



4423.43



Towards European citizenship

342.8
432.123

A Passport Union

The granting of special rights

LIBRARY

Commission
of the European Communities

There has been so much concentration upon European goods that European citizenship appears to have been neglected. Two new projects should now alter this impression. The first envisages that all Community nationals should have a uniform passport, abolition of controls at internal frontiers and harmonization of legislation affecting aliens. The second concerns the special rights to which citizens living in a Community country other than their country of origin could be entitled. These special rights, basically of a political nature, would be the rights to vote, to stand for election and to hold public office.

Bulletin
of the European Communities

Supplement 7/75

Towards European citizenship

*Same as Com(75) 322
final
July 2, 1975*

Implementation of point 10 of the final communi-
qué issued at the European Summit held in Paris
on 9 and 10 December 1974

A Passport Union

(Report presented by the Commission to the Council on
3 July 1975)

Implementation of point 11 of the final communi-
qué issued at the European Summit held in Paris
on 9 and 10 December 1974

The granting of special rights

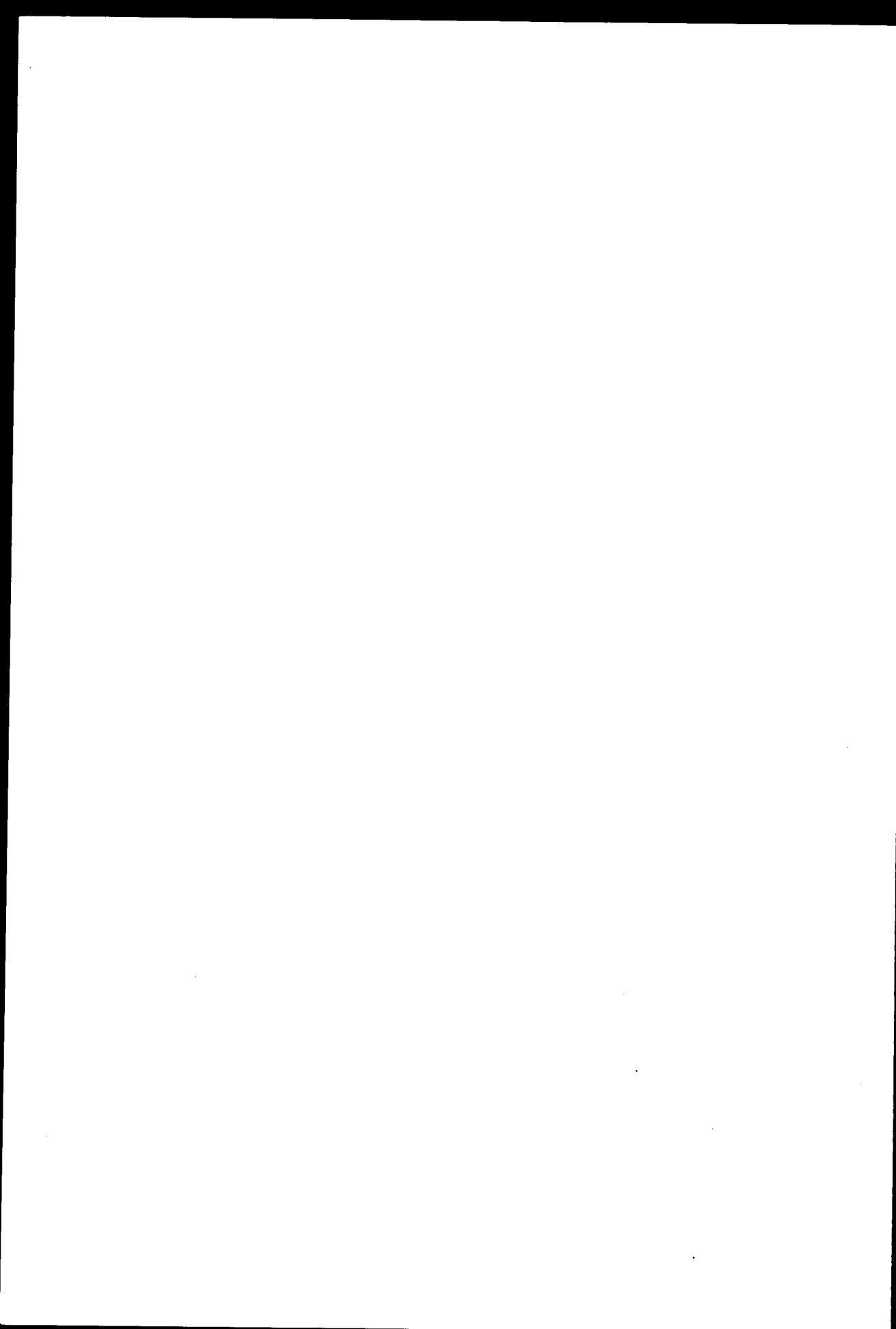
*— same as
Com(75) 321 final*

(Report presented by the Commission to the Council on
3 July 1975)

July 2, 1975

EUROPEAN COMMUNITIES

Commission



contents

A Passport Union	5
<i>Covering letter</i>	7
<i>Commission report</i>	8
Scope of report	8
Significance of the Passport Union	8
Main problems raised by the establishment of a Passport Union which will have to be studied by the working party	12
Composition of the working party	16
 <i>Annex 1</i>	
Comparative study of:	
— the Benelux Convention of 11 April 1960	
— the Convention between the Nordic countries of 12 July 1957	
— the 'Understanding' between the United Kingdom and Ireland	17
 <i>Annex 2</i>	
Harmonization of legislation affecting aliens	19
 <i>Annex 3</i>	
Current projects and existing schemes which appear to be related to implementation of the Passport Union	20
 The granting of special rights	23
<i>Covering letter</i>	25
<i>Commission report</i>	26
Structure of the report	26
Meaning of the expression 'special rights'	26

Principal problems to be studied by the working party reponsible for implementing point 11	28
---	----

