

Should it prove impossible to hold the elections in the Community during that period, the Council acting unanimously shall, after consulting the European Parliament, determine another period which shall be not more than one month before or one month after the period fixed pursuant to the preceding subparagraph.

3. Without prejudice to Article 22 of the Treaty establishing the European Coal and Steel Community, Article 139 of the Treaty establishing the European Economic Community and Article 109 of the Treaty establishing the European Atomic Energy Community, the European Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the period referred to in Article 9(1).

4. The powers of the outgoing European Parliament shall cease upon the opening of the first sitting of the new European Parliament.

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*Article 11*

Pending the entry into force of the uniform electoral procedure referred to in Article 7(1), the European Parliament shall verify the credentials of representatives. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.

*Article 12*

1. Pending the entry into force of the uniform electoral procedure referred to in Article 7(1) and subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 3 for the remainder of that period.

2. Where a seat falls vacant pursuant to national provisions in force in a Member State, the latter shall inform the European Parliament, which shall take note of that fact.

In all other cases, the European Parliament shall establish that there is a vacancy and inform the Member State thereof.

*Article 13*

Should it appear necessary to adopt measures to implement this Act, the Council acting unanimously on a proposal from the European Parliament after consulting the Commission, shall adopt such measures after endeavouring to reach agreement with the European Parliament in a conciliation committee consisting of the Council and representatives of the European Parliament.

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*Article 14*

Article 21(1) and (2) of the Treaty establishing the European Coal and Steel Community, Article 138(1) and (2) of the Treaty establishing the European Economic Community and Article 108(1) and (2) of the Treaty establishing the European Atomic Energy Community shall lapse on the date of the sitting held in accordance with Article 10(3) by the first European Parliament elected pursuant to this Act.

*Article 15*

This Act is drawn up in the Danish, Dutch, English, French, German, Irish and Italian languages, all the texts being equally authentic.

Annexes I to III shall form an integral part of this Act.

A declaration by the Government of the Federal Republic of Germany is attached hereto.

*Article 16*

The provisions of this Act shall enter into force on the first day of the month following that during which the last of the notifications referred to in the Decision is received.

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Done at Brussels on the twentieth day of September in the year one thousand nine hundred and seventy-six.

R. VAN ELSLANDE  
Ivar NØRGAARD  
Hans-Dietrich GENSCHER  
LOUIS DE GUINGAUD  
Gearóid MAC GEARAILL  
Arnaldo FORNARI  
Jean HAMBIUS  
L. J. BRINKHORST  
A. CROSLAND

#### ANNEX I

The Danish authorities may decide on the dates on which the election of Members to the European Parliament shall take place in Greenland.

#### ANNEX II

The United Kingdom will apply the provisions of this Act only in respect of the United Kingdom.

#### ANNEX III

### DECLARATION ON ARTICLE 13

As regards the procedure to be followed by the Conciliation Committee, it is agreed to have recourse to the provisions of paragraphs 5, 6 and 7 of the procedure laid down in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975.\* \*\*

### DECLARATION BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY

The Government of the Federal Republic of Germany declares that the Act concerning the election of the Members of the European Parliament by direct universal suffrage shall equally apply to *Land* Berlin.

\* OJ C 89, 22.4. 1975

\*\* This Joint Declaration is given on pp. 873 to 876 of this volume

In consideration of the rights and responsibilities of France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, the Berlin House of Deputies will elect representatives to those seats within the quota of the Federal Republic of Germany that fall to *Land* Berlin.

## LEGAL OPINION

Subject: Uniform electoral procedure - single territorial constituency - compatibility with the Treaty  
Request for an opinion, dated 29 January 1998, from the Committee on Institutional Affairs

1. By letter of 29 January 1998 the Committee on Institutional Affairs asked the Legal Service to draw up an opinion on the compatibility with Article 137 of the EC Treaty of a proposal providing for a certain percentage of Members of the European Parliament to be elected within a single constituency comprising the territory of the European Union.

I. Background to the proposal

2. Where the various precedents regarding a uniform electoral procedure are concerned, the Legal Service refers readers to the background set out in Mr Anastassopoulos' working document of 14 January 1998<sup>(1)</sup>.

3. The modification of Article 137 by the draft Treaty of Amsterdam enables the European Parliament to draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

4. On 16 October 1997 the Committee on Institutional Affairs was authorized to draw up an own-initiative report on the electoral procedure.

5. The committee's rapporteur, Mr Anastassopoulos, proposes to choose the second option in the new Article 138 (Article 190 of the consolidated version of the Treaty) and to restrict himself to drawing up a proposal for European elections which embodies principles common to all Member States. Accordingly, this legal opinion must be based on the future version of the Treaty.

6. Article 6 of the draft Act reads as follows:

*'Twenty per cent of the total number of seats within the European Parliament shall be filled by means of list-based proportional representation relating to a single constituency comprising the territory of the European Union Member States with effect from the European elections to be held in 2009. The implementing provisions shall be adopted on a proposal from the European Parliament by the Council acting unanimously, following receipt of Parliament's assent before 1 January 2008.'*

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<sup>(1)</sup> Doc. PE 224.331/rev. 2

It is in respect of this proposal that the Committee on Institutional Affairs has sought the opinion of the Legal Service.

## II. The position in law

7. The first paragraph of Article 189 (currently Article 137) of the EC Treaty reads as follows:

*'The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community<sup>(1)</sup>, shall exercise the powers conferred upon it by this Treaty.'*

The above provision thus includes two elements: first, the statement that the Members of the European Parliament represent the peoples of the States brought together in the Community and, secondly, the reference to the powers conferred upon it.

8. Consequently, according to the legal literature Parliament does not represent a hypothetical European people, but has the task of representing the peoples of the Member States of the Community<sup>(2)</sup>. *'This clarification is useful, because it makes it possible to dismiss three demands which are sometimes made: the first entails the aim of organizing ... the possibility of pluri-national constituencies ...'*<sup>(3)</sup>.

9. Following the entry into force of the Treaty of Amsterdam, that statement will be confirmed not only by the new wording of Article 190(1)<sup>(4)</sup>, but above all by the insertion of a new second subparagraph into Article 190(2), which reads as follows:

*'in the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.'*

10. It must therefore be concluded that there is a definite link between the framework represented by each Member State and the representation of its people in the European Parliament.

11. The statement made here is, moreover, borne out by what happened at the Maastricht intergovernmental conference. A proposal tabled by the German delegation, which sought to modify Article 137 of the EC Treaty by deleting the reference to the Member States, stating

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<sup>(1)</sup> Our underlining

<sup>(2)</sup> Haag/Bieber in: Groeben/Thiesing/Ehlermann, Kommentar zum EU-EG-Vertrag, 5th ed., Baden-Baden 1997, Article 137, first paragraph et seq.

<sup>(3)</sup> Article 137, second paragraph; see V. Constantinesco in: Constantinesco/Jaqué/Kovar/Simon, Treaty establishing the EEC, commentary, Paris 1992, Article 137, second paragraph

<sup>(4)</sup> The paragraph reads as follows:

*'1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.'*

instead that the European Parliament 'shall consist of representatives of the citizens of the Union', was not accepted<sup>(1)</sup>.

12. This being the case, the link between the representative in the European Parliament and the State in which the right to vote is exercised, in relation to the rights of Union citizens to move and reside freely within the territory of the Union, has changed somewhat following the introduction of Article 8b(2) (future Article 19) of the Maastricht Treaty, pursuant to which:

*'... 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. ...'*

13. It follows from this that it is therefore possible for persons who are not nationals of their State of residence to participate in the election of the representatives covered by the quota that Article 138 of the EC Treaty allocates to that State. Furthermore, the representation of the State concerned is no longer reserved exclusively for nationals of that State. This legal situation is also the practical expression of a new element enshrined in the Treaty by Article 138a, which refers, in the context of political parties at European level, to the formation of a European awareness and to the expression of the political will of the citizens of the Union, without mentioning the peoples of the Member States.
14. It should be noted, however, that the *'exception'* to the link with the framework of States stemming at present from Article 137 and, in future, from Articles 189 and 190 of the EC Treaty is limited: where the right to vote is concerned, a citizen has a choice only between the State of which he is a national and that in which he resides. In the present state of Community law, it is therefore not possible for a voter to exercise his right to vote in any Member State of his choice, if neither of the conditions linking him to that State (nationality or residence) is fulfilled.

In any event, it will also be noted that the possibility in question has been created by a provision in primary law, namely Article 8b(2) of the EC Treaty.

15. While the Treaty itself may undoubtedly create *'exceptions'* applicable to its own provisions, the same possibility does not exist for a lower-ranking act.
16. As the existence of Articles 19 and 191 (currently Articles 8b and 138a) of the EC Treaty shows, representation of the peoples of the Community which crosses State frontiers is possible, and is not alien to the principles of the Treaty. To achieve this, however, a modification of Articles 189 and 190 of the EC Treaty (Treaty of Amsterdam version) will be needed, using the procedure provided for in Article N of the Treaty on European Union (Article 48 of the new version of the Treaty on European Union).

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(1) Cf. Cloos/Reinisch/Vignes/Weyland, *The Maastricht Treaty*, Brussels 1993, p. 367

### III. Conclusions

1. Given that the rapporteur of the Committee on Institutional Affairs proposes to choose the second option in the new Article 138 (Article 190 of the consolidated version of the Treaty), which will only become operational once the Treaty of Amsterdam has entered into force, this legal opinion must be based on the future version of the Treaty.
2. The wording of the first paragraph of Article 189 (currently Article 137) of the EC Treaty and its legislative history make it clear that Members of the European Parliament represent the peoples of the States brought together in the Community.
3. The link between the representative in the European Parliament and the State in which the right to vote is exercised, in relation to the rights of Union citizens to move and reside freely within the territory of the Union, has changed somewhat following the introduction of Articles 8b(2) and 138a (future Articles 19 and 191) of the Maastricht Treaty. The exception to the link with the framework of States is limited, however; moreover, it has been created by a provision of primary law. While the Treaty itself may create exceptions applicable to its own provisions, the same possibility does not exist for a lower-ranking act, as will be the case with the act to be proposed by Parliament pursuant to the future Article 190 of the EC Treaty.
4. As the existence of Articles 19 and 191 (currently Articles 8b and 138a) of the EC Treaty shows, representation of the peoples of the Community which crosses State frontiers is possible, and is not alien to the principles of the Treaty. To achieve this, however, a modification of Articles 189 and 190 of the EC Treaty (Treaty of Amsterdam version) will be needed, using the procedure provided for in Article N of the Treaty on European Union (Article 48 of the new version of the Treaty on European Union).

Ezio PERILLO

Hans KRÜCK

Seen: Gregorio GARZÓN CLARIANA  
The Jurisconsult

## COUNCIL DIRECTIVE 93/109/EC

of 6 December 1993

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 8b (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Whereas the Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe; whereas one of its tasks is to organize, in a manner demonstrating consistency and solidarity, relations between the peoples of the Member States; whereas its fundamental objectives include a strengthening of the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

Whereas to that end Title II of the Treaty on European Union, amending the Treaty establishing the European Economic Community, with a view to establishing the European Community, introduces a citizenship of the Union for all nationals of the Member States and confers on such nationals on that basis a number of rights;

Whereas the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, laid down in Article 8b (2) of the Treaty establishing the European Community, is an instance of the application of the principle of non-discrimination between nationals and non-nationals and a corollary of the right to move and reside freely enshrined in Article 8a of that Treaty;

Whereas Article 8b (2) of the EC Treaty is concerned only with the possibility of exercising the right of vote and to stand as a candidate in elections to the European Parliament, without prejudice to Article 138 (3) of the EC Treaty, which provides for the establishment of a uniform procedure in all Member States for those elections; whereas it essentially seeks to abolish the nationality

requirement which currently has to be satisfied in most Member States in order to exercise those rights;

Whereas application of Article 8b (2) of the EC Treaty does not presuppose harmonization of Member States' electoral systems; whereas, moreover, to take account of the principle of proportionality set out in the third paragraph of Article 3b of the EC Treaty, the content of Community legislation in this sphere must not go beyond what is necessary to achieve the objective of Article 8b (2) of the EC Treaty;

Whereas the purpose of Article 8b (2) of the EC Treaty is to ensure that all citizens of the Union, whether or not they are nationals of the Member State in which they reside, can exercise in that State their right to vote and to stand as a candidate in elections to the European Parliament under the same conditions; whereas the conditions applying to non-nationals, including those relating to period and proof of residence, should therefore be identical to those, if any, applying to nationals of the Member State concerned;

Whereas Article 8b (2) of the EC Treaty provides for the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, without, nevertheless, substituting it for the right to vote and to stand as a candidate in the Member State of which the citizen is a national; whereas the freedom of citizens of the Union to choose the Member State in which to take part in European elections must be respected, while taking care to ensure that this freedom is not abused by people voting or standing as a candidate in more than one country;

Whereas any derogation from the general rules of this Directive must be warranted, pursuant to Article 8b (2) of the EC Treaty, by problems specific to a Member State; whereas any derogation must, by its very nature, be subject to review;

Whereas such specific problems may arise in a Member State in which the proportion of citizens of the Union of voting age, who reside in it but are not nationals of it, is very significantly above average; whereas derogations are warranted where such citizens form more than 20 % of the total electorate; whereas such derogations must be based on the criterion of period of residence;

<sup>(1)</sup> OJ No C 329, 6. 12. 1993.

