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BRIEFING
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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice
- 2 The Commission
- 3 The Court of Auditors, ESC and COR
- 4 Differentiated integration
- 5 The CFSP
- 6 The role of the national parliaments
- 7 The hierarchy of Community acts
- 8 Codecision procedure
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- 10 European citizenship
- 11 WEU, security and defence
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ON
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**BRIEFING
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I. SUMMARY

Generally speaking, the issue of European citizenship is not addressed directly. It is approached more from the standpoint of fundamental rights which would enable greater substance to be given to the concept of citizenship, or of related topics such as transparency.

II. AGENDA FOR THE CONFERENCE

Articles 8a to 8e of the Treaty on European Union list a number of specific rights of citizens. Since citizenship is a developing concept, the Treaty made provision for the extension of citizens' rights. However, although the TEU does not formally provide for the revision of Article 8a to 8e at the 1996 IGC, the notions of citizenship, democracy, transparency and so forth will probably be discussed.

The European 'citizens' rights' listed in the TEU are:

- Article 8a: the right to move and reside freely within the territory of the Member States;
- Article 8b: the right to vote and stand as a candidate at municipal and European elections;
- Article 8c: the right to diplomatic or consular protection in third countries;
- Article 8d: the right to petition the European Parliament and to apply to the Ombudsman.

III. POSITIONS

1. European Parliament

1.1. Resolution of 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference

[...]

7. Greater substance should be provided for the concept of EU citizenship through development of the special rights linked to EU citizenship, notably by means of:

- accession of the Union to the Council of Europe's Convention on Human Rights and Fundamental Freedoms;
- a new right of all EU citizens to information on EU matters;
- inclusion of an explicit reference in the Treaty to the principle of equal treatment irrespective of race, sex, age, handicap or religion (including mentioning the fundamental social rights of workers set out in the Charter, enlarging upon them and extending them to all citizens of the Union); also

incorporation of an article specifically referring to the ban on capital punishment;

- bringing together within a single article the economic rights that are scattered throughout the Treaty [...], and reinforcing these rights;
- the development of political citizenship, inter alia through measures that facilitate participation in political life in a Member State of Union citizens residing in that State;
- the strengthening of provisions needed to achieve fully the free movement of persons;
- the preservation of Europe's diversity through special safeguards for traditional national minorities in terms of human rights, democracy and the rule of law;
- the application of the provisions in the Treaty on equal rights not only to economic rights but to all aspects of equality for women.

In addition, the Treaty should contain a clear rejection of racism, xenophobia, sexism, discrimination on grounds of a person's sexual orientation, anti-semitism, revisionism and all forms of discrimination and guarantee adequate legal protection against discrimination for all individuals resident within the EU.

8. In order to develop the means of expression for citizens at European level, Article 138a of the Treaty on European political parties must be applied and developed.

[...]

1.2. Opinion of the Committee on Legal Affairs and Citizens' Rights

[...]

9. Union citizenship should be enhanced and should go considerably beyond the civic and electoral provisions now contained in the Treaty on European Union. European citizenship must imply that the European Union guarantees the protection of all fundamental rights contained in the European Convention on Human Rights and Fundamental Freedoms and the implementation of common policies in the fields of justice and home affairs. Third country nationals residing in the European Union should be able easily to attain European citizenship. [...]

2. Council: Report on the functioning of the TEU

[...]

7. [...] The necessary arrangements have been made concerning the right to vote and the protection of citizens abroad. [...]

8. [...] provisions have been adopted to ensure that in municipal elections and elections to the European Parliament every citizen is entitled to vote and to stand for election in the Member State where he resides, under the same conditions as nationals of that State. [...]

9. Article 8a of the EC Treaty provides that every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the consular

authorities of any Member State, on the same conditions as nationals of that State. [...]

10. Article 138e of the EC Treaty makes provision for an Ombudsman, who would receive complaints from citizens concerning instances of maladministration in the activities of the Community Institutions or bodies. [...]

11. Article 8a of the EC Treaty confirms the basic principle that every citizen of the Union has the right to move and reside within the territory of any Member State. [...]

12. Article 8e of the EC Treaty offers the possibility of supplementing the rights of citizenship, [...].

3. Commission

3.1. Report on the operation of the TEU

[...]

1. The right to freedom of movement and residence

8. Citizens of the Union have been given general rights of freedom of movement and residence; the exercise of these rights is subject to 'limits and conditions' laid down by Community law.