Composition of the working party	31
--	----

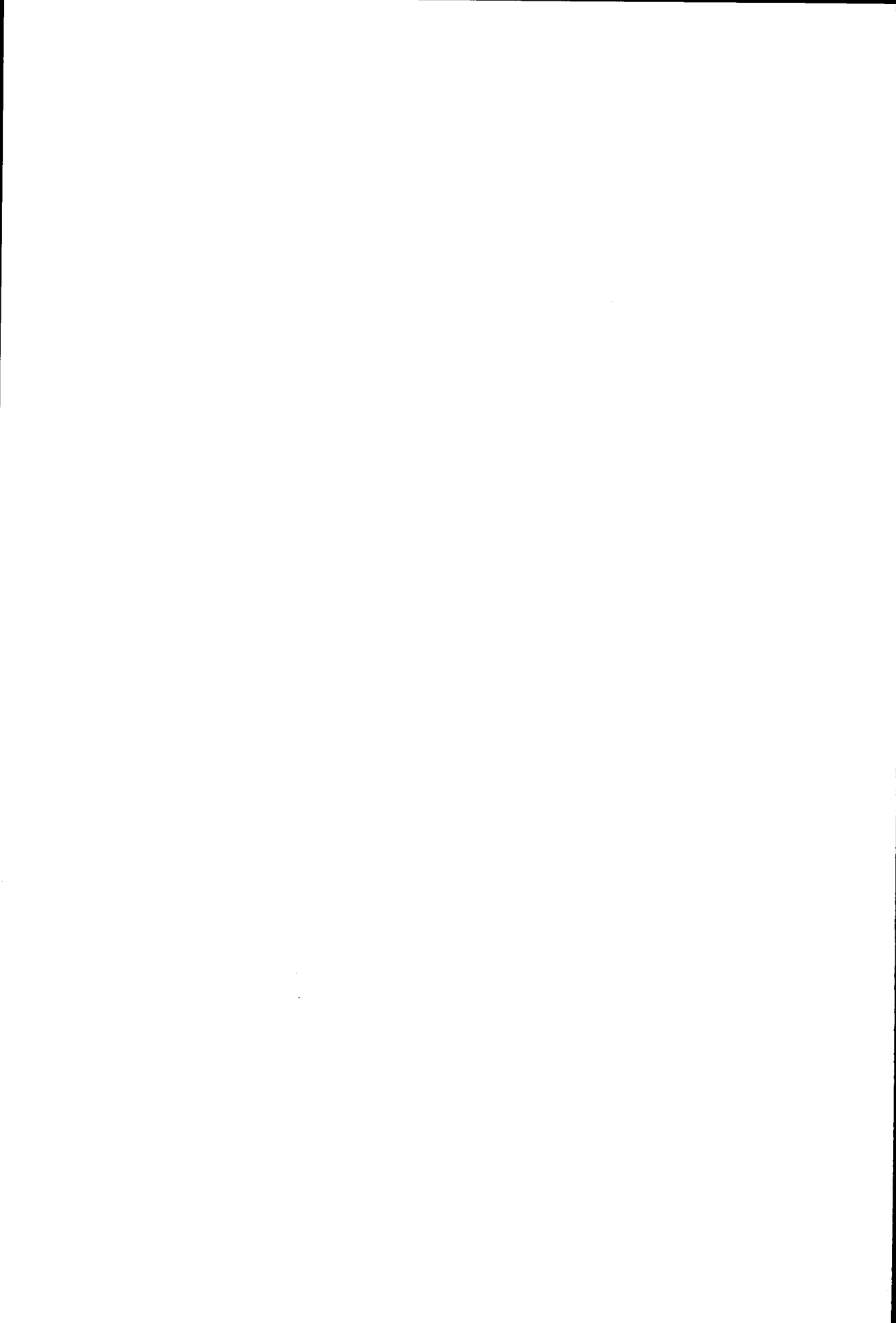
Annex 1

Possible political rights for Community nationals in the host country	31
--	----

Annex 2

Problems linked with overall plans	32
--	----

A Passport Union



Covering letter to the Council

The final communiqué issued at the European Summit held in Paris on 9 and 10 December 1974 states at point 10 that 'a working party will be set up to study the possibility of establishing a Passport Union and, in anticipation of this, the introduction of a uniform passport. If possible, this draft should be submitted to the Governments of the Member States before 31 December 1976. It will, in particular, provide for stage-by-stage harmonization of legislation affecting aliens and for the abolition of passport control within the Community'.¹

It was agreed with the Member States that the Commission would consider the problems which might be raised by the setting up of a Passport Union between the Member States.²

The Commission, having examined the scope of this statement, has reached the following two conclusions:

The Passport Union is seen as a project involving two immediate and two longer term objectives. The first immediate objective is the creation of a uniform passport to be issued by each Member State to its nationals in place of the passports of varying appearance currently issued, and which would symbolize a definite connection with the Communities; this could lead to negotiations with non-member countries to secure equality of treatment for all holders of the uniform passport, irrespective of their nationality. The second immediate objective of the Passport Union is the abolition of identity checks at Community internal frontiers, irrespective of whether these are carried out on nationals of the Member States or of non-member countries. This would however necessitate reorganization of the checks at external frontiers of the Community to be carried out by each Member State on behalf of all others, and this could be a starting point for the development of a common approach on the part of Member States in that they would accord equality of treatment to nationals of all non-member countries.

It will be for the working party to examine whether the proposed concept of a Passport

Union can be put into effect, and if so, to lay down the conditions and timetable for it. It should, however, prove possible to achieve the two abovementioned immediate objectives within a short time, in spite of certain difficult problems.

Please find attached an analysis of the text of point 10 and the main problems which might be raised by its implementation, followed by some considerations regarding the composition of the working party which will be instructed to deal with the matter.

The Council should decide on the composition of this working party which would comprise senior officials from the Member States. In view of the many connections between the Passport Union and free movement of persons within the Communities and the fact that the Commission has a central role in the organization of this free movement, it would be best if the Commission provided the Chairman and the secretariat of the working party.

¹ Bull. EC 12-1974, point 1104.

² Meeting of Coreper on 24 April 1974.

**Commission report
on the implementation of point 10
of the final communiqué
issued at the European Summit
held in Paris
on 9 and 10 December 1974**

Passport Union

1. Scope of report

This report expands in turn on the three main factors which seem to govern the implementation of point 10.

These factors are set out below under the following headings:

- Significance of the Passport Union;
- Main problems raised by the establishment of a Passport Union which will have to be studied by the working party;
- Composition of the working party.