Whereas citizenship of the Union is intended to enable citizens of the Union to integrate better in their host country and that in this context, it is in accordance with the intentions of the authors of the Treaty to avoid any polarization between lists of national and non-national candidates;

Whereas this risk of polarization concerns in particular a Member State in which the proportion of non-national citizens of the Union of voting age exceeds 20 % of the total number of citizens of the Union of voting age who reside there and that, therefore, it is important that this Member State may lay down, in compliance with Article 8b of the Treaty, specific provisions concerning the composition of lists of candidates;

Whereas account must be taken of the fact that in certain Member States residents who are nationals of other Member States have the right to vote in elections to the national parliament and certain provisions of this Directive may consequently be dispensed with in those Member States,

HAS ADOPTED THIS DIRECTIVE :

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

1. This Directive lays down the detailed arrangements whereby citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote and to stand as a candidate there in elections to the European Parliament.

2. Nothing in this Directive shall affect each Member State's provisions concerning the right to vote or to stand as a candidate of its nationals who reside outside its electoral territory.

##### *Article 2*

For the purposes of this Directive :

1. 'elections to the European Parliament' means elections by direct universal suffrage to the European Parliament of representatives in accordance with the Act of 20 September 1976<sup>(1)</sup>;
2. 'electoral territory' means the territory of a Member State in which, in accordance with the above Act and, within that framework, in accordance with the electoral law of that Member State, members of the European Parliament are elected by the people of that Member State;

<sup>(1)</sup> OJ No L 278, 8. 10. 1976, p. 5.

3. 'Member State of residence' means a Member State in which a citizen of the Union resides but of which he is not a national;
4. 'home Member State' means the Member State of which a citizen of the Union is a national;
5. 'Community voter' means any citizen of the Union who is entitled to vote in elections to the European Parliament in his Member State of residence in accordance with this Directive;
6. 'Community national entitled to stand as a candidate' means any citizen of the Union who has the right to stand as a candidate in elections to the European Parliament in his Member State of residence in accordance with this Directive;
7. 'electoral roll' means the official register of all voters entitled to vote in a given constituency or locality, drawn up and kept up to date by the competent authority under the electoral law of the Member State of residence, or the population register if it indicates eligibility to vote;
8. 'reference date' means the day or the days on which citizens of the Union must satisfy, under the law of the Member State of residence, the requirements for voting or for standing as a candidate in that State;
9. 'formal declaration' means a declaration by the person concerned, inaccuracy in which makes that person liable to penalties, in accordance with the national law applicable.

##### *Article 3*

Any person who, on the reference date :

- (a) is a citizen of the Union within the meaning of the second subparagraph of Article 8 (1) of the Treaty;
- (b) is not a national of the Member State of residence, but satisfies the same conditions in respect of the right to vote and to stand as a candidate as that State imposes by law on its own nationals,

shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence unless deprived of those rights pursuant to Articles 6 and 7.

Where, in order to stand as a candidate, nationals of the Member State of residence must have been nationals for a certain minimum period, citizens of the Union shall be deemed to have met this condition when they have been nationals of a Member State for the same period.

##### *Article 4*

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.

2. No person may stand as a candidate in more than one Member State at the same election.

*Article 5*

If, in order to vote or to stand as candidates, nationals of the Member State of residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

*Article 6*

1. Any citizen of the Union who resides in a Member State of which he is not a national and who, through an individual criminal law or civil law decision, has been deprived of his right to stand as a candidate under either the law of the Member State of residence or the law of his home Member State, shall be precluded from exercising that right in the Member State of residence in elections to the European Parliament.

2. An application from any citizen of the Union to stand as a candidate in elections to the European Parliament in the Member State of residence shall be declared inadmissible where that citizen is unable to provide the attestation referred to in Article 10 (2).

*Article 7*

1. The Member State of residence may check whether the citizens of the Union who have expressed a desire to exercise their right to vote there have not been deprived of that right in the home Member State through an individual civil law or criminal law decision.

2. For the purposes of paragraph 1 of this Article, the Member State of residence may notify the home Member State of the declaration referred to in Article 9 (2). To that end, the relevant and normally available information from the home Member State shall be provided in good time and in an appropriate manner; such information may only include details which are strictly necessary for the implementation of this Article and may only be used for that purpose. If the information provided invalidates the content of the declaration, the Member State of residence shall take the appropriate steps to prevent the person concerned from voting.

3. The home Member State may, in good time and in an appropriate manner, submit to the Member State of residence any information necessary for the implementation of this Article.

*Article 8*

1. A Community voter exercises his right to vote in the Member State of residence if he has expressed the wish to do so.

2. If voting is compulsory in the Member State of residence, Community voters who have expressed the wish to do so shall be obliged to vote.

## CHAPTER II

## EXERCISE OF THE RIGHT TO VOTE AND THE RIGHT TO STAND AS A CANDIDATE

*Article 9*

1. Member States shall take the necessary measures to enable a Community voter who has expressed the wish for such to be entered on the electoral roll sufficiently in advance of polling day.

2. In order to have his name entered on the electoral roll, a Community voter shall produce the same documents as a voter who is a national. He shall also produce a formal declaration stating:

- (a) his nationality and his address in the electoral territory of the Member State of residence;
- (b) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and
- (c) that he will exercise his right to vote in the Member State of residence only.

3. The Member State of residence may also require a Community voter to:

- (a) state in his declaration under paragraph 2 that he has not been deprived of the right to vote in his home Member State;
- (b) produce a valid identity document, and
- (c) indicate the date from which he has been resident in that State or in another Member State.

4. Community voters who have been entered on the electoral roll shall remain thereon, under the same conditions as voters who are nationals, until such time as they request to be removed or until such time as they are removed automatically because they no longer satisfy the requirements for exercising the right to vote.

*Article 10*

1. When he submits his application to stand as a candidate, a Community national shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating:

- (a) his nationality and his address in the electoral territory of the Member State of residence;

- (b) that he is not standing as a candidate for election to the European Parliament in any other Member State, and
- (c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered.

2. When he submits his application to stand as a candidate a Community national must also produce an attestation from the competent administrative authorities of his home Member State certifying that he has not been deprived of the right to stand as a candidate in that Member State or that no such disqualification is known to those authorities.

3. The Member State of residence may also require a Community national entitled to stand as a candidate to produce a valid identity document. It may also require him to indicate the date from which he has been a national of a Member State.

#### *Article 11*

1. The Member State of residence shall inform the person concerned of the action taken on his application for entry on the electoral roll or of the decision concerning the admissibility of his application to stand as a candidate.

2. Should a person be refused entry on the electoral roll or his application to stand as a candidate be rejected, the person concerned shall be entitled to legal remedies on the same terms as the legislation of the Member State of residence prescribes for voters and persons entitled to stand as candidates who are its nationals.

#### *Article 12*

The Member State of residence shall inform Community voters and Community nationals entitled to stand as candidates in good time and in an appropriate manner of the conditions and detailed arrangements for the exercise of the right to vote and to stand as a candidate in elections in that State.

#### *Article 13*

Member States shall exchange the information required for the implementation of Article 4. To that end, the Member State of residence shall, on the basis of the formal declaration referred to in Articles 9 and 10, supply the home Member State, sufficiently in advance of polling day, with information on the latter State's nationals entered on electoral rolls or standing as candidates. The home Member State shall, in accordance with its national legislation, take appropriate measures to ensure that its nationals do not vote more than once or stand as candidates in more than one Member State.

### CHAPTER III

#### DEROGATIONS AND TRANSITIONAL PROVISIONS

#### *Article 14*

1. If on 1 January 1993, in a given Member State, the proportion of citizens of the Union of voting age who

reside in it but are not nationals of it exceeds 20 % of the total number of citizens of the Union residing there who are of voting age, that Member State may, by way of derogation from Articles 3, 9 and 10:

- (a) restrict the right to vote to Community voters who have resided in that Member State for a minimum period, which may not exceed five years;
- (b) restrict the right to stand as a candidate to Community nationals entitled to stand as candidates who have resided in that Member State for a minimum period, which may not exceed 10 years.

These provisions are without prejudice to appropriate measures which this Member State may take with regard to the composition of lists of candidates and which are intended in particular to encourage the integration of non-national citizens of the Union.

However, Community voters and Community nationals entitled to stand as candidates who, owing to the fact that they have taken up residence outside their home Member State or by reason of the duration of such residence, do not have the right to vote or to stand as candidates in that home State shall not be subject to the conditions as to length of residence set out above.

2. Where, on 1 February 1994, the laws of a Member State prescribe that the nationals of another Member State who reside there have the right to vote for the national parliament of that State and, for that purpose, may be entered on the electoral roll of that State under exactly the same conditions as national voters, the first Member State may, by way of derogation from this Directive, refrain from applying Articles 6 to 13 in respect of such nationals.

3. By 31 December 1997 and thereafter 18 months prior to each election to the European Parliament, the Commission shall submit to the European Parliament and to the Council a report in which it shall check whether the grant to the Member States concerned of a derogation pursuant to Article 8b (2) of the EC Treaty is still warranted and shall propose that any necessary adjustments be made.

Member States which invoke derogations under paragraph 1 shall furnish the Commission with all the necessary background information.

#### *Article 15*

For the fourth direct elections to the European Parliament, the following special provisions shall apply:

- (a) citizens of the Union who, on 15 February 1994, already have the right to vote in the Member State of residence and whose names appear on the electoral roll in the Member State of residence shall not be subject to the formalities laid down in Article 9;
- (b) Member States in which the electoral rolls have been finalized before 15 February 1994 shall take the steps necessary to enable Community voters who wish to exercise their right to vote there to enter names on the electoral roll sufficiently in advance of polling day;

- (c) Member States which do not draw up specific electoral rolls but indicate eligibility to vote in the population register and where voting is not compulsory may also apply this system to Community voters who appear on that register and who, having been informed individually of their rights, have not expressed a wish to exercise their right to vote in their home Member State. They shall forward to the home Member State the document showing the intention expressed by those voters to vote in the Member State of residence;
- (d) Member States in which the internal procedure for the nomination of candidates for political parties and groups is governed by law may provide that any such procedures which, in accordance with that law, were opened before 1 February 1994 and the decisions taken within that framework shall remain valid.

#### CHAPTER IV

#### FINAL PROVISIONS

##### *Article 16*

The Commission shall submit a report to the European Parliament and the Council by 31 December 1995 on the application of this Directive to the June 1994 elections to the European Parliament. On the basis of the said report the Council, acting unanimously on a proposal from the

Commission and after consulting the European Parliament, may adopt provisions amending this Directive.

##### *Article 17*

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 February 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

##### *Article 18*

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

##### *Article 19*

This Directive is addressed to the Member States.