9. The Union citizen's right to freedom of movement must therefore be seen in the context of the establishment of the 'area without internal frontiers in which the free movement of ... persons ... is ensured in accordance with the provisions of this Treaty' (Article 7a, added by the Single European Act). [...]

2. The right to vote and stand for election

11. All citizens of the Union residing in a Member State of which they are not nationals are now entitled to vote and stand as candidates in municipal elections and elections to the European Parliament. [...]

3. Diplomatic and consular protection

[...]

16. There are [...] provisos attached to putting this new right into practice. The 'guidelines' which are supposed to bring it about are merely non-binding instructions. They are also incomplete, as they only deal with consular protection, moreover without covering all the fields listed in the Vienna Convention on Consular Relations. In particular, these 'guidelines' have received little publicity, so that by and large the citizens of the Union are unaware of them. Lastly, there is no clear indication of how a citizen can avail him- or herself of this right to protection. [...]

5. Overall assessment

18. Generally speaking, the introduction of the concept of European citizenship, which does not replace but is in addition to national citizenship, carries immense potential. Its purpose is to deepen European citizens' sense of

belonging to the European Union and make that sense more tangible by conferring on them the rights associated with it.

The most noteworthy and visible application of the concept is the right to vote and stand as a candidate in European and municipal elections. However, the ambitious notion written into the Treaty has not yet produced measures conferring really effective rights: the citizen enjoys only fragmented, incomplete rights which are themselves subject to restrictive conditions. In that sense, the concept of citizenship is not yet put into practice in a way that lives up to the individual's expectations.

[...]

3.2. Other Commission initiatives

The Commission has also taken the following measures in areas relating to the concept of European citizenship:

- freedom of movement: proposals for implementing freedom of movement within the framework of Parliament's proceedings for failure to act (cf. statements made by Mr Santer before the European Parliament);

- economic and social rights of citizens: Commission initiative ('Putting citizens first') to inform citizens of their rights (employment, studies, residence, etc.) within the single market. (Cf. also the creation of a 'European Hotline on Health' (details in Santer note) encouraged by the Court.);

- civil protection: possibility of a Commission decision on a Community civil protection programme covering cooperation and mutual assistance in the event of fire, chemical accident, earthquake, etc.

4. Reflection Group

Progress report

In connection with citizens' rights, the Reflection Group feels there to be an urgent need to ensure full observance of fundamental rights, both in relations between the Union and the Member States and between States and individuals. There is therefore a need to insert an article into the Treaty providing for the suspension of its rights or even the expulsion of a Member State which infringes fundamental human rights or basic democratic principles.

With regard to the substance of such rights, the following were mentioned:

- express condemnation of racism and xenophobia by means of an analogous provision to the one proposed in 1991 by the European Parliament;

- a general clause prohibiting discrimination on grounds of gender, race, religion, opinion, sexual preferences, etc. Some felt that the principle of equality between women and men should have general application and not be restricted to the economic sphere, as was currently the case; it should also be worded in a positive way in the Treaty and not simply as the result of a ban on discrimination;

- prohibition of the death penalty;¹
- protection of minorities;¹
- socio-economic rights, with the inclusion in the Treaty of the rights set out in the European Social Charter;¹
- employment and quality of the environment;¹
- a European voluntary service, or 'Peace Corps', for humanitarian action.¹

As regards the way in which such rights might be embodied in the Treaty, two possibilities were considered:

- the Union should accede to the European Convention on Human Rights;
- a bill of rights should be included in the Treaty (in the enacting terms, an annex, or the preamble).

From the point of view of individual protection, it was clear that only accession by the Community to the European Convention and the inclusion of a bill of rights in the enacting terms would confer a full guarantee (by the Luxembourg and Strasbourg Courts in the former instance, and the Luxembourg Court alone in the latter).

Some members pointed out that:

- adoption of European citizenship was perceived as a threat to national identity in some Member States and that, unless this view were to change, neither the concept nor the scope of European citizenship should be developed any further;
- accession by the Community to the European Convention on Human Rights was unnecessary; furthermore, they did not feel it useful to include a Charter of Human Rights in the Treaty, since all Member States already guaranteed such rights at national level. Some, however, were prepared to accept a bill of rights in the preamble to the Treaty or were in favour of incorporation into the Treaty of a citizens' right to information.