2. Significance of the Passport Union

2.1 Introduction

The concept 'Passport Union' is a new one. No scheme exists which bears this name. The only known measures towards creating unions embracing several countries for the purpose of carrying out controls of persons have been the establishment of free movement zones entailing abandonment of identity checks at internal frontiers and the transfer of such checks to external frontiers.¹ Neither does 'Passport Union' exist as a theoretical concept.

However, the expression 'Passport Union' is to some extent evocative and calls to mind by a process of association of ideas the concept of Customs Union. Establishing a Passport Union would provide arrangements in respect of indivi-

duals similar to those provided by a Customs Union in respect of goods, i.e. free movement within the Union together with transfer of controls to the external frontiers of the Union and confirmation of it as an entity in relation to non-member countries in the form of joint action *vis-à-vis* such countries (common foreign policy).

Even though 'Passport Union' is not a time-honoured expression the word 'passport' is familiar to everyone. It is a document issued by a national administrative body to nationals of the country concerned, attesting to their identity *vis-à-vis* foreign authorities. A passport establishes the existence of a connection between a legal person governed by public international law and a natural person. In the first place, this connection is affirmed *erga omnes* by the State issuing the passport with regard to all other legal persons governed by public international law. Secondly, this connection enables the holder of the passport to require from the State to whose territory he has travelled such treatment as has been agreed between that State and the State of which he is a national.

The preceding remarks are not sufficient to give a clear idea of the nature of the Passport Union envisaged in the Paris Communiqué. This can only be obtained from an analysis of the elements regarded by its authors as being central to a Passport Union. At all events the Heads of Government, in contemplating the establishment of such a Union, regarded three measures as essential: prior introduction of a uniform passport, harmonization of legislation affecting aliens and abolition of passport control within the Community. The significance of the Passport Union may be gathered from the scope and interdependence of these three projected developments.

¹ Such zones involving Member States of the Community have been established between the Scandinavian countries and Finland, between the United Kingdom, Ireland, the Channel Islands and the Isle of Man, and between the three Benelux countries. A comparative description of these three zones is given in Annex 1, p. 17.

2.2 Uniform passport

To understand the significance of the uniform passport in a Passport Union, the possible nature, uses and purpose of such a passport must be considered.

2.2.1 The uniform passport will, as the first step towards a Passport Union, be a document issued by each Member State to its own nationals. It cannot be imagined that the Member States would in the near future grant the Community authority to issue passports, and that this authority would be recognized by the international community.¹ The uniform passport will thus of necessity be initially a national passport which the Member States would agree should have the same appearance so as to demonstrate, in addition to a connection with the country in question, a definite connection with the Community.

2.2.2 As regards its use, the uniform passport is not intended to be a document serving only the purpose of free movement of nationals of the Member States within the Community. The words used by the authors of the Paris Communiqué show clearly that they had in mind a particular kind of identity document, one specifically intended to be used abroad, even though it may play a subsidiary role as a national identity document, so that standardizing passports will entail the joint creation of a new document intended to be used in relations with all non-member countries. There would, moreover, be little point in introducing a uniform passport to be used as an identity document solely for travel within the Community, which would be in addition to the identity card held by nationals of five of the Member States out of nine² and which is currently all that is required for such travel.

If one of the fundamental characteristics of passports is that they may be used in any foreign country, the same would be true of uniform passports. But were these to be introduced, is it possible to imagine that the same authority would issue to the same person two passports having the characteristics of documents issued

at national level and yet differing in their appearance? It seems rather that uniform passports should replace immediately or at a time to be fixed the passports of varying design currently issued by the Member States to their nationals, and be valid in the same way as such passports, not only within the Community but also *vis-à-vis* all non-member countries. In other words they would be used in those non-member countries which require passports, whereas in the remaining non-member countries and in the Community, they would be used by all nationals of those Member States which do not issue national identity cards and by the nationals of Member States which issue such identity cards, whether they do not hold such a document or whether they prefer to use a passport.

2.2.3 Having established that passports of uniform appearance should be used in place of the passports currently issued by Member States, the manner of this replacement and its significance should now be examined.

Although it is true that the creation of a passport of uniform appearance would in no way affect agreements concluded by each Member State with non-member countries for the benefit of its nationals, and would leave unaffected the differences in treatment accorded by such countries according to whether a person is a national of one Member State or another, the fact remains that the introduction of such a passport would have a psychological effect, one which would emphasize the feeling of nationals of the nine Member States of belonging to the Community. But to fully appreciate this effect, it should

¹ The Community institutions have at present the right merely to issue *laissez-passer* to their officials and servants (cf. Article 7 of the Protocol on the Privileges and Immunities of the European Communities). The holders of such *laissez-passer* may travel freely within the territory of the Community and non-member countries which recognize them (currently only Switzerland) without being required to present any further proof of identity.

² In France and Italy, national identity cards are generally carried, although they are optional. They are compulsory in Germany, Belgium and Luxembourg.

be remembered firstly that for the nationals of five Member States, only national identity cards need be carried to travel to a number of non-member countries, and secondly that the replacement of one document by another (in this case, a national passport by a uniform passport) will be felt much more positively and lastingly if accompanied by a change in the *statu quo*, i.e. if the connection with the Community attested to by the uniform passport produces concrete results with regard to the treatment accorded to its holder by non-member countries.

One should take into account not simply the psychological effect of a uniform passport as justifying its existence but that such a passport might be equally justified by the desire of the nine Member States to affirm *vis-à-vis* non-member countries the existence of the Community as an entity, and eventually to obtain from each of them identical treatment for citizens of the Community. In the same way that equality of treatment is assured, on the basis of the Community Treaties, between citizens of the Community in the Member State in which they reside, so equality of treatment of Community citizens, whatever their nationality, would be ensured by stages through the Passport Union, when they travel to a non-member country. It would certainly be disturbing to find that two nationals of two different Member States, each holding a uniform passport, were treated differently by the same non-member country because of their nationality by, for example, requiring one to have a visa and not the other or where discrimination arose by granting one the right to pursue business activities and not the other.

This approach would give uniform passports the status traditionally associated with passports which, in addition to attesting to a connection with a legal person governed by public international law, secure equal treatment as between holders of the same kind of passport by other international entities recognizing that legal person.