Done at Brussels, 6 December 1993.

*For the Council*

*The President*

W. CLAES

Case C-41/92

The Liberal Democrats  
v  
European Parliament

(Actions against Community institutions for failure to act — Act of the Parliament  
— Uniform electoral procedure — No need to give a decision)

Report for the Hearing .....	I - 3154
Opinion of Advocate General Darmon delivered on 24 March 1993 .....	I - 3160
Order of the Court, 10 June 1993 .....	I - 3174

Summary of the Order

*Actions against Community institutions for failure to act — Failure rectified after the action had been brought — Application no longer having any subject-matter — No need to give a decision (EEC Treaty, Art. 175)*

When, in an action against a Community institution for failure to act, the act whose omission constitutes the subject-matter of the dispute has been adopted after the action has been brought but before delivery of the judgment, the application will no longer have any subject-matter and there is consequently no need to give a decision.

I - 3153

REPORT FOR THE HEARING  
in Case C-41/92\*

## I — Legal background and facts

1. Article 138(3) of the EEC Treaty, which is identical to Article 21(3) of the ECSC Treaty and Article 108(3) of the EAEC Treaty, provides that:

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

2. Article 7(1) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage, annexed to Council Decision 76/787/EEC, Euratom (OJ 1976 L 278, p. 1), provides that:

'Pursuant to Article 21(3) of the Treaty establishing the European Coal and Steel Community, Article 138(3) of the Treaty establishing the European Economic Community and [Article] 108(3) of the Treaty establishing the European Atomic Energy Community, the Assembly shall draw up a proposal for a uniform electoral procedure.'

3. On 10 March 1982, on the basis of the report drawn up by Mr Seitlinger MEP, the European Parliament adopted a resolution on a draft uniform electoral procedure for

the election of Members of the European Parliament (OJ 1982 C 87, p. 61) whereby it:

'1. Submits this draft Act [set out in the preamble] to the Council;

2. Invites the Council to adopt it without delay and to forward it to the Member States so that they may adopt the provisions needed for the elections to take place in 1984 in accordance with their respective constitutional requirements.'

4. On 9 March 1983, the Parliament voted on a new resolution on the uniform electoral procedure (OJ 1983 C 96, p. 28) in which it:

'1. Deplores the fact that the Council has so far been unable to adopt the draft Act for a uniform electoral procedure approved by the European Parliament;

2. Calls on the Council immediately to take all possible steps to ensure that the next direct elections are carried out on the basis of the draft approved by the

European Parliament and to adopt the proposal of the European Parliament.'

5. During the legislative period 1984 to 1989, a new report was prepared by Mr Bocklet MEP and adopted by the Political Affairs Committee of the Parliament; in the light of the minority support for the draft submitted in that report, it was referred back to a special working group, which adopted a draft proposal in favour of greater uniformity; this proposal, however, was never put before the plenary session of the Parliament.

6. The second paragraph of Article 14 of the Draft Treaty establishing the European Union (the Spinelli proposal), adopted by resolution of the Parliament of 14 February 1984 (OJ 1984 C 77, p. 33) provides that an organic law shall lay down a uniform electoral procedure.

7. In 1989 the new Institutional Affairs Committee of the European Parliament was given the task of drawing up a uniform electoral procedure. Karel De Gucht MEP was appointed Rapporteur.

8. The Liberal Democrats constitute the third largest political party in the United Kingdom. The party has legal personality under the laws of both England and Wales and of Scotland. It is entitled to sue in its own name and may be sued.

Despite receiving between 6 and 18% of votes in the European Elections, the Liberal Democrats have never been represented in the European Parliament because of the majority (first-past-the-post) system in force in Great Britain.

9. On 4 October 1991, the Liberal Democrats formally called on the Parliament to comply, within two months, with its obligation under Article 138(3) of the EEC Treaty and the corresponding articles of the ECSC and EAEC Treaties, as well as Article 7 of the 1976 Act, to draw up draft measures to permit direct universal suffrage according to a uniform electoral procedure.

In that Call to Act, the Liberal Democrats stated that:

'The adoption of a version of the De Gucht proposals, explicit about the choice of proportional representation as the uniform procedure in all 12 Member States and calling for the necessary legislation to be implemented in time for the 1994 elections, would be regarded ... as fulfilment of the Parliament's obligation under the Treaties and the 1976 Act.

(If) ... the (1982) Seitlinger Report does not, after all, represent the proposal called for by the Treaties, the Parliament should state this explicitly ...'

10. On 10 October 1991, the Parliament, on the basis of the De Gucht Report, adopted a resolution on the European Parliament's guidelines for the draft uniform electoral procedure (OJ 1991 C 282, p. 141), in which it:

'1. Reaffirms that the main priority would be to achieve, as soon as possible, harmonization of common criteria for the electoral procedure, starting with the issues on which there is a possibility of consensus;

\* Language of the case: English.

2. Has adopted the following guidelines:

(i) Voting system:

The distribution of seats shall be determined in accordance with a system of proportional representation ...

11. The Treaty on European Union proposes to retain the text of the first subparagraph of Article 138(3) of the EEC Treaty in its present form and to supplement the second subparagraph as follows:

'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.'

12. In reply to Question No H-0010/91 from Mr Raffarin MEP (Debates of the European Parliament No J-398 of January 1991) concerning the procedure for election to the European Parliament, the Council declared that up to that time no proposal had been submitted to it by the Parliament.

In reply to Written Question No 2358/91 of 22 October 1991 by Mr David Martin MEP on the same subject, the Council replied that the President of the Council had informed the President of the European Parliament in

1983 that it had not been possible to achieve the necessary unanimity on the draft Act adopted by the Parliament in 1982. The Council inferred that the draft was out-of-date from the fact that the Parliament's Political Affairs Committee took the matter up once again and prepared the Booklet Report in February 1985. The Council accordingly did not consider any proposal to have been submitted to it.

II — Written procedure and forms of order sought by the parties .

1. The application by the Liberal Democrats for a declaration of failure to act was received at the Court Registry on 14 February 1992.

2. *The Liberal Democrats* claim that the Court should:

— declare that the European Parliament has failed to fulfil its obligations under Article 138(3) of the EEC Treaty and Article 7(1) of the 'Act concerning the election of the representatives of the European Parliament by direct universal suffrage' annexed to Council Decision 76/787/EEC, EEC, Euratom;

— take such further action as the Court may in its wisdom deem appropriate; and

— order the European Parliament to pay the costs.

3. By a document received at the Court Registry on 16 April 1992, *the European Parliament* raised an objection of inadmissibility

under Article 91(1) of the Rules of Procedure of the Court of Justice, in which it contended that the Court should:

— declare the application inadmissible;

— order the applicant to pay the costs.

III — Pleas in law and arguments of the parties

*The European Parliament* has submitted three pleas of inadmissibility: (i) that it has satisfied its obligations and/or defined its position; (ii) that the act requested by the applicant has no legal effect; (iii) that the applicant is unable to establish *locus standi*.

*The action taken and/or the position defined by the Parliament*

1. *The Parliament* submits that the 1982 proposals were never withdrawn and that they remain before the Council. The new version of Article 138(3) of the EEC Treaty provided for in the Treaty on European Union does not imply that the 1982 proposals are non-existent or that they have no legal effect.

The Parliament also points out that it took a position, following the Call to Act of 4 October 1991, by adopting the resolution of 10 October 1991 containing significant interim proposals. Although the Treaties do not impose any obligation on it in that regard, it did propose a system of proportional representation, following a request from the applicant.

2. *The applicant* first of all points out that the question whether the Parliament did or did not act is a substantive issue and does not relate to the admissibility of the application.

Whatever might be the case, the Parliament cannot argue that it carried out its duty to act, in view of the fact that the 1982 proposals had fallen into desuetude. The applicant refers in that regard to the positions taken by the Parliament after 1982, the Council's replies to parliamentary questions and to the new text envisaged for Article 138(3) of the EEC Treaty. In addition, the applicant also indicated in its Call to Act that if the 1982 proposals continued to have legal effect, the Parliament should state this explicitly so that the Council could be properly seized of its responsibilities.

The resolution of 10 October 1991 did not constitute a definition of position but rather merely laid down guidelines for a definitive proposal. The Parliament has failed to indicate whether and in what manner it intended to put an end to the infringement of the Treaty and has failed to give positive and unequivocal notice of its intention to act or not to act.

*The legal effect of the act requested*

1. *The Parliament* argues that Articles 173 and 175 are the two sides of the same method of recourse and that, just as in the case of measures capable of forming the subject-matter of an application for annulment, those the absence of adoption of which is criticized must produce legal effects vis-à-vis third parties. The proposals of the Parliament have merely a preliminary character in comparison with the provisions which the Council is required to adopt and

which alone can have legal effects *vis-à-vis* the applicant. The Parliament points out that, in the area of competition, the Court has accepted that measures which are purely preparatory in character cannot as such be the subject of an application for a declaration that they are void (Case 60/81 *IRI v Commission* [1981] ECR 2639).

The applicant cannot argue that the proposals provided for in Article 138(3) can have legal effects on the relations between the Council and the European Parliament; such reasoning would be valid only in the context of proceedings between the Council and the Parliament. A political party is not a privileged applicant.

2. *The applicant* replies that an unlawful act adopted by the Parliament may be the subject of an action for annulment. In any event, it follows from the case law of the Court (Case 22/70 *Commission v Council* ('ERTA') [1970] ECR 263; Case 302/87 *Parliament v Council* [1988] ECR 5615; Case 377/87 *Parliament v Council* [1988] ECR 4017) that the principle that an act amenable to challenge must be one that has legal effects is to be interpreted broadly and that the mere fact that an applicant could not have brought an action for annulment if the institution had adopted a proposal does not preclude an action by the applicant for the failure to adopt the proposal.

The essential question is whether the act requested has legal effects *simpliciter* and not whether it has legal effects *vis-à-vis* the applicant, which is a matter touching on the latter's *locus standi*. A proposal by the Parliament under Article 138(3) would have a most important effect on the relations between the institutions.

#### *Locus standi*

1. *The Parliament* argues that, according to a literal interpretation of Article 175, the applicant must demonstrate that the act requested is addressed to it; thus, it contends, is not so in the present case.

Even if it is accepted that Articles 173 and 175 are parallel, the applicant would have to establish that the act requested, even if formally addressed to a third party, is of direct and individual concern to it.

The applicant cannot argue that it is directly concerned in view of the fact that the proposals requested form only the basis of the provisions to be adopted by the Council and implemented by the Member States which alone affect the applicant directly (Case 294/83 *Parti Ecologiste 'Les Verts' v Parliament* [1986] ECR 1339).

The applicant is not any more individually concerned in view of the fact that the measures adopted on the basis of the proposals sought would affect all voters and all political parties in the Community.

In its judgment in *Les Verts* (cited above), the Court declared the application admissible under the second paragraph of Article 175 without conferring a special status on political parties.

2. According to *the applicant*, the third paragraph of Article 175 should be interpreted along broadly similar lines to the second paragraph of Article 173; it believes that it has *locus standi* to bring an action for failure to act since it is directly and individually concerned with the measure requested.

The applicant is the only political party in the Community which, although regularly obtaining a large number of votes in European elections, is unrepresented in the European Parliament by reason of the voting system in Great Britain.

The applicant also points out that the Court's case-law is designed to create a com-

prehensive system of legal protection (Case 169/84 *COFAZ and Others v Commission* [1986] ECR 391; Case C-70/88 *Parliament v Commission* [1990] ECR I-2041 ('Chernobyl')). It would accordingly be wrong to declare the action for failure to act inadmissible on the ground that political parties are not the addressees of the legislation to be adopted but merely the entities which are governed by such legislation. Furthermore, Article 138a of the EEC Treaty (provided for by the Treaty on European Union) confers a special status on political parties.