5. Member States

5.1. Belgium

Draft policy note from the government to parliament on the 1996 Intergovernmental Conference

The government is in favour of providing greater substance for the concept of citizenship by fleshing out the Treaty provisions relating thereto. It is prepared to consider certain proposals for the extension of citizens' rights, such as:

¹ These amendments did not gain general support, at least at first reading.

- accession by the European Union to the European Convention on Human Rights and other instruments defining fundamental rights and freedoms, or the inclusion in the Treaty of a catalogue of fundamental rights and freedoms;
- a limited extension of the list of rights and duties set out in the Treaty, to cover areas such as the fight against racism and xenophobia;
- introduction of a mechanism enabling penalties - including suspension of the membership of any Member State failing to fulfil its obligations in respect of democratic freedoms and human rights - to be imposed.

5.2. Denmark

In its 'Agenda for Europe', the Danish Government says it is in favour of some fundamental rights being dissociated from the concept of European citizenship. This could possibly be enlarged upon by the incorporation of parts of the Declaration of Human Rights, particularly freedom of expression, the right of property and the right to a clean environment. Such rights could be included in the sections on social policy and employment or in a new chapter, or even in the section on European citizenship.

5.3. Germany

The report of the Conference of Ministers of the Länder of 23 and 24 May 1995 states that European citizenship must be given greater substance by means of improvements in the following areas:

- fundamental rights, such as the right to information and the fight against racism, must be included in the Treaty;
- social security;
- administrative independence of municipalities;
- transparency;
- inter-regional cooperation.

The discussion paper on furthering Community responsibility for policy in the field of justice and home affairs with a view to the 1996 IGC, published by the steering committee of the CDU/CSU Group in the Bundestag, mentions the importance of democratic equality for all citizens of the Union in respect of the electoral law governing elections to the European Parliament.

Furthermore, fundamental rights must be standardized to the greatest possible extent in a 'people's Europe'.

5.4. Greece

According to the document entitled 'Towards a People's Europe - democracy and development', Athens believes in a citizens' Europe, and therefore opposes any notion of a two-speed Europe. Greece, it is stressed, will not accept any proposals contrary to the principle of equal rights and duties for all the peoples of Europe, particularly in the economic field.

5.5. Spain

The memorandum entitled 'The 1996 Intergovernmental Conference: bases for a discussion' establishes a link between citizenship of the Union and fundamental rights. The document sets out two options:

- either to extend substantially the catalogue of rights set out in the existing chapter on citizenship of the Union (Articles 8 to 8e) by incorporating, inter alia, an article on combating racism and xenophobia;
- or to draw up a charter of fundamental rights of citizens of the Union including, with a view to future enlargements, all the rights held to be fundamental in current European legislation, thus enabling them to be protected both by the Union institutions and those of the Member States.

5.6. Italy

In its statement on the 1996 Intergovernmental Conference, the Italian Government maintains that individual citizens will understand the Union if it is built with their consent, if they grasp the aspects which affect them most closely and if they feel that their everyday lives are influenced by Community legislation with its rules and safeguards: freedom of movement and the single currency (the most familiar aspect of the economy, which people use to buy food and other daily necessities and which serves as the yardstick for work and production, wealth and poverty). Bearing in mind the lessons learned from the Maastricht ratification process, the new conference must base European integration on a clarity of purpose and close, ongoing contacts between individual citizens and the bodies representing them, starting with the national parliaments.

5.7. Luxembourg

In its 'Memorandum on the 1996 Intergovernmental Conference' the Luxembourg Government calls for the preamble to the new treaty to refer explicitly to the protection of the human rights and fundamental freedoms of European citizens, equality between men and women and the fight against racism and xenophobia.

5.8. Netherlands

The 'Memorandum on the progress report of the Reflection Group' by the Netherlands Foreign Minister, Mr Kok, points to a divergence of views on the subject of human rights. Some members of the Reflection Group are unwilling to take up a position until the Court of Justice has delivered its opinion on accession to the European Convention on Human Rights. Others feel that the Reflection Group has a responsibility to act on this matter. None the less, all agree that fundamental rights should be a topic for discussion at the conference. The main issues should be anti-racism and a more detailed article on non-discrimination. Eastwards expansion of the Union makes this more important than at the time of earlier conferences.

With regard to European citizenship, the call by the Netherlands for greater transparency and access to information on Council decisions has gained the support by some members.