Thus in addition to bringing into being a passport of uniform appearance, the Passport Union would have as an objective the task of acquiring

for that document the status normally reserved for such documents, thus involving negotiations with each non-Member State to secure identical treatment for all citizens of the Community.

If this approach were adopted, the uniform passport would thus have to be viewed as supporting rights to be negotiated to attain identical treatment for all nationals of the Member States by non-member countries and as evidence of the desire of the Member States to undertake such negotiations.

2.3 *Abolition of passport control within the Community*

In addition to the aspect of the Passport Union concerned with external relations and consisting of the creation of a uniform passport and possible extension of that measure, i.e. negotiations for identical treatment of citizens of the Community by non-member countries, there is an aspect concerned with internal relations which involves, as we shall see, the abolition of passport control within the Community. The actual scope of this may be discerned stage by stage by means of an analysis based on gradual elimination.

2.3.1 Abolition of passport control within the Community can not mean abolishing all checks on identity documents throughout the Community. All the Member States require aliens to carry either a passport or an identity card, and although some do not have a system of identity cards for their own nationals, identity checks have to be carried out in other ways. It is clear that the authors of the Paris Communiqué did not envisage the general abolition of passport checks on aliens. What they had in mind must therefore be checks carried out at frontiers at the time of entry or exit by aliens.

The Member States mutually recognize the right to check the passports not only of aliens but also of their own nationals and these checks are carried out at the frontier on exit or re-entry.

It is thus clear that the abolition of passport control within the Community means the abolition of passport control at Community internal frontiers.

2.3.2 Further, abolition of passport control can not consist only of abolition of control of passports at the internal frontiers of the Community. It must logically extend also to documents which replace passports by agreement between States, such as national identity cards.

In order to be in any way beneficial, abolition of passport control must include abolition of checks on all documents recognized as valid identity documents in the context of international relations.

2.3.3 Moreover, abolition of identity checks at internal frontiers can not be selective and apply only to nationals of the Member States to enable them alone to move freely within the Community. It is impossible to distinguish nationals of another Member State from those of a non-member country. If identity checks in respect of the former are to be abolished their abolition in respect of the latter must also be accepted.

2.3.4 Finally, abolition of passport control at internal frontiers can not apply only to identity documents, allowing checks on documents based on them, such as entry or exit visas, residence permits and work permits to continue. To retain checks on these documents would defeat the object and destroy the advantages of abolishing checks on identity documents.

2.3.5 To sum up, if all the implications of the abolition of passport control within the Community are considered, it is clear that this entails on the part of each Member State abolition in principle of all forms of control of individuals, whatever their nationality, carried out at the internal frontiers of the Community both on their entry into or exit from the country concerned. It should not be forgotten, however, that free movement of persons across internal frontiers cannot be attained solely through the Passport Union. This can only be achieved by

ensuring, in addition, that checks are not made on goods or on currency carried by such persons, or on their vehicles.

Moreover, as with the uniform passport, abolition of control of persons at Community internal frontiers provides scope for further action. In the same way that the introduction of uniform passports could lead to negotiations for equality of treatment of nationals of the Member States by non-member countries, abolition of controls of persons could, by reason of their transfer to external frontiers, trigger off developments towards equality of treatment of the nationals of non-member countries by the Member States on the lines of a process exemplified by the Convention on the transfer of control of persons to the external frontiers of Benelux signed on 11 April 1960.¹ A similar development which, when complete, resulted in nationals of one-member country holding the same kind of passport no longer being treated differently by the nine Member States because of their nationality would accord with the concept of a Passport Union which went further than being simply a free movement zone.

2.4 Harmonization of legislation affecting aliens

Introduction of a uniform passport and abolition of controls of persons at internal frontiers are objectives beyond which others, more ambitious, may be discerned. However, harmonization of legislation affecting aliens, like all harmonization of national laws, cannot constitute an objective. In the present case, it would be rather the consequence of abolishing control of persons at internal frontiers. The abolition of such control entails the transfer of controls to external frontiers to some degree, implying harmonization of the national legislation concerned. Moreover, if equality of treatment of nationals of the Member States by non-member countries were negotiated on the basis of the uniform passport, these

¹ See Annex 1, page 17.

countries would be bound to request in exchange a similar degree of equal treatment of their nationals by the Member States which would lead in this way to harmonization of the national laws concerned. In both cases however, the relevant part of each Member State's legislation affecting aliens is that which applies to nationals of non-member countries and not that which applies to nationals of the other Member States, which has already been considerably amended in implementation of the EEC Treaty, and in particular Articles 48, 52, 56 and 59 thereof.

If it is true that harmonization of legislation is a question of means rather than ends, it does not seem necessary, for the purpose of defining the possible nature of the Passport Union, to further analyse here the purpose and methods of harmonizing legislation affecting aliens. Annex 2 provides additional information on the national laws governing aliens and about the harmonization of those laws as a consequence of attaining the objectives of the Passport Union.

2.5 Conclusion

It has proved possible to define the Passport Union on the basis of the constituent factors analysed above.

These factors have shown the Passport Union to be a project aimed at confirming the Community as an entity *vis-à-vis* the rest of the world and capable of reviving the feeling of citizens of the Community of belonging to that entity.

The form this project will take consists firstly in replacing national passports of varying appearance with a uniform national passport, and perhaps in addition in seeking to secure identical treatment of citizens of the Community by every non-member country. In this way, the impact of such identical treatment which would make nationals of the Member States working or travelling outside the Community more aware of their connection with the Community would be added to the psychological effect of having a passport of uniform appearance.

The project also involves abolition of control of persons at Community internal frontiers and some degree of transfer of such control to external frontiers, which could lead to uniform treatment of nationals of non-member countries by all the Member States.

This second aspect of the Passport Union will have a considerable impact on public opinion, since it affects citizens of the Community travelling within the Community and all nationals of non-member countries travelling to any of the Member States.

The harmonization of legislation affecting aliens referred to in point 10 of the Paris Communiqué as the third element central to the Passport Union is in fact only the corollary of the other two. It is clear that the greater the extent to which the Member States agree to afford equality of treatment to nationals of non-member countries, whether it be to ensure that a more efficient check is kept on such aliens or to secure equal treatment on the part of non-member countries in exchange, the more extensive and fundamental will be the harmonization of national laws affecting aliens.