F. A. Schockweiler  
Judge-Rapporteur

OPINION OF ADVOCATE GENERAL  
DARMON

delivered on 24 March 1993

Mr President,  
Members of the Court,

1. In this action, the Liberal Democrats, a political party in Great Britain, ('the applicant'), seek a declaration from the Court that the European Parliament ('the Parliament') has failed to act in accordance with its obligations under the first subparagraph of Article 138(3) of the EEC Treaty<sup>1</sup> and Article 7(1) of the Act concerning the election of the representatives of the Assembly by direct universal suffrage, annexed to Council Decision 76/787/EEC, EEC, Euratom of 20 September 1976<sup>2</sup> ('the Act') through its failure to submit to the Council a proposal for the election of members of the Parliament in accordance with a uniform procedure in all Member States.

2. By a letter of 4 October 1991, the applicant called on the Parliament to remedy its failure to act. No reply to that letter was forthcoming.

3. The first subparagraph of Article 138(3) of the EEC Treaty provides that:

<sup>1</sup> Original language: French.

<sup>2</sup> — See also Article 21(3) of the ECSC Treaty and Article 129(3) of the EATC Treaty.

<sup>3</sup> — OJ 1976 L 278, p. 1.

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

4. Article 7(1) of the Act provides that:

'Pursuant to Article 21(3) of the Treaty establishing the European Coal and Steel Community, Article 138(3) of the Treaty establishing the European Economic Community and [Article] 108(3) of the Treaty establishing the European Atomic Energy Community, the Assembly shall draw up a proposal for a uniform electoral procedure.'

5. According to the applicant, the failure of which it accuses the defendant, inasmuch as it obstructs the adoption of a uniform electoral procedure, prevents the applicant from being represented in the Parliament.

6. The Parliament argues that the application is inadmissible for the following three reasons:

— there was no failure to act inasmuch as the Parliament has satisfied the obligation imposed on it by the first subparagraph of Article 138(3);

— the proposals which the Parliament is required to draw up have no legal effect *vis-à-vis* the applicant; for that reason, any failure by the Parliament to comply with that obligation cannot be penalized by the application of Article 175 of the EEC Treaty;

— finally, the applicant lacks *locus standi* as it cannot demonstrate that it has a direct and individual interest in bringing the action.

7. Although the Parliament did not raise a separate plea of inadmissibility based on the absence of capacity to be a defendant in the matter, the Court may of its own motion ascertain whether there is such an absence in respect of a failure to act, as it did in its judgment in Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* with regard to the Parliament's capacity as defendant in an action for annulment.<sup>4</sup>

8. Let us assess the scope of this issue. In relations between the Community institutions, the action for failure to act is a particularly effective tool.

9. In cases where it is used by the Parliament, it has been described as the 'king of actions'<sup>5</sup> inasmuch as it constitutes a 'method of exerting pressure' during the legislative process characterized by the dominant role of the Council.

<sup>4</sup> — Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* [1986] ECR I-339, at paragraph 19.

<sup>5</sup> — *Levants in Le Parlement européen et Le Conseil de la Communauté européenne*, University of Strasbourg, 1987, p. 14.

10. Can the Parliament, therefore, without being subject to judicial review, fail to deliver an opinion or fail to submit a proposal in a decision-making process where those are required?

11. To phrase it differently, the Parliament's capacity to initiate proceedings in respect of failure to act confers of itself on that institution an active role in the review of legality,<sup>6</sup> even though the Council remains the principal Community legislature. Conversely, recognition of the Parliament's capacity to have proceedings initiated against it is tantamount to subjecting its inaction to inescapable judicial control.

12. The Treaty on European Union, which extends the procedures for cooperation and assent of the European Parliament and introduces a new procedure for joint decision-making, increases for that very reason the possibility of paralysis. This indicates the interest which exists in securing a decision that proceedings may be brought against the Parliament in the matter of failure to act.

13. The laconic nature of the relevant tests, coupled with the Parliament's restricted powers in the original Treaties, has led the Court, particularly over the past decade, to reinforce the 'various aspects of the European Parliament's involvement in judicial proceedings'.<sup>6</sup> The Court has accepted since 1964 that acts of the Parliament may be the subject of a preliminary reference.<sup>7</sup> The Parliament may also be required to supply information to the Court under the second

<sup>6</sup> — See, for example, 'Insertion du Parlement européen dans le système institutionnel des communautés européennes', *ADP*, 1986, p. 798.

<sup>7</sup> — See my contribution to the *McIntyre Booklet*, p. 75. See also point 3 of my Opinion in Case 302/83 *Parliament v Council* [1985] ECR S-615.

<sup>8</sup> — Case 11/63 *Morges v European Parliament* [1964] ECR 115.

paragraph of Article 21 of the Statute of the Court of Justice of the EEC. After recognizing the Parliament's right of intervention,<sup>8</sup> the Court upheld its power to initiate proceedings in cases of failure to act,<sup>9</sup> as well as ruling that its acts could be subject to an application for annulment under Article 173.<sup>10</sup> Finally, the Court has accepted, within certain limits, that the Parliament has capacity to bring actions for annulment of the measures of other institutions.<sup>11</sup>

14. The Court today has the opportunity to complete this interpretative process by ruling that, subject to certain conditions, actions may be brought against the Parliament for failure to act.

15. Article 175 of the EEC Treaty provides as follows:

'Should the Council or Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.'<sup>12</sup>

...

8 — Case 138/79 *Roquette Frères v Council* [1982] ECR II 333 and in Case 139/79 *Alstona v Council* [1982] ECR II 393.

9 — Case 13/83 *Parliament v Council* [1985] ECR 1513 (common transport policy).

10 — *Les Verts*, cited above.

11 — Case C-70/88 *Parliament v Council* [1990] ECR I-2041 (Chernobyl).

12 — First paragraph; my emphasis. It is worth pointing out that the Treaty on European Union of 7 February 1992 expressly recognizes the capacity of the Parliament to be the defendant in actions brought against it for failure to act: 'Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established' (Title II, Article G, E (34)).

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.'<sup>13</sup>

16. In its judgment in the 'common transport policy' case,<sup>14</sup> in which it held that the Parliament could bring an action for failure to act, the Court pointed out that the Parliament was one of the 'institutions of the Community'<sup>15</sup> and stated in that regard that:

'... the first paragraph of Article 175 ... expressly gives a right of action for failure to act against the Council and Commission *inter alia* to "the other institutions of the Community". It thus gives the same right of action to all the Community institutions. It is not possible to restrict the exercise of that right by one of them without adversely affecting its status as an institution under the Treaty, in particular Article 4(1).'<sup>16</sup>

17. This reasoning is eminently applicable by analogy to the third paragraph of Article 175. How, after all, can the phrase 'institution(s) of the Community' have two separate meanings within the same article?

18. The Court's case-law on the Parliament's involvement in judicial proceedings is largely based on the principle of institutional

13 — Third paragraph; my emphasis.

14 — See footnote 9 above.

15 — This term is defined in Article 4(1) of the Treaty and expressly includes the Parliament. In addition, the Parliament is mentioned in first place in Part Five of the Treaty dealing with the institutions of the Community.

16 — Paragraph 17. It should be noted that this formula is substantially identical to that used in paragraph 19 of the judgments in Cases 138/79 and 139/79, cited above.

balance: each Community institution must be able to exercise fully the powers conferred on it by the Treaty with due regard for those of the other institutions. It is with a view to maintaining this institutional balance that the Court reviews the observance of each institution's prerogatives.<sup>17</sup>

19. In its judgment in *Les Verts*, the Court ruled that:

'... An interpretation of Article 173 of the Treaty which excluded measures adopted by the European Parliament from those which could be contested would lead to a result contrary both to the *spirit* of the Treaty as expressed in Article 164 and to its system. Measures adopted by the European Parliament in the context of the EEC Treaty could encroach on the powers of the Member States or of the other institutions, or exceed the limits which have been set to the Parliament's powers, without it being possible to refer them for review by the Court. It must therefore be concluded that an action for annulment may lie against measures adopted by the European Parliament intended to have legal effect *vis-à-vis* third parties.'<sup>18</sup>

20. The Court thereby confirmed that the Parliament could be a *defendant* in an action for annulment.

21. Dealing with the same legal remedy, and for the purpose of establishing (within certain limits) the Parliament's *capacity to bring actions*, the Court ruled in its judgment in the 'Chernobyl' case<sup>19</sup> that:

17 — See paragraphs 21 and 22 of the judgment in Case C-70/88 *Parliament v Council* (Chernobyl), cited above.

18 — Paragraph 25, my emphasis.

19 — Cited above in footnote 13.

'Observance of the institutional balance means that each of the institutions must exercise its powers with due regard for the powers of the other institutions. It also requires that it should be possible to penalize any breach of that rule which may occur.

The Court, which under the Treaties has the task of ensuring that in the interpretation and application of the Treaties the law is observed, must therefore be able to maintain the institutional balance and, consequently, review the observance of the Parliament's prerogatives when called upon to do so by the Parliament, by means of a legal remedy which is suited to the purpose which the Parliament seeks to achieve.'<sup>22</sup>

22. Specifying its own function in this regard, the Court, in anticipation of the issue which arises in the present case, pointed out in more general terms that:

'However, it is the Court's duty to ensure that the provisions of the Treaties concerning the institutional balance are fully applied and to see to it that the Parliament's prerogatives, like those of the other institutions, cannot be breached without it having available a legal remedy, among those laid down in the Treaties, which may be exercised in a certain and effective manner.'<sup>21</sup>

23. From this I conclude that Community law does not guarantee a coherent system of legal protection through a 'complete system of legal remedies'<sup>22</sup> and that the prerogatives of the other institutions — as well as of the Member States — would be breached if they were unable to bring actions against the Parliament for failure to act. What would be

22 — Paragraphs 22 and 23; my emphasis.

21 — Paragraph 25, my emphasis.

22 — See point 6 in the Opinion of Advocate General Van Gerven in the 'Chernobyl' case [1990] ECR I-2041, at I-2057.

the point of the Court's recognition of actions for annulment against measures of the Parliament if that institution could, through inaction, escape all control?

24. I would for that reason propose that the Court should rule that actions may be brought *against* the Parliament for failure to act.

25. An action for failure to act, however, cannot be allowed in respect of *every* abstention on the part of the Parliament.

26. In its judgment in *Les Verts*, the Court put forward the principle that:

'... the general scheme of the Treaty is to make a direct action available against "all measures adopted by the institutions ... which are intended to have legal effects"'.<sup>23</sup>

27. With regard to annulment, the action is available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects.<sup>24</sup> The Court also restated that principle in its judgment in the 'Comitology' case.<sup>25</sup>

28. The Court has also ruled that:

'... in the system of legal remedies provided for by the Treaty there is a close relationship

between the right of action given in Article 173, which allows unlawful measures of the Council and Commission to be declared void, and that based on Article 175, which may lead to a finding that the failure by the Council or Commission to adopt certain measures is contrary to the Treaty'.<sup>26</sup>

29. It follows that the criterion of *legal effects* is of crucial significance in the present context. Any omission by a Community institution to adopt a measure having legal effects, irrespective of its nature, constitutes a failure to act within the meaning of Article 175.

30. An examination of the competence and powers of the Parliament, which demonstrates the need to accept that actions may be brought against that institution for failure to act, must also make it possible to restrict the practical scope of such actions.

31. An action for failure to act normally seeks, through the establishment of the failure and the obligation to put an end to it,<sup>27</sup> the adoption of a decision which ought to have been taken but which, in infringement of the Treaty, has not yet been taken. With regard to the adoption of binding rules, the Parliament does not in principle have the power of initiation, which is the prerogative of the Commission, or the direct power to take decisions, which is exercised by the Council and Commission.

32. In addition, it occurs frequently in cases where the failure on the part of the Parliament is of such a kind as to inhibit the functioning of the institutions that the Treaty counters the risk of such paralysis by

providing that in instances of prolonged inaction the failure to act may be disregarded and the decision in question adopted. This, for example, is the case with regard to the cooperation procedure under the second subparagraph of Article 149(2)(b) and budgetary matters covered by Article 203(4) and (6).<sup>28</sup> In cases of this kind, recourse to Article 175 loses its entire *raison d'être*. The Treaty laid down in advance the consequences of failure to act on the part of the Parliament.<sup>29</sup>

33. In the same way, no action for failure to act is possible where the Parliament has failed to adopt a measure in an area in which it exercises a discretionary power. An omission in such a case will not constitute failure to act because it will not be 'in infringement of [the] Treaty'.<sup>30</sup> The same also applies, for instance, with regard to motions of censure.