5.9. Austria

In its 'Guidelines on the probable topics of the 1996 IGC', the Austrian Government expresses the view that Community responsibility for civil protection should be added to the TEU. In addition, the fundamental rights of Union citizens should be guaranteed, in particular as regards data protection (third pillar). Finally, the Austrian Government proposes that governments be required to investigate any action to combat racism and xenophobia and to draw up minimum requirements for protection against racist and xenophobic activities.

5.10. Portugal

In an interview published in the newspaper 'Público', the Portuguese Prime Minister, Mr Cavaco Silva, said that the reform should focus on citizens' problems. He also put forward the idea of a citizens' charter establishing an area without internal borders with equal rights and duties for all Europeans.

5.11. Finland

In its memorandum, the Finnish Government sees European citizenship as a means of promoting democracy and the rule of law in the Union and furthering unity in Europe. A clearer definition of the concept of European citizenship in the Treaty might provide a means of guaranteeing the principles of transparency, democracy, the rule of law, equality, social justice and respect for human rights.

5.12. Joint declaration by the German and Italian Foreign Ministers

This declaration was issued following the meeting between the German and Italian Foreign Ministers held in Italy on 15 July 1995. With regard to citizenship, the declaration proposes the codification of fundamental rights and freedoms, whose safekeeping would be entrusted to the Court of Justice.

6. Institut für Europäische Politik

This study on citizenship commissioned by the European Parliament's Directorate-General for Research states that European citizenship is necessary, in that the European Union is already well integrated and decisions taken by the European institutions affect individual citizens. None the less, although the latter are increasingly affected by Community decisions, they still have a nationalistic approach to national matters.

Although many still feel that European citizenship 'is lacking in content', one cannot ignore the possible benefits of stronger provisions on European citizenship:

- a clearer identity for citizens in the EU;
- a step towards greater transparency;
- development of a European public opinion;
- a better understanding of citizens' needs.

Finally, several dimensions should be incorporated into the concept of citizenship:

- a democratic dimension covering all aspects of a European citizen's involvement in political affairs (right to vote, right to petition, role of the Ombudsman, referendum);
- diplomatic and consular protection;
- a social dimension covering the full range of social guarantees for European citizens;
- the right to equal treatment without discrimination at work;
- freedom of movement for workers;
- the duties of European citizens.

There are three possible ways of incorporating these new elements into the Treaty:

- minimalist strategy - procedure set out in Article 8e of the EC Treaty:

This could consist of strict compliance with the procedures set out in Article 8e of the EC Treaty. Parliament's proposals for the introduction of new rights or the extension of existing rights would in this instance be treated as a suggestion that the Commission use its right of initiative under Article 8e in accordance with the wishes expressed by Parliament.

An alternative to this procedure would be an initiative by Parliament under the procedure provided for in Article 138b, which would give this subject a certain symbolic value and, furthermore, prompt the Commission to submit its proposals within an acceptable time frame.

- maximalist strategy - procedure set out in Article N of the TEU:

The European Parliament could attempt to add to the agenda for the Conference the topic 'European citizenship', or simply 'citizens' rights', together with new rights in the form of coordination and extension of existing rights in the amended treaty.

- step-by-step strategy:

As with the procedures in the other areas of the Treaty (for example, completion of the common market) an attempt could be made to reach a consensus at the Intergovernmental Conference on a general concept of Union citizenship, which would simply lay down the main principles and the objectives to be attained on the basis of a pre-determined timetable.

7. Federal Trust

Building the Union

The EU should accede to the European Convention in order to give greater substance to the guarantee that citizens' rights will be enforced. The need for accession is all the more urgent in view of the fact that enlargement of the EU will bring in a number of countries which have had a questionable human rights record in the past. Like the current Member States, such countries must be profoundly convinced that the EU is founded on strict respect for human rights.

8. CEPS

Preparing for 1996 and a larger European Union: principles and priorities

There are no formal plans for the inclusion of this topic on the agenda for the 1996 IGC. It should be discussed at the conference however, because this would increase public interest in how the EU institutions operate and because the enlargement of the EU to take in the CEECs provides the opportunity for a debate on the appropriateness of incorporated a declaration of human rights.

One further issue should be considered: Article F makes respect for democratic principles a criterion for accession to the EU. What would happen if, following a change of government, a Member State were to infringe these principles? What steps would the EU take? Economic sanctions? Military action (by analogy with the American Civil War in the 19th century)? Or expulsion? Such questions cannot be avoided.

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