3. Main problems raised by the establishment of a Passport Union which will have to be studied by the working party

Its remit being to study the possibility of establishing a Passport Union, the working party will obviously have to define the elements central to such a project. If it were to arrive at the concept of a Passport Union described above it would have to study the conditions and time limits in which this could be brought into being. In this respect, its work could be organized under the following four headings:

- uniform passport;
- abolition of control of persons at international frontiers in the Community;
- equality of treatment of nationals of Member States by third countries;
- legal implementation of the Passport Union.

3.1 *Uniform passport*

3.1.1 It should not be particularly problematic to decide on the appearance, content and holders of the uniform passport provided that there is agreement that this passport, although essentially national, will demonstrate, in addition to a national connection, a connection with the European Communities and will replace existing national passports whose appearance varies. It should however be pointed out that the detailed arrangements for replacing existing national passports by a uniform passport could raise some problems of a political nature. This could for example be the case with the British passport issued by the United Kingdom not only to British citizens with the right of abode but also to other British subjects who are citizens of non-member countries.

3.1.2 The time required before the first uniform passports are issued could be relatively short, firstly because the problems involved do not seem unduly numerous, and secondly, because this is in principle a project separate from the abolition of control of persons at internal frontiers.

3.2 *Abolition of controls of persons at internal frontiers*

It is at present impossible for the Commission to draw up a complete list of the main problems raised by the abolition of control of persons at internal frontiers and to put forward possible solutions to each of them. This is because of lack of information about the legislation in each Member State governing frontiers checks on persons entering or leaving, whether nationals or aliens. Furthermore, there is uncertainty about the conditions under which such legislation is applied in practice. In one and the same Member State legislation and practice may even vary according to the frontier in question.

In these circumstances, the only thing that can be done at present is to draw up a work programme. Five guidelines are suggested under

which the problems raised by the abolition of checks at internal frontiers may be listed, then dealt with.

3.2.1 Once the internal and external frontiers in the Communities are determined, it will be necessary to draw up a list of the controls of persons carried out at present by each Member State at internal frontiers, and to establish the extent to which the disappearance of such controls would affect application of the relevant substantive provisions.

In doing so, the importance of frontier checks should not be overestimated. As regards aliens who are nationals of another Member State, these checks are in fact to a large extent superfluous, but are maintained because it is impossible to distinguish such persons from nationals of non-member countries on the basis of physical appearance. Moreover, checks upon entry are, generally speaking, *a priori* checks the disappearance of which would affect neither the system of *a posteriori* checks carried out within national territory or the penalties applied when offences are established.

3.2.2 Once cases have been established where abolition of checks at internal frontiers would lead to a considerable reduction in the effectiveness of the relevant substantive provisions, the necessary corrective measures would have to be found. These could consist in:

- adapting the relevant national rules and their application solely by the Member State in question, for example by increasing the number of random checks carried out *a posteriori* and the severity of the penalties imposed for established offences, or
- establishing close cooperation between the supervisory authorities in the Member States, who would provide one another with the assistance necessary to ensure that the substantive provisions adopted independently by each Member State were respected, or
- amending the national substantive provisions so as to harmonize or even standardize them, possibly granting authority to joint bodies.

Three matters which would call for common action by the Member States come to mind straight away.

The first is the system of card checks on persons entering and leaving

Only certain Member States, namely Ireland and the United Kingdom, have set up a system whereby cards are issued to persons upon entry and collected on departure, thus enabling the length of stay in their territory to be checked. This problem would therefore have to be examined.

The second is the visa aspect

Visa requirements, which are different for immigration than for holiday and business trips, are not the same in the nine Member States. So long as these differences are not integrated into a common foreign policy, they will remain an obstacle to the establishment of a single, lasting visa policy within the Community.

Within Benelux the problem is resolved by a common policy while in the Nordic Union it is achieved through a simple form of administrative cooperation. There are no provisions on this subject in the Understanding but in fact there are few differences between the visa requirements of Ireland and the United Kingdom.

The third is the question of deportation

Here there are differences from country to country found not only in written rules (objective grounds for deportation), but also in concepts and policies. All countries aim to uphold law and order and public security and reserve the right to deport aliens on these grounds, but these concepts are differently constituted from one country to another and the Member States retain untrammelled power to define them. These constituent parts are not harmonized in respect of aliens from another Member State even in the Community context. It has not been possible to do more than to lay down certain limits (for

example, prohibition on relying on economic reasons or previous convictions) and to strengthen safeguards through the courts. Moreover, the strictness with which deportation measures are applied varies greatly from one Member State to another; the differences in attitude are largely dependent on the economic, social and political factors prevailing at the time. To resolve this problem Benelux and the Nordic Union make cases for deportation subject to a consultation procedure. The Understanding makes no provision for such cases.

3.2.3 Once the working party has established, in particular by examining the above three questions, which checks should be carried out by each Member State on behalf of all others at the external frontiers, it should then consider to what extent such checks are compatible with the agreements entered into by the Member States with a particular non-member country and designed to simplify or abolish controls of persons.

Where such checks are found to be incompatible there are three possible solutions: the Member State party to such an agreement repudiates it, the agreement is extended to all Member States of the Community, or lastly the agreement is amended in such a way that the Member State party to it is able to provide the other Member States with adequate guarantees regarding the control of persons it carries out on behalf of all.

3.2.4 The working party would also have to establish, by weighing the advantages and disadvantages, whether checks should be abolished at all the internal frontiers of the Communities or whether this should not apply to the non-European territories of Member States.

3.2.5 Finally, the working party will have to undertake examination of all checks carried out at internal frontiers which are liable to impede the free movement of travellers, so as to verify that the various sectoral measures already taken or in the process of being taken in fact result in complete freedom of movement.

In this respect, the working party would have to extend its investigations to checks carried out not only on persons themselves (identity, right of entry, etc.) but also, for example, on articles or currency carried.

These are the lines along which the working party could structure its work on the abolition of controls on persons. It will moreover find aspects to consider in the various projects and actual developments referred to in Annexes 1 and 3.