34. Nevertheless, the expansion of the Parliament's role in the preparation of Community decisions that followed in particular from the Single European Act, which introduced joint decision procedures in a number of areas,<sup>31</sup> may increase the risk for certain

procedures of paralysis resulting from inaction on the part of the institution.

35. Even before the Single Act, in legislative matters where the Treaties provide for the Parliament to be consulted (Article 43(2), Article 100, etc.), a request for an opinion submitted to it by the Council and which remained unanswered did not satisfy the condition of consultation: the Court requires the Parliament to express its opinion.<sup>32</sup> Consequently, the absence of an opinion prevents the Council from adopting a regulation and thereby blocks the legislative process. Reference might also be made to the absence of a vote on discharge in respect of the implementation of the budget (Article 206b of the Treaty) or the absence of a decision by the President of the Parliament declaring that the budget has been finally adopted (Article 203(7)).

36. It is for that reason necessary to provide that an action for failure to act may be brought against the Parliament in order to put an end to such a situation.

37. In the case where proceedings for a failure to act may be brought against an institution which fails to 'act', that is to say, to adopt a measure producing legal effects, it must also be possible to bring such proceedings against the institution which, at an earlier stage, fails to adopt a measure, the performance of which is a precondition to the action of the former. Such failure to act itself produces legal effects.

38. I wish to quote at this point from the Court's case-law on budgetary procedure. In its judgment in Case 34/86 *Council v Parliament*,<sup>33</sup> the Court ruled that:

<sup>23</sup> — Paragraphs 34 to 36 of the judgment in Case 138/79, cited above.

<sup>33</sup> — Case 34/86 [1986] ECR 2155.

<sup>23</sup> — Paragraph 24; my emphasis.

<sup>24</sup> — See judgment in Case 22/70 *Commission v Council* [1970] ECR 263 ('AETR'), at paragraph 42.

<sup>25</sup> — Judgment in Case 302/87 *Parliament v Council* [1988] ECR 5615, at paragraph 20. On this point, see also paragraph 4 of the Opinion delivered by Advocate General Van Gerven on 13 January 1993 in Case C-314/91 *Beate Weber v Parliament* [1993] ECR I-1093.

<sup>26</sup> — Paragraph 36 of the judgment in the 'common transport policy' case, cited above.

<sup>27</sup> — Article 176 of the Treaty.

<sup>28</sup> — See also the second subparagraph of Article 149(2) of the Treaty on European Union signed at Maastricht on 7 February 1992.

<sup>29</sup> — See Joliet, *Le droit institutionnel des Communautés européennes*, 1981, p. 152.

<sup>30</sup> — This is the reason why the Court has consistently declared as inadmissible actions for failure to act brought against the Commission on the ground that that institution has omitted to bring an action for failure to fulfil obligations, an action which the Commission has a discretion. In this connection, see the judgments in Case 486/85 *Lutnick and Others v Commission* [1986] ECR II-201 and Case 247/87 *Star Fruit Company v Commission* [1989] ECR 291, at paragraphs 11 and 12, and the orders in Case C-371/89 *Finnish v Commission* [1990] ECR I-1555 and Case C-72/90 *Alta Aluine France v Commission* [1990] ECR I-2181. See also paragraph 48 of the judgment in the 'common transport policy' case, cited above, in which the Court stated that 'under Article 175 the Court must find that there has been an infringement of the Treaty if the Council or the Commission fails to act when under an obligation to do so' (my emphasis).

<sup>31</sup> — See points 30 to 32 of my Opinion in the 'Comitology' case, cited above.

'... If it were not possible to refer the acts of the budgetary authority for review by the Court, the institutions of which that authority is composed could encroach upon the powers of the Member States or of the other institutions or exceed the limits which have been set to their own powers.'<sup>34</sup>

39. Commenting on the grounds of that judgment, Advocate General Mischo has noted that:

'Just as the Court must be able to verify whether an institution is encroaching upon the powers of the other institutions or of the Member States by adopting certain measures, it should also be empowered to do so where an institution's failure to act is liable to bring about the same result and hinder the exercise by the other institutions or the Member States of their respective powers.'<sup>35</sup>

40. The Court did accept *obiter* in its judgment in the 'Comitology' case that the Parliament can bring proceedings for failure to act in respect of the Council's omission to present a draft budget.<sup>36</sup> In the absence of such a draft, the Parliament is not in a position to exercise the powers conferred on it by Article 203(4) to (8) of the Treaty.

41. Admittedly, where the Parliament is not acting in an area in which the Treaties authorize or oblige it to act, it is not encroaching upon the powers of the other institutions. On the other hand, however, it may be

preventing those institutions from exercising their powers.

42. The view should therefore be taken that an action against the Parliament for failure to act may in principle be brought before the Court provided that the measure, adoption of which is sought, produces legal effects.

43. The Parliament, it will be recalled, has raised three pleas of inadmissibility.

44. The first of these, which involves the question whether the Parliament did or did not 'draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure' within the meaning of the first subparagraph of Article 138(3) of the Treaty is, in my opinion, not one relating to admissibility but is rather an issue of substance touching on the very *existence* of the failure to act.

45. It was for that reason that the parties ~~were~~ requested, for the purposes of the hearing, to limit their observations to the following points:

(1) Does the proposal adopted by the Parliament pursuant to the above provision have legal effects?

(2) To what extent is the applicant directly and individually concerned?

46. I shall examine each of these two points in turn.

47. Do the 'proposals' referred to in the first subparagraph of Article 138(3) have the characteristics of measures producing legal effects?

48. The three-stage procedure set out in that provision is unusual in more than one respect. It has already been used to bring about the Council Decision of 20 September 1976, cited above, and the Act of the same date annexed thereto 'concerning the election of the representatives of the Assembly by direct universal suffrage'.

49. Article 138 imposes an *obligation* on the Parliament to draw up 'proposals' in order to make possible elections by direct universal suffrage in accordance with a uniform procedure in all Member States.<sup>37</sup>

50. As the institution to which those proposals are addressed, the Council, *acting unanimously*, is required to lay down *appropriate provisions*, which it *shall recommend*<sup>38</sup> to Member States for adoption in accordance with their respective constitutional requirements.

51. It has been pointed out in academic writing that this case is one of a special procedure involving at the same time *implementation* and *revision* of the Treaty. It is remarkable in this regard that the Act, Article 1 of which provides for the election of members of the European Parliament by direct universal suffrage (without any mention of 'in accordance with the procedure fixed by each Member State') and Article 2

for a new allocation for each Member State of the number of representatives in the Assembly, has had the effect of causing paragraphs 1 and 2 of Article 138 to lapse, and, in particular, that this *lapse* is expressly provided for in Article 14 of the Act itself.

52. The Act thus complements the Treaty and is a measure of primary law.

53. Constituting an exceptional case under the Treaty, it is the Parliament which here enjoys the power of initiative; this, as Mr Vergès points out, is logical since the Assembly is 'directly concerned by the change in its system of recruitment'.<sup>39</sup>

54. As it deals only with the 'election of the representatives of the Assembly by direct universal suffrage', the Act leaves incomplete the tasks allocated to the Parliament and Council by Article 138(3).

55. Having thus recourse to the 'technique of progressive application',<sup>40</sup> it nevertheless prescribes in Article 7<sup>41</sup> (though without laying down a deadline) that this task must be completed by the drawing up of a 'proposal for a uniform electoral procedure'.

56. The drawing up of this 'proposal'<sup>42</sup> (it should be noted that Article 7 of the Act uses the singular and not the plural, as in Article 138) and, in the light of the latter, the

<sup>39</sup> — In Megeat and Others, *Le droit de la Communauté européenne*, volume 7, article 138, point 9.

<sup>40</sup> — *Ibid.*, point 24.

<sup>41</sup> — See paragraph 1 above.

<sup>42</sup> — A resolution was voted on by the Parliament on 10 March 1976 in which the Council was requested to adopt 'a uniform election procedure based on the principle of proportional representation'. To date, no such resolution has been officially communicated to the Court or published. This point may constitute a new element with regard to the substance, possible existence of a failure to act. It cannot have any bearing on the issue of admissibility.

<sup>34</sup> — At paragraph 12.

<sup>35</sup> — Opinion in Case 377/87 *Parliament v Council* (1988) ECR 4017, at points 36.

<sup>36</sup> — At paragraph 16.

Council's adoption of the 'provisions' will produce their full effects in respect of the first and, subsequently, the second subparagraphs of Article 138(3), which then ought for that reason to lapse in the same way as paragraphs 1 and 2 of that same article are declared by Article 14 of the Act to have lapsed.

57. The Parliament's proposals are not binding on the Council. It is remarkable that in an area such as the adoption of a single electoral system, affecting the constitutional rules of the Member States and for that reason coming under their exclusive competence, the procedure set out in Article 138(3) makes it possible to reconcile the objective of harmonization of legislation with respect for the competence exercised by the Member States.

58. As Mr Vergès also points out, the 'provisions' laid down by the Council are for that reason measures *sui generis* which cannot be treated as decisions within the meaning of the first paragraph of Article 189 (they do not have any legal effect until they have been adopted by the Member States in accordance with their constitutional rules) or as conventions for amendments to the Treaty concluded under Article 236 (here there is a decision taken unilaterally by the Council rather than a text resulting from an intergovernmental conference).<sup>43</sup>

59. The provisions referred to in Article 138(3) cannot therefore be regarded as lacking in legal effect in the same way as an opinion or a recommendation under the third paragraph of Article 175 or the fifth paragraph of Article 189 of the Treaty. As soon as the provisions have been ratified, all national bodies, including the legislature,

have a duty to comply with the provisions as adopted.

60. However, in order to ascertain whether the 'proposals' referred to in the first subparagraph of Article 138(3) have legal effects which allow a person instituting proceedings for failure to act to avail himself of them, it must be borne in mind that in such a matter the conditions laid down by Article 175 — and by the Court's own case-law — vary depending on whether the proceedings are brought by a Member State or a Community institution, on the one hand, or by an individual, on the other.

61. Let us examine the first case.

62. The requirement that there be legal effects is necessary for two fundamental reasons:

(a) *the structure of the Community judicial system*; as the Court's judgment in the 'AETR' case made clear,<sup>44</sup> measures which have no legal effect do not come within the scope of review of Community legality;<sup>45</sup>

(b) *the coherence of legal remedies*;<sup>46</sup> this is shown by the following example: the express refusal to adopt a recommendation cannot be contested on the basis of Article 173.<sup>47</sup> As M. and D. Waelbroeck

point out, 'if actions for failure to act could be brought against the institutions or the Member States in respect of non-obligatory measures, all that the defendant institution would have to do in order to avoid an action would be to refuse expressly to adopt a recommendation or opinion'.<sup>48</sup>

63. Where an institution fails to take a preparatory measure necessary for the adoption by another institution of a definitive measure producing legal effects, that failure itself produces legal effects inasmuch as it prevents the adoption of the definitive measure. It is this which, as I have pointed out, justifies the action for failure to act.

64. Thus, in the context of Article 152 of the Treaty, where the Commission fails to submit a proposal to the Council following a request by the latter, the Council will find itself unable to act in the absence of this vital preliminary step. It may bring proceedings against the Commission for failure to act on the ground that the latter has not adopted the proposal within the stipulated period,<sup>49</sup> even though that proposal does not *per se* produce legal effects.

65. As Mr Juliet has pointed out, regarding the Commission rather than the Parliament, when the adoption of a measure requires the cooperation of two institutions, 'proceedings brought against inaction on the part of the Council would serve no purpose if they could not also be directed against the Commission's failure to initiate the procedure'.<sup>50</sup>

66. The 'proposals' drawn up by the Parliament under the first subparagraph of Article

138(3) produce specific legal effects *vis-à-vis* the Council since without them the Council cannot exercise the powers conferred on it by the second subparagraph. As Messrs Vandersanden and Barav have pointed out,<sup>51</sup> 'preparatory measures are to be treated as part of the end measure capable of being the subject-matter of an action for annulment in cases where the mere fact of inaction interrupting the procedure would produce definitive legal effects'.

67. It is clear that the Parliament's 'proposals' have the effect of enabling, even more so of obliging, the Council to act. Since it is not bound as to the substance, the Council may depart from the content of those proposals. On the other hand, the Parliament's failure to act produces legal effects *vis-à-vis* the Council inasmuch as it makes it impossible for the Council to fulfil the task assigned to it.

68. There would thus be a disregard for the Council's prerogatives if it were unable in such a case to institute proceedings for failure to act.

69. Does the Parliament's failure to draw up proposals, however, produce legal effects *vis-à-vis* the applicant? Does this condition governing admissibility of an action for failure to act differ when the action is based on the third paragraph of Article 175?

70. This latter provision can itself be distinguished from that in the first paragraph of the same article in so far as the failure to adopt a measure such as a recommendation

<sup>43</sup> — Judgment cited above, at paragraphs 38 to 42.

<sup>44</sup> — See A. Barav, 'Considérations sur la spécificité du recours en carence', *RTDE* 1975, p. 57: 'Il n'est pas clair que mesures which cannot be contested by any other means of legal redress should be capable of being contested through an action for failure to act'.

<sup>45</sup> — See M. and D. Waelbroeck, *Encyclopédie Dalloz*, 'Failure to act', No 26 and No 27.

<sup>46</sup> — Case 15/70 *Chevalley v Commission* [1970] E.C.R. 925.

<sup>48</sup> — Ibid.

<sup>49</sup> — See, in this connection, J. V. Louis, *Les règlements de la Communauté économique européenne*, 1969, p. 7.

<sup>50</sup> — Juliet, *op. cit.*, p. 154.

<sup>51</sup> — *Controverses communautaires*, 1977, p. 210.

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or an opinion cannot form the subject-matter of an action for failure to act brought by a natural or legal person.

71. Should the action in the present case be declared inadmissible solely on the ground that the Parliament could not in any event have adopted, *vis-à-vis* the applicant, any measure other than a recommendation or an opinion within the meaning of the third paragraph of Article 175 of the Treaty, as the Court ruled in its judgment in *Italsolar*,<sup>52</sup> which involved an action against the Commission for failure to act?

72. I believe that I have demonstrated that the Parliament's failure to draw up 'proposals' does produce legal effects and that consequently such proposals cannot be treated as recommendations or opinions within the meaning of the above provision. Similarly, the measure adopted by the Council, even if described as 'provisions', the adoption of which is 'recommended', can produce legal effects if the implementation of a uniform electoral system by all the Member States depends primarily on the introduction of that measure. Respect for the *entente communautaire* appears to me to exclude any other harmonization procedure.

73. However, is the Parliament's adoption of the 'proposal' capable as such of producing legal effects *vis-à-vis* individuals?

74. In its judgment in *Lord Bethell*,<sup>53</sup> the Court ruled that:

... the applicant, for his application to be admissible, must be in a position to establish

either that he is the addressee of a measure of the Commission *having specific legal effects with regard to him*, which is, as such, capable of being declared void, or that the Commission, having been duly called upon to act in pursuance of the second paragraph of Article 175, has failed to adopt in relation to him a measure which he was legally entitled to claim by virtue of the rules of Community law'.<sup>54</sup>

75. An individual cannot therefore complain that the particular institution in question failed to address to him an act if it was not under any obligation to do so.<sup>55</sup> It is necessary that the act should produce legal effects *in respect of that individual*.

76. This condition, however, cannot be strictly applied.

77. Thus, in its judgment in *Asia Motor*,<sup>56</sup> the Court of First Instance, ruling in an urgent action for failure to act brought by the companies in question (who had made a complaint pursuant to Article 3 of Regulation No 17)<sup>57</sup> against the Commission by reason of the latter's failure to adopt a provisional decision on the basis of Article 6 of Regulation No 99/63/EEC,<sup>58</sup> declared the action admissible even though the 'Article 6

<sup>54</sup> — At paragraph 13.

<sup>55</sup> — See also the judgments in *Case 6/70 Bortoluzzi v. Commission and Others v. Commission* [1970] ECR 815, at paragraphs 6 and 7, and in *Case 15/70 Chevillet v. Commission*, cited above, at paragraphs 10 and 11.

<sup>56</sup> — Case T-28/90 *Asia Motor France and Others v. Commission* [1992] ECR II-2283, at paragraph 29.

<sup>57</sup> — First Regulation implementing Articles 15 and 26 of the Treaty, OJ, English Special Edition 1959-1962, p. 87.

<sup>58</sup> — Where the Commission, having received an application pursuant to Article 3(2) of Regulation No 17, considers that on the basis of the information in its possession there are insufficient grounds for granting the application, it shall inform the applicants of its reasons and its time-limit for them to submit any further comments in writing. Regulation of the Commission of 25 July 1963 on the hearing provided for in Article 19(1) and (2) of Council Regulation No 17, OJ, English Special Edition 1963-1964, p. 47.

<sup>52</sup> — Case C-257/90 *Italsolar v. Commission* [1992] ECR I-9, at paragraphs 24 to 31.

<sup>53</sup> — Case 216/81 *Lord Bethell v. Commission* [1982] ECR 2227.

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letter' did not constitute a definitive decision on the complaint.

78. The adoption of such a decision enables the undertaking in question to submit any observations which it may have. It is consequently a preparatory measure which has no legal effects *vis-à-vis* the undertaking and therefore cannot form the subject-matter of an action for annulment under Article 173 of the Treaty.<sup>59</sup> On the other hand, non-adoption deprives the undertaking of the opportunity to present its observations and for that reason produces, so far as that undertaking is concerned, legal effects which are capable of justifying an action for failure to act.

79. Was not the basis for this solution in any case already present in the Court's judgments in *Deutscher Komponistenverband eV v. Commission*<sup>60</sup> and *GEMA v. Commission*?<sup>61</sup>

80. There is therefore in my view no doubt that individuals may in certain cases bring proceedings for failure to act in respect of the non-adoption of a measure even though such measure could not be contested under Article 173 of the Treaty, particularly where the measure in question is preparatory in nature.

81. Thus, the mere fact that the 'proposals' referred to in the first subparagraph of Article 138(3), had they had been drawn up by the Parliament, could not have been the

subject-matter of an action for annulment by an individual unless they produced legal effects in his regard cannot in itself render inadmissible an action for failure to act in respect of the non-adoption of such measures. We here encounter once again the idea that, although the measure adopted does not create legal effects, its non-adoption may do so.

82. Any examination of whether the non-adoption of the measure has a legal effect *vis-à-vis* the applicant is an examination into whether the latter's personal rights have been *detrimentally affected* by the failure in that regard. Only the provisions laid down by the Council or, more correctly, the consequential national measures are capable of affecting its legal position. I am unable to identify any *direct connecting link* between the absence of Liberal Democrat representation in the Parliament and the failure to act of which the latter institution stands accused. The concatenation of causes seems to me to be too hypothetical and too uncertain in order to succeed in its contention that the Parliament's failure produces legal effects with regard to it, the applicant would have to be able to demonstrate that the system of proportional representation, as a uniform electoral system, would, beyond any shadow of doubt, be in turn *proposed* by the Parliament, *recommended* by the Council and *adopted* by the Member States.

83. The first plea of inadmissibility, based on the absence of legal effects *vis-à-vis* the applicant, would thus be sufficient to dismiss the application. Notwithstanding this, I believe that the second plea in law may also usefully be examined.

84. The question in this regard is the following: what interpretation is to be placed on the words 'to address to that person' in the third paragraph of Article 175 of the Treaty? Can the applicant, as a natural or legal

<sup>59</sup> — Case 40/81 *IBM Corporation v. Commission* [1981] ECR 2639, at paragraph 21; Case E-4/89 *Automec v. Commission* [1990] ECR II-947, at paragraph 49.

<sup>60</sup> — Case 4/71 [1971] ECR 705. See the Opinion delivered in that case by Advocate General Roemer (at p. 715): '... there is nothing to preclude regarding as acts certain procedural measures, such as the grant of the right to be heard in cartel proceedings following an application to that effect, since it places those concerned in a certain legal position in the proceedings and has legal effects (for example, the fact that in subsequent legal proceedings matters may not be raised upon if they could have been raised at the hearing and might possibly have influenced the decision of the Commission)'.  
<sup>61</sup> — Case 125/78 [1979] ECR 1023, at paragraphs 19 to 21.

person, argue that the act in question is addressed to it?

85. It is obvious that, when acting within the framework of Article 138, the Parliament is not required to address its proposals, whatever they may be, to the applicant.

86. The Court, however, will not take the view that an applicant must necessarily be the addressee of the act in respect of the non-adoption of which it has brought the action against the Community institution in question.

87. In its judgment in Case C-107/91 *ENU v Commission*,<sup>62</sup> the Portuguese company ENU, which was experiencing major difficulties in disposing of the uranium concentrate which it produced, complained that the Commission, *inter alia*, had failed to order the Supply Agency<sup>63</sup> to put into operation, as a matter of urgency, a special scheme providing an immediate solution to ENU's problem in disposing of its uranium stocks. The Commission argued that if it had been adopted, the measure would have had to be addressed to the Agency rather than to ENU.

88. The Court pointed out that:

'such a decision, even if it had been addressed to the Agency, would have *directly and individually* concerned the applicant, which for that reason could have contested it before the Court on the basis of the second paragraph of Article 146 of the EAEC Treaty.

It follows that the applicant must be in a position to bring the matter before the Court under the third paragraph of Article 148 for the purpose of contesting the failure to adopt the decision requested. If such a possibility

does not exist, the right conferred by the second paragraph of Article 53 would have no means of legal enforcement.'<sup>64</sup>

89. The Court has thus given a broad interpretation to the words 'has failed to address to that person any act', the purpose being to confer legal protection on any person who, while not being the formal addressee of the act in question, is in fact *concerned* by that act in the same way as the actual addressee. The criterion to be applied in order to establish whether a non-privileged applicant has sufficient legal interest in bringing proceedings for a failure to act is the same as that which the Court applies in the case of actions for annulment: just as he must be *directly and individually* concerned by the act which he seeks to have annulled, so the applicant must be *directly and individually* concerned by the failure to act.<sup>65</sup>

90. This broad interpretation seems to me to be dictated by the necessary coherence of the legal remedies. A person who is directly and individually concerned by an act which is not addressed to him may contest it under the second paragraph of Article 173. That individual may also bring an action if the institution merely fails to reply.

91. Points 5 and 6 of the Court's judgment in *Holtz & Willemsen*<sup>66</sup> are particularly illuminating in this regard:

'By the third paragraph of Article 175 any natural or legal person may, under the conditions laid down in the first and second paragraphs of the same article, complain to the Court of Justice that the Council or the Commission has, in infringement of the Treaty, "failed to address to that person any act other than a recommendation or an opinion".

<sup>64</sup> — Paragraphs 17 and 18; my emphasis.

<sup>65</sup> — See the judgments in *Chevalley*, cited above, at paragraph 6, and in *Lord Bethell*, also cited above, at paragraph 16.

<sup>66</sup> — Case 134/73 *Holtz & Willemsen v Council* [1974] E.C.R. I.

It appears that the action commenced by the applicant has the object of procuring a *provision of a general regulatory character* having the same legal scope as Regulation No 1336/72, and not an act concerning it directly and individually.'<sup>67</sup>

92. In that case, an undertaking complained that the Council had failed to adopt a decision granting an additional subsidy for colza and rape seed processed in oil mills in the German *Land* of Nordrhein-Westfalen and that the Commission had failed to submit to the Council a proposal in that regard.