In the absence of precise information about the main problems to be resolved, it is difficult to estimate the time within which abolition of control of persons could become effective at the internal frontiers of the Community. However long this may be it will be considerably lengthened if abolition of controls is linked to the introduction of an identity card cum passport.¹

3.3 *Equal treatment of nationals of Member States by non-member countries*

Achievement of this objective, if adopted by the working party, is in essence independent of the abolition of control of persons at internal frontiers. It implies long term action which would commence after the introduction of the uniform passport and which would lead to major changes for the Communities.

3.3.1 As is shown by the example of Benelux, abolition of control of persons at internal frontiers can lead to the gradual development of a common visa policy *vis-à-vis* non-member countries. If this is done, by granting reciprocal rights, the Member States would be induced to negotiate with such countries with a view to abolishing visas for all their nationals.

3.3.2 Although on this particular point regarding visas a certain degree of equality of treatment of nationals of Member States by non-member countries can be achieved through developments resulting from the abolition of checks at internal frontiers, nevertheless such equality of treatment as a whole is an objective that can be achieved through a separate programme that would con-

stitute one of the possible developments opened up by the creation of the uniform passport. This programme would probably have to be spread over a number of years since equal treatment of nationals of all Member States by all non-member countries implies the replacement of existing bilateral agreements by joint agreements according to a process which could be similar to that by which the common commercial policy is gradually being introduced at present. Moreover, through the grant of reciprocal rights, these renegotiations would raise directly the problem of Member States according equality of treatment to nationals of non-member countries thus supplementing the initial results obtained in this connection by means of joint action following abolition of checks at the internal frontiers of the Community.

3.3.3 It is clear that such a process would gradually give non-member countries the feeling that here were the beginnings of Community citizenship. For this reason, if the working party were to carry its proposals regarding equality of treatment of nationals of Member States by non-member countries thus far, it would have to take into account, firstly, the grant of special rights envisaged in point 11 of the Paris Communiqué which by granting political rights aims to confirm on an internal basis the existence of Community citizenship, and secondly, the European Union proposals which are being drawn up at present.

3.4 *Legal implementation of the Passport Union*

If the working party concludes that a Passport Union is feasible and establishes in sufficient detail the conditions and detailed arrangements under which it could be brought into being, it will then have to consider how the relevant agreements should be legally formulated.

Since the Community Treaties contain no provisions giving an immediate power to act with

¹ See Annex 3, point 2, page 21.

regard to political rights, even under Article 235 of the EEC Treaty, the legal instrument to be employed would have to be an *ad hoc* act, which could be a new treaty governed by international law or—if necessary—an amendment to the EEC Treaty pursuant to Article 236 by addition of the necessary provisions, e.g., in the form of a Protocol.

If the solution of a new treaty governed by international law were adopted, a number of questions would arise such as whether or not such a convention would have to contain self-executing provisions, whether or not provision should be made for uniform interpretation of it, etc.

3.5 Conclusions

The problems raised by the projected developments specifically referred to in point 10, of which, such as the endeavour to secure identical treatment of Community nationals by every non-member country and its corollary through the grant of reciprocal rights, i.e., negotiations to secure identical treatment of nationals of every non-member country by Member States, would logically result from one of these projected developments, namely the uniform passport, have indicated by their scale, and having regard to past and current experience, which of the projected developments could be put unto effect within a reasonable time and without too great difficulty.

These projected developments are the introduction of a passport of uniform appearance provided it is not technically sophisticated, abolition of checks at internal frontiers and their transfer to external frontiers based on the relevant experience of six Member States and harmonization of legislation affecting aliens confined to measures regulating tourist and business visitors.

The objectives of securing uniform treatment of Community nationals by every non-member country and, through the grant of reciprocal rights of uniform treatment of nationals of such countries by the Member States would be more

difficult and take longer to achieve. In addition to the need to harmonize the visa and immigration policies of the Member States, which is bound up with the aspect of reciprocity, non-member countries would have to agree to regard the Nine as a single entity and European citizenship as a reality. It must be acknowledged that the Community does not at present have jurisdiction over the rights of persons, with the exception of economic and social rights, and that European citizenship, which does not exist at present, will take the first step towards becoming a reality only with the election of the European Parliament on the basis of universal suffrage and the implementation of point 11 concerning special rights. In any event, even if this objective were adopted, it would not be so pressingly important as those outlined earlier since it affects only nationals of Member States who leave the Community and its attainment would be mainly appreciated by those few who spend long periods in non-member countries.

4. Composition of the working party

4.1 Point 10 makes no mention of the nature of the legal instruments whereby the Passport Union could be brought into being or the procedure to be adopted for its implementation; it merely states that a working party will be set up to study this and to submit a draft to the Governments of the Member States.

It appears that there are two possible approaches with regard to legal implementation of the Passport Union: firstly a separate Treaty governed by international law and secondly a revision of the EEC Treaty. In fact, the fundamental objective of any liberalization is, as has been shown, to secure freedom of movement entirely devoid of any controls within the Community, other aspects being more or less corollaries or consequences of this basic principle, particularly with regard to the transfer of controls on aliens to the external frontiers of the Community, harmonization of legislation and the joint conclusion of agreements with non-member countries on treatment of their nationals by the Member

States. Thus, although the Passport Union is not essential to achievement of the objectives of the EEC Treaty as it stands at present and since it is therefore not possible to rely on Article 235, it remains true that it is a natural extension of the principles of free movement which constitute one of the foundations of the Community."

Whichever means are chosen, it is clear that the abolition of identity checks at the internal frontiers of the Communities, which is one of the objectives of point 10, is in keeping with abolition of all types of controls at such frontiers and would follow on logically from what has been achieved already under the Community Treaties with regard to freedom of movement of persons.

In these circumstances, to ensure that the work to be carried out is consistent with the objectives attained under the Community Treaties and to ensure their continuity the Commission proposes that it should itself provide the chairman of the working party which will be made up of persons designated by the Member States and will be required to submit a report to the government representatives meeting within the Council, and should also be responsible for the secretariat. Once the working party has been set up, the Commission will take the necessary steps to see that it meets without delay.

Annex 1

Comparative study of:

- the Benelux Convention of 11 April 1960
- the Convention between the Nordic countries of 12 July 1957
- the 'Understanding' between the United Kingdom and Ireland.

In considering the abolition of control of persons at internal Community frontiers it is of value to study and compare the Conventions already in force which have been concluded between or with certain Community countries and which have established zones within which persons may move freely without being subject to frontier checks.

It should be noted that six Community countries are already involved in such free movement zones.

1. Benelux Convention of 11 April 1960¹

1.1 The main object of the Convention is to:

- abolish controls of persons at internal frontiers;
- encourage the adoption of a common policy on the crossing of external frontiers.

1.2 Application of the Convention

1.2.1 A joint working party has been set up pursuant to the Convention. It meets regularly and the three countries consider that it operates very satisfactorily.

This working party:

- lays down fundamental rules governing the control of persons at external frontiers;
- makes preparations for the gradual harmonization of national rules governing the entry and residence of aliens (in relation in Benelux);
- draws up the relevant instructions issued by the three countries to their diplomatic and consular representatives.

¹ Convention of 11 April 1960 between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands on the transfer of control of persons to the external frontiers of Benelux territory.

1.2.2 There is in addition an Inspection Committee consisting of representatives of the three countries which visits at regular intervals the crossing points at the external frontiers of the Benelux territory.

1.2.3 The authorities of each of the three countries supply one another with all relevant information concerning offences committed in connection with the entry, movement and residence of aliens.

Aliens declared undesirable in one of the three countries may, at the request of that country, be declared undesirable in the other two. As a rule a request of this type is complied with.

1.2.4 The three countries endeavour to maintain a joint approach on the subject in international organizations such as the ICAO (International Civil Aviation Organization) and the IMCO (Inter-Governmental Maritime Consultative organization).

1.2.5 Since 1962 a number of conventions have been concluded by the Benelux with non-member countries concerning visas or their abolition. Visas granted are valid throughout the Benelux territory.

2. Nordic Convention of 12 July 1957¹

2.1 The object of the Convention is to:

- abolish control of persons at internal frontiers;
- transfer such control to external frontiers.

2.2 *Comparison between the Benelux Convention of 11 April 1960 and the Nordic Convention*

2.2.1 Points of similarity

- checks are carried out in principle at external frontiers;
- persons admitted into the territory of one of the Nordic States may move freely in the other three States (subject to exceptions);
- the four States have given mutual undertakings to expel persons whose presence is considered undesirable by one of the other three States (except where there is an express decision to the contrary);
- the four States have given mutual undertakings to supply the other States with all necessary information regarding the residence of non-Nordic aliens.
- a 'Cooperation Committee' has been set up to 'deal with matters of importance to the common passport control zone'.

2.2.2 Differences

- each State has reserved the right to carry out checks at intra-Nordic frontiers where it considers this necessary;
- the Cooperation Committee is an advisory body. It does not draw up common rules regarding frontier controls nor does it aim to harmonize national rules regarding the entry and residence of non-Nordic aliens;
- the diplomatic and consular representatives of Nordic countries do not receive common instruction;
- there is no provision for coordination between the four Nordic countries in international organizations;
- the four Nordic countries do not have a common policy regarding the issue of visas.

2.3 *A special feature of the Convention*

A system of entry and exit cards has been devised in coordination with national rules regarding visas.

When a person requiring a visa in a Nordic country enters that country an entry card is completed by the authorities in the country of entry. They retain this card. The alien is issued with another card which he must be able to show in the event of a check. This card indicates the period of time during which he may reside in the zone.

When the alien leaves the zone the authorities of the last Nordic country through which he passes retain the second card, indicate the date of exit and send it to the authorities of the country where he entered the zone.

This system allows a check to be kept on whether the alien is still in the zone or has left it.

If the alien obtains a residence permit for a longer period in a Nordic country other than that by which he entered the zone the authorities of the country issuing the extended permit notify the authorities of the latter country.

This card system cannot however operate where an alien requires an entry visa for one country, e.g., Finland, but not for another, e.g., Denmark. In such a case a card is not completed on entry into the zone via Denmark. The person may therefore enter Finland via the frontier between Sweden and Finland without undergoing a check.

¹ Convention between Denmark, Finland, Norway and Sweden concerning the waiver of passport control at the intra-Nordic frontiers, signed at Copenhagen on 12 July 1957—United Nations Treaty Series No 4660.

This shortcoming of the Convention cannot be remedied so long as there is no common policy between the Nordic countries regarding the issue of visas.

3. The 'Understanding' between the United Kingdom and Ireland

The 'Understanding' concerning the free movement of persons between the United Kingdom and Ireland dates from the Twenties.

It consists of an agreement between the Governments of both countries of which there is no official text. It is an established administrative practice facilitated by a common past and by the similarity of the policies of both countries regarding the entry and residence of aliens.

It relates solely to checks at internal frontiers. Officially, therefore, there is no common visa policy but in practice the policies are similar. There are certain instances where a visa is required for one of the countries and not for the other but these are rare. Moreover there is no common policy regarding undesirable aliens. It is thus possible for a person regarded as undesirable by the United Kingdom to enter the zone via Ireland and to pass unchecked into the United Kingdom via the internal frontier between Ireland and the United Kingdom.

A system of entry and exit cards is applied in both countries to all persons having neither British nor Irish nationality.

However, this system is less highly developed than that of the Nordic countries in that the exit card is not sent automatically to the authorities of the country of entry.

Consequently, a person possessing a visa for Ireland may enter Ireland, then enter the United Kingdom unchecked and leave the United Kingdom for the continent of Europe without the Irish authorities knowing whether or not he has left the free movement zone. The Irish authorities may in fact succeed in discovering this since the United Kingdom authorities complete an exit card when the person leaves the free movement zone but they do not forward it automatically to the Irish authorities.

4. Conclusions

It follows from the above:

— that it is possible to establish a free movement zone between a number of countries without adopting common policies or practices regarding deportation or the issue of visas (cf. Nordic convention; the 'Understanding' between the United Kingdom and Ireland);

— that it is clear however that the lack of a degree of coordination of policies regarding visas and the deportation (or refusal of entry and residence) of undesirable aliens makes the relevant national provisions less effective since aliens may more easily circumvent them in the absence of checks at national frontiers.