93. In dismissing the application, the Court pointed out that the proposal demanded from the Commission was 'an intrinsic part of the procedure for the preparation of the regulation' and was for that reason not 'capable of falling in the category of acts which by the third paragraph of Article 175 can be addressed to the applicant'.<sup>68</sup>

94. It seems to me that that solution is perfectly capable of being applied to the case at present under examination.

95. Finally, an individual who is not the addressee of a decision can be *individually* concerned by that decision only if it affects him by reason of certain attributes which are peculiar to him, or by reason of circum-

stances in which he is differentiated from all other persons, and by virtue of these factors distinguishes him individually just as in the case of the person addressed.<sup>69</sup>

96. The applicant's interest is not in the adoption of a uniform procedure *as such*, but rather in the adoption of the system of proportional representation. I have already mentioned that the Council is at liberty not to recommend such a system. In addition, the system ultimately adopted will affect all political parties within the Community and not the applicant considered individually.

97. To sum up, then, the Parliament's failure (assuming it to have been established) to draw up a 'proposal' produces legal effects only *vis-à-vis* the Council, which is thereby prevented from laying down the 'appropriate provisions' under the second subparagraph of Article 138(3) of the Treaty, and *vis-à-vis* the Member States, which are thus faced with a delay in the submission to them of the recommendation for the adoption of a uniform system.

98. Irrespective of its political significance, however, that failure does not produce any legal effect *vis-à-vis* a natural or legal person who, furthermore, cannot under any circumstances argue that the act was addressed to him.

99. For the above reasons I propose that the Court should declare inadmissible the action for failure to act brought by the Liberal Democrats and that that party should accordingly be ordered to pay the costs of the proceedings.

<sup>67</sup> — My emphasis.

<sup>68</sup> — Point 5 of the judgment.

<sup>69</sup> — Case 25/62 *Plaumann v Commission* [1963] ECR 95, in particular at pages 106 and 107, and in Case 75/84 *Metro SA-Großmärkte v Commission* [1986] ECR 3021, at paragraph 20.

<sup>62</sup> — Case C-107/91 [1993] ECR I-599.

<sup>63</sup> — Provided for under Article 52 of the EAEC Treaty.



# European Parliamentary Elections Bill

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A

## B I L L

TO

Amend the European Parliamentary Elections Act 1978 so as to alter the method used in Great Britain for electing Members of the European Parliament; to make other amendments of enactments relating to the election of Members of the European Parliament; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Number of MEPs,  
electoral regions  
and electoral system.

1. For sections 1 to 3 of the European Parliamentary Elections Act 1978 (election and number of representatives) there shall be substituted-

"Election of  
MEPs.

1. This Act makes provision for the election in the United Kingdom of Members of the European Parliament ("MEPs").

Electoral regions  
and number of  
MEPs.

2. - (1) The United Kingdom shall be divided into electoral regions.

(2) England shall be divided into nine electoral regions.

(3) Scotland, Wales and Northern Ireland shall each

constitute a single electoral region.

(4) The number of MEPs elected in the United Kingdom shall be 87, of whom-

(a) 71 shall be elected for electoral regions in England,

(b) 8 shall be elected for Scotland,

(c) 5 shall be elected for Wales, and

(d) 3 shall be elected for Northern Ireland

(5) Schedule 2 (which sets out the electoral regions in England and makes provision for the number of MEPs to be elected for each region) shall have effect.

Electoral system  
in Great Britain.

3. - (1) The system of election in an electoral region in Great Britain shall be a regional list system complying with the following conditions.

(2) A vote may be cast for a registered party, or an individual candidate, named on the ballot paper.

(3) The first seat shall be allocated to the party or individual candidate with the greatest number of votes.

(4) The second and subsequent seats shall be allocated in the same way, except that the number of votes given to a party to which one or more seats have already been allocated shall be divided by the number of seats allocated plus one.

(5) In allocating the second or any subsequent seat there shall be disregarded any votes given to-

(a) a party to which there has already been allocated a number of seats equal to the number of names on the party's list of candidates, and

(b) an individual candidate to whom a seat has already been allocated

(6) Seats allocated to a party shall be filled by the persons named on the party's list of candidates in the order in which they appear on that list.

(7) For the purposes of subsections (3) and (4) fractions shall be taken into account

(8) In this section-

(a) "registered party" means a party registered under any enactment providing for the registration of political parties,

(b) a reference to a party's "list of candidates" is a reference to the list submitted in accordance with regulations made as required by paragraph 2(3B) of Schedule 1.

Electoral system  
in Northern  
Ireland.

3A. The system of election in Northern Ireland shall be a single transferable vote system under which-

(a) a vote is capable of being given so as to indicate the voter's order of preference for the candidates, and

(b) a vote is capable of being transferred to the next choice-

(i) when the vote is not required to give a prior choice the necessary quota of votes, or

(ii) when, owing to the deficiency in the number of votes given for a prior choice, that choice is eliminated from the list of candidates.

Electoral system:  
supplementary

3B. Schedule 1 (which makes supplementary provision about the holding of elections, the filling of vacancies, and disqualification) shall have effect.

Franchise.

3C. - (1) A person shall be entitled to vote as an elector at a European Parliamentary election in an electoral region if he is within any of subsections (2) to (5) below.

(2) A person is within this subsection if on the day of the poll he would be entitled to vote as an elector at a parliamentary election in a parliamentary constituency wholly or partly comprised in the electoral region, and-

(a) the address at which he is registered in the relevant register of parliamentary electors is within the electoral region, or

(b) his registration in the relevant register of parliamentary electors results from an overseas elector's declaration which specifies an address within the electoral region.

(3) A person is within this subsection if-

(a) he is a peer who on the day of the poll would be entitled to vote at a local government election in an electoral area wholly or partly comprised in the electoral region, and

(b) the address at which he is registered in the relevant register of local government electors is within the electoral region.

(4) A person is within this subsection if he is entitled to vote in the electoral region by virtue of section 3(2) to (9) of the Representation of the People Act 1985 (peers resident outside the United Kingdom).

(5) A person is within this subsection if he is entitled to vote in the electoral region by virtue of Part III of the European Parliamentary Elections (Changes to the Franchise and Qualifications of Representatives) Regulations 1994 (relevant citizens of the European Union).

(6) Subsection (1) shall have effect subject to any provision of regulations made under paragraph 2 of Schedule 1 which provides for alterations made after a specified date in a register of electors to be disregarded.

(7) In subsection (3) "local government election" includes a municipal election in the City of London

(that is, an election to the office of mayor, alderman, common councilman or sheriff and also the election of any officer elected by the mayor, aldermen and liverymen in common hall).

Date of elections 3D. - (1) The poll at each general election of representatives to the European Parliament shall be held on a day appointed by order of the Secretary of State.

(2) A statutory instrument made under this section shall be laid before Parliament after being made "

Electoral regions in England.

2. For Schedule 2 to the European Parliamentary Elections Act 1978 (European Parliamentary constituencies in Great Britain) there shall be substituted the Schedule set out in Schedule 1 to this Act.

Amendments and repeals.

3. - (1) Schedule 2 (minor and consequential amendments of Schedule 1 to the European Parliamentary Elections Act 1978) shall have effect.

(2) Schedule 3 (other minor and consequential amendments) shall have effect.

(3) The enactments listed in Schedule 4 are hereby repealed to the extent specified.

Expenses.

4. *For section 7(1)(a) of the European Parliamentary Elections Act 1978 (expenses: Consolidated Fund) there shall be substituted-*

*"(a) charges to which persons on whom functions are conferred by regulations made by virtue of paragraph 4(2) of Schedule 1 are entitled by virtue of regulations under this Act, and*

*(aa) any sums required by the Secretary of State for expenditure on the provision of training relating to functions conferred by regulations made by virtue of paragraph 4(2) of Schedule 1;".*

Commencement.

5. - (1) The preceding provisions of this Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument.

(2) An order under subsection (1) may-

(a) appoint different days for different purposes;

(b) include such transitional provisions and savings as the Secretary of State thinks expedient.

Short title

6. This Act may be cited as the European Parliamentary Elections Act 1998.

N° 267

# SÉNAT

SESSION ORDINAIRE DE 1997-1998

Annexe au procès-verbal de la séance du 4 février 1998.

## PROPOSITION DE LOI

*relative à l'élection des membres français  
du Parlement européen,*

PRÉSENTÉE

Par MM. Michel BARNIER, Alphonse ARZEL, Denis BADRÉ, Claude BELOT, Jean BERNARD, Roger BESSE, Jean BIZET, François BLAIZOT, Gérard BRAUN, Mme Paulette BRISEPIERRE, MM. Charles CECCALDI-RAYNAUD, Gérard CÉSAR, Jacques CHAUMONT, Charles de CUTTOLI, Désiré DEBAVELAERE, Charles DESCOURS, Michel DOUBLET, Daniel ECKENSPIELLER, Pierre FAUCHON, Gérard FAYOLLE, Hilaire FLANDRE, Jean-Pierre FOURCADE, Yann GAILLARD, Patrice GÉLARD, Jacques GENTON, Alain GÉRARD, Paul GIROD, Daniel GOULET, Georges GRUILLOT, Bernard HUGO, Roger HUSSON, Bernard JOLY, André JOURDAIN, Alain JOYANDET, Pierre LAFFITTE, Gérard LARCHER, Dominique LECLERC, Jacques LEGENDRE, Jean-François LE GRAND, François LESEIN, Jacques MACHET, Jean MADELAIN, Pierre MARTIN, Mmes Lucette MICHAUX-CHEVRY, Nelly OLIN, MM. Paul d'ORNANO, Joseph OSTERMANN, Victor REUX, Roger RIGAUDIÈRE, Louis SOUVET et André VALLET,

Sénateurs.

(Renvoyée à la commission des Lois constitutionnelles, de législation, du suffrage universel, du règlement et d'administration générale, sous réserve de la constitution éventuelle d'une commission spéciale dans les conditions prévues par le Règlement.)

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Elections et référendums.

## EXPOSÉ DES MOTIFS

MESDAMES, MESSIEURS,

La présente proposition de loi a pour objet de renforcer le lien devant exister entre les membres français du Parlement européen et leurs mandataires.

### **Le constat**

Depuis 1979, les membres français du Parlement européen sont élus au suffrage universel sur la base d'un scrutin proportionnel à l'échelle nationale. Au fil des scrutins, la participation populaire s'est considérablement réduite, diminuant d'autant la représentativité de nos représentants au Parlement de Strasbourg. A cela, plusieurs explications dont l'une l'emporte sur toutes les autres : le mode de scrutin actuellement en vigueur ne permet pas à l'élu européen de s'individualiser aux yeux de l'électeur, et à la construction européenne d'être représentée par un visage connu de chacun.

Cette représentativité est pourtant une des conditions d'une bonne prise en compte des intérêts français dans la construction européenne, au sein de laquelle le Parlement européen joue un rôle important et qui sera sans doute appelé à croître dans les prochaines années.

Il importe donc que les préoccupations de nos concitoyens soient exposées au mieux par leurs représentants au sein de l'unique institution communautaire élue. Force est de constater que tel n'est pas le cas aujourd'hui. La représentation parlementaire à Strasbourg se caractérise par un fort absentéisme, favorisé par la variété des lieux de travail des élus européens. Les fréquents cas de cumul des mandats obligent en outre à des choix dont pâtissent trop souvent les activités communautaires. A cela s'ajoute un système de scrutin qui, en favorisant le creusement d'un important fossé entre l'élu et l'électeur, ne permet pas à ce dernier d'exercer un contrôle sur son représentant, et à ce dernier, de défendre ses propositions comme le bilan de son action devant ses électeurs.

## L'esprit de la réforme

La prochaine élection au Parlement européen aura lieu au printemps 1999. Il reste un peu moins de deux ans pour mener à bien cette réforme. Ce délai est largement suffisant alors qu'il n'est guère utile d'insister sur l'ampleur de l'enjeu compte tenu de l'importance prise par la dimension communautaire dans la législation intérieure de chaque Etat membre, et donc de la France qui se doit de disposer à Strasbourg d'une représentation conforme à sa vocation et à ses aspirations européennes.

La présente proposition de loi vise au maintien d'un scrutin proportionnel car les enjeux en présence plaident en faveur d'une représentation de l'ensemble des sensibilités politiques françaises. Elle est cependant favorable à la suppression du principe d'une seule et unique circonscription qui présente les inconvénients mentionnés précédemment. Elle soumet à l'approbation de la représentation nationale l'idée d'un découpage en plusieurs grandes circonscriptions réunissant plusieurs régions administratives, à l'exception de l'Ile-de-France, en raison de son importance démographique.

Ces circonscriptions répondraient à une logique géographique et économique et auraient une superficie significative tout en étant des ensembles doués d'une dimension à échelle humaine. Le nombre d'élus qu'elles désigneraient serait suffisamment élevé pour que puisse pleinement jouer le scrutin proportionnel, mais également suffisamment limité pour que le choix des électeurs puisse aisément s'exprimer. Les élus au Parlement européen, responsables devant les habitants d'une zone précise, pourraient ainsi témoigner de leur activité devant leurs électeurs.

La représentativité moyenne de chaque élu européen par nombre global d'habitants serait équivalente d'une région à l'autre (685 598), à l'exception des DOM-TOM où elle serait plus élevée (481 750), ce qui se justifie par l'importance que cette partie de la République occupe dans les programmes communautaires.

Loin de créer un échelon supplémentaire dans l'ordre administratif, ces circonscriptions, dont le seul objet serait de permettre l'élection des parlementaires européens, éviteraient que n'apparaissent à terme des « super-députés » représentant une région particulière, ce qui se produirait inmanquablement dans le cas d'une superposition de la circonscription européenne et de la région, deux régions n'ayant dans ce cas qu'un élu, onze autres n'en ayant que deux.

Par ailleurs, une circonscription supplémentaire serait créée pour les Français établis hors de France.

Cette proposition de loi, enfin, tout en étant d'une mise en œuvre aisée, garantit le maintien du principe d'égalité de l'ensemble des citoyens quel que soit leur lieu de résidence.

Tel est l'objet de la présente proposition de loi que ses auteurs vous demandent de bien vouloir adopter.

## PROPOSITION DE LOI

### Article premier

L'article 4 de la loi n° 77-729 du 7 juillet 1977 relative à l'élection des représentants au Parlement européen est ainsi rédigé :

« Art. 4. – Le territoire de la République est divisé en huit circonscriptions composées de régions au sens de la loi n° 82-213 du 2 mars 1982.

« La répartition des sièges à pourvoir entre les circonscriptions ainsi que la composition des circonscriptions est fixée conformément au tableau suivant :

Circonscriptions	Nombre d'élus
Nord-Manche (Basse-Normandie, Haute-Normandie, Picardie, Nord - Pas-de-Calais).....	13
Grand Est ( <i>Alsace, Bourgogne, Champagne-Ardenne, Lorraine, Franche-Comté</i> ) .....	12
Ile-de-France .....	15
Arc Atlantique ( <i>Bretagne, Pays de la Loire, Poitou-Charentes</i> ) .....	11
Centre-Massif central ( <i>Auvergne, Centre, Limousin</i> ) .....	6
Grand Sud-Ouest ( <i>Aquitaine, Languedoc-Roussillon, Midi-Pyrénées</i> ) .....	11
Rhône-Alpes-Méditerranée-Corse ( <i>Corse, Provence-Côte d'Azur, Rhône-Alpes</i> ) .....	14
DOM-TOM .....	4

### Article 2

Il est inséré, après l'article 4 de la loi n° 77-729 du 7 juillet 1977 précitée, un article additionnel ainsi rédigé :

« Art. 4 bis. – Une circonscription supplémentaire est créée pour permettre aux Français établis hors de France d'élire leur représentant. Un siège est affecté à cette circonscription électorale. »

20 May 1998

**OPINION**  
(Rule 147)

for the Committee on Institutional Affairs

on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament (report by Mr Anastassopoulos)

Committee on Legal Affairs and Citizens' Rights

Draftsman: Mrs Evelyne Gebhardt

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**PROCEDURE**

At its meeting of 4 November 1997 the Committee on Legal Affairs and Citizens' Rights appointed Mrs Evelyne Gebhardt draftsman.

It considered the draft opinion at its meetings of 3 February 1998, 26 February 1998, 28 April 1998 and 19 May 1998.

At the last meeting it adopted the following conclusions by 11 votes to 1, with 4 abstentions.

The following were present for the vote: De Clercq, chairman; Gebhardt, draftsman; Añoveros Trias de Bes (for Ferri), Berger, Buffetaut, C. Casini, Cassidy, Cot, Fabra Vallés ( for Palacio, pursuant to Rule 138(2) of the Rules of Procedure), Falconer (for Barzanti), Garriga Polledo (for Mosiek-Urbahn, pursuant to Rule 138(2) of the Rules of Procedure), Newman, Oddy, Thors, Tsatsos (for Medina Ortega), Ullmann and Zimmermann (for Verde i Aldea),

**I. BASIS IN THE TREATIES**

Provisions on electoral law appeared in the 1957 Convention on certain institutions common to the European Communities, which amended Article 21(3) of the ECSC Treaty to read as follows:

'The Assembly 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, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutions requirements'.

The provisions currently applicable to elections to the European Parliament are those of the EC Treaty in the version of 7 February 1992 (Maastricht). They are to be found in Articles 8b(2) and 138(3) require, over and above the provisions of the original version, the assent of a majority of the Members of the European Parliament for the Council's legal act.

A differing wording in the Treaty of Amsterdam (Art. 190(4)), is not yet in force, since the ratification process has not yet been completed in all Member States.

Also relevant are Art. 138a on political parties at European level, and Art. F (principles of democracy; human rights and fundamental freedoms) of the Treaty on European Union.

Except where otherwise provided for, the Act of 20 September 1976 concerning the election of representatives of the Assembly by direct universal suffrage (OJ L 278/1976) still applies.

## **II. AMENDMENTS NECESSARY**

### **A. General**

The principles of democracy demand that there should be general electoral principles recognized in all Member States. Under these principles the Members of the European Parliament must be elected by direct universal suffrage through an equal, free and secret ballot.

### **B. The right to vote**

The right to vote should be readily comprehensible and should thus be dependent on only a small number of criteria linked to the introduction of the citizenship of the Union in Article 8 of the Treaty of Maastricht and the electoral act 93/109/EC.

1. All citizens of the Union who have reached the age of 18 are entitled to vote (this already applies in all Member States).
2. The right to vote is dependent on entry in the electoral register of the place of residence in the Member State concerned. Derogations which prevent or restrict freedom of movement, and the freedom of citizens to choose their place of residence within the European Union, should be avoided.

Entry on the register should be a straightforward and inexpensive procedure and should follow automatically on reaching the appropriate age, or, if a citizen changes place of residence, should take place within a period of time which also applies to the citizens of the Member State in question.

3. The right to vote may only be exercised when it has not been withdrawn by a final and binding decision in the state of origin or the state of residence, either as the result of a court judgment or for some other reason.
4. For citizens of the Union living outside the European Union, it makes sense for the right to vote to be governed by the laws of the state whose citizenship they possess.

### **C. Right to stand for election**

1. The right to stand for election should in principle be based on the same criteria as the right to vote. This applies in particular to the minimum age, which currently ranges from 18 to 25 in the Member States. There is no clear reason why persons who are of full age and legal capacity should be denied the right to stand for election.

2. Candidates may only be proposed by parties, who have a special role (Art. 138a of the EC Treaty). The parties must draw up lists of candidates, which take account of social groups and regional features. Individual candidacies should not be ruled out, and should be permitted if supported by a certain number of signatures. This number of signatures must be the same for all Member States and must be relatively low, in order to give individual candidates a broadly equal opportunity. Requiring a deposit would place independent candidates at a disadvantage compared with parties and would unduly impede less well-off candidates.
3. The duties of the European Parliament as a transnational parliament are of a special kind. They are not compatible with the interest of a national or regional parliament in a Member State. For further incompatibilities see the Act of 20 September 1976.

#### D. Electoral procedure

Fourteen Member States already use a system of proportional representation. Even the UK has plans to move away from the first-past-the-post system.

Hence, a decision has been taken in favour of proportional representation in the European Union. However, at a time when a growing number of citizens aspire to greater political participation, it needs to be seen whether and to what extent this aspiration can be realized in the election of the members of the European Parliament.

The option of casting preferential votes, which is already a possibility under some electoral laws, seems sensible. It counteracts the tendency of Parliament to become faceless. However, it should not be forgotten that preferential votes tend to reduce women's chances of being elected and to favour 'the great and good'.

Dividing the electoral territory into constituencies of a manageable size would also help break down anonymity and encourage personal identification of citizens with 'their' Members. Constituencies would also simplify the requisite balanced regional representation of citizens in the European Parliament.

In addition to balanced regional representation, there is a need for a balanced representation of the sexes. Proportional representation permits the adoption of an appropriate uniform set of rules.

#### E. Allocation of seats

The allocation of seats to parties and to independent candidates should be based on the number of valid votes obtained. A sensible way of allocating seats is through a system of highest averages (e.g. the d'Hondt system). To avoid fragmentation of Parliament which would hamper its work, the uniform election procedure should provide that only lists gaining a minimum percentage of valid votes can be considered for the allocation of seats. This percentage should not be higher than 5%.

#### F. Electoral term; date of election

The five-year electoral period has stood the test of time and should be kept. To take account of the differing traditions in the Member States the system should permit the election to be held on a weekday or a Sunday. It must therefore take place on several consecutive days.

## G. Election expenses

Under a uniform system election expenses should be reimbursed in accordance with the same criteria and to the same amount. The basis for calculating the amount reimbursed should be the number of votes obtained.

Member States set a ceiling on individual election expenses in order to prevent the outcome of elections from being influenced by capital resources.

## H. Prospects for the future

The uniform election procedure for the Members of the European Parliament should be marked by a high degree of flexibility and should be responsive to future developments: for example, the enlargement of the European Union, the presentation of European lists by European political parties or the possibility of the right to vote being granted to all persons legally resident in the European Union.

## III. CONCLUSIONS

The Committee on Legal Affairs and Citizens' Rights proposes an act concerning the election of Members to the European Parliament embodying the following principles:

- i. The Members of the European Parliament shall be elected by direct universal suffrage through an equal, free and secret ballot.
2. The electoral term shall be five years. The polling dates shall extend over not more than five consecutive days, including a Sunday.
3. The right to vote and the right to stand for election shall be accorded to EU citizens who have reached their 18th birthday, who are entered on the electoral register and who have not had their right to vote withdrawn in accordance with law. Registration shall be automatic. The right to stand for election should be based on the right to vote. Therefore no monetary restriction should be placed on the individual's right to stand. Individual candidacies should be permitted if supported by a certain number of signatures, which should be relatively low, in order to give individual candidates a broadly equal opportunity.
4. Membership of the European Parliament shall be incompatible with membership of a national or regional parliament and with the office of leader of a regional executive or of mayor of a large town with a population of more than 50 000. Members of a government, the European Commission and the governing bodies of the European Central Bank, and officials or agents thereof, and the persons referred to in Article 6 of the Act of 20 September 1976 may not simultaneously hold a seat in the European Parliament.
5. In the allocation of seats only lists which have obtained at least 5% of the valid votes cast shall be taken into account. Under the laws of the Member States, the casting of preferential votes may be permitted. Individual candidacies must be permitted in all Member States according to the same rules.

6. The electoral area shall be divided into territorial constituencies of a manageable size. Member States with less than 20 million inhabitants may refrain from making the subdivision into constituencies.
7. The total number of seats in the European Parliament shall be filled by means of a proportional, list-based voting system. No later than the 2009 European elections, the parties shall be permitted to set up transnational lists of candidates. The Council, acting on a proposal from the European Parliament, shall enact the necessary implementing provisions.
8. Each of the Member States may establish a ceiling on the expenditure which candidates may devote to the electoral campaign on the basis of similar principles and a transparent statement must be made regarding the expenditure incurred.
9. Except where otherwise provided for, the Act of 20 September 1976 concerning the election of representatives of the European Parliament by direct universal suffrage (OJ L 278/1976) shall continue to apply.