This shows that although the abolition of checks at the internal frontiers of a community would at first sight seem to be a purely internal measure, it has consequences affecting policy *vis-à-vis* non-member countries.

The example of Benelux demonstrates these consequences clearly.

Annex 2

Harmonization of legislation affecting aliens

The purpose of what follows, after recalling the nature of legislation affecting aliens, will be to illustrate with examples its relationship with the abolition of passport control within the Community and the endeavour to secure identical treatment of Community nationals by non-member countries, to thus show that the various aspects of the Passport Union envisaged in point 10 of the Paris Communiqué form a coherent whole and finally, that even if only the internal features of the Passport Union were brought into being this could result in negotiations with non-member countries.

What is legislation affecting aliens?

Each Member State's legislation affecting aliens covers all provisions, whether adopted unilaterally or by agreement, relating to the rights of aliens, whether they be nationals of other Member States or of non-member countries. These provisions include measures which treat them in a particular way and others which treat them in the same way as nationals, and they may be divided into two broad categories, namely:

1.1 Control of aliens and immigration

This is the administrative system whereby the entry, expulsion, duration of residence and deportation as well as the activities of aliens depend upon individual decisions taken by government departments on grounds of public order, health and security and of immigration policy. The provisions governing this administrative system are based on the existence of rights, proof of such rights and checks on them.

1.2 Civil, economic, social and political rights acknowledged as belonging to aliens

There are general rules defining, in respect of all aliens or certain categories of aliens, the rights enjoyed and exercised by them once they are individually authorized to reside or pursue an activity in national territory. One may quote, by way of example, the right to acquire immovable property, receive social security benefits, take part in professional or trade associations by voting or by being eligible for election and take up certain activities such as those of doctors, lawyers, etc.

2. *Harmonization of legislation affecting aliens as a result of the abolition of control of persons at the internal frontiers of the Community*

Abolishing passport control within the Community would mean that such control would be transferred to the external frontiers and that each Member State would carry this out on behalf of all the others unless the Member States abandoned all *a priori* control which seems unthinkable.

A priori control by a Member State on behalf of all implies in turn a minimum degree of harmonization of national laws governing nationals of non-member countries.

The type of legislation liable to be affected by such harmonization following the abolition of control of persons at the internal frontiers of the Community is that described above under control of aliens and immigration.

It is possible to conceive of a number of situations in which such harmonization would probably be necessary. For example, if some Member States wish to continue to require an entry visa, even for tourist or business visits, from nationals of a particular non-member country while others have waived this requirement, the fact that the latter allow those nationals to enter their territory without a visa would make it very difficult for the former since abolition of controls at integral frontiers would mean that those nationals could enter without a visa a State which required them to have a visa. In this way, national laws governing visas would lose much of their effectiveness if they are too dissimilar.

In the same way, although some Member States are strict about entry into their territory and have very elaborate exit and entry control procedures designed to ensure in particular that an authorized period of residence has not been exceeded others with less strict entry controls may on the other hand act more expeditiously with regard to deportation or apply more severe penalties for illegal periods of residence, just as they may prefer a system whereby registration

is required on arrival or on passing through the place or places of residence in their territory to check the period of residence.

3. *Harmonization of legislation affecting aliens as a result of non-member countries according equality of treatment to Community nationals*

Legal provisions affecting aliens which could be harmonized as a result of the endeavour to secure equality of treatment of Community nationals by non-member countries comprise both that which has been described under control of aliens and immigration and the body of civil, economic, social and political rights acknowledged as belonging to aliens.

4. To summarize, it appears that the harmonization of legislation affecting aliens to be undertaken in implementation of point 10 of the Paris Communiqué should include at the very least entry and residence requirements imposed on tourists and business visitors, measures for controlling persons at external frontiers and *a posteriori* control, and expulsion, deportation or other measures designed to prevent entry into or unauthorized presence in national territory. Insofar as certain of these rules are the subject of conventions the latter will have to be re-negotiated.

Annex 3

Current projects and existing schemes which appear to be related to implementation of the Passport Union

1. Current projects and existing schemes connected with one or other of the objectives of the Passport Union provided for in the Paris Communiqué include abolition of control of persons at frontiers, introduction of a uniform passport and harmonization of legislation affecting aliens.

There are two types of existing schemes relating to checks at frontiers: those emanating from the Council of Europe in the form of agreements to be ratified by its member countries and agreements between countries to set up among themselves a zone within which persons may move freely.

Six Member States belong to zones within which persons may move freely: the Benelux countries which have set up such a zone between themselves, the United Kingdom and Ireland form one with the

Channel Islands and the Isle of Man, and Denmark which belongs to a zone comprising the Scandinavian countries and Finland.¹

The agreements prepared by the Council of Europe aim to simplify formalities at frontiers. There are three such agreements: one deals with rules governing the movement of persons between the member countries of the Council of Europe, another concerns the abolition of visas for refugees and the third covers the movement of young persons travelling under a joint passport between the member countries of the Council of Europe. Only the first of these agreements is of a general nature and could therefore have some bearing on the abolition of passport control within the Community. However, while it increases the number of identity documents which may be used for international travel it does not reduce checks on these documents at frontiers.

2. The introduction of a uniform passport calls to mind another Council of Europe initiative. On the basis of work carried out by the International Civil Aviation Organization with a view to introducing an electronic identity card cum passport the Council of Europe proposes to encourage the adoption and recognition by its member countries of such a document which would enable wanted persons to be identified by means of a signal memorized by computer.

Starting from this premise some Community Member States have considered encouraging the introduction on a similar basis of a card to be issued to all nationals of Member States established in the Community or in a non-member country and to nationals of non-member countries established in the Community which, besides being indicative of the European Union in course of creation, would prove in an easily verifiable manner each time a check was made the identity of its bearer and his Community status. These identity documents would also be computerized and would follow the trend in the Member States of having more refined statistical information which can be checked at any time about nationals and aliens established in their territory.

Advocates of these documents regard them as being valuable and useful at intra-Community level only. They would serve no purpose other than that of the identity documents already accepted as proof of identity by the Member States. It would simply be a question therefore of replacing such documents by a uniform and updated one which could be checked particularly efficiently and quickly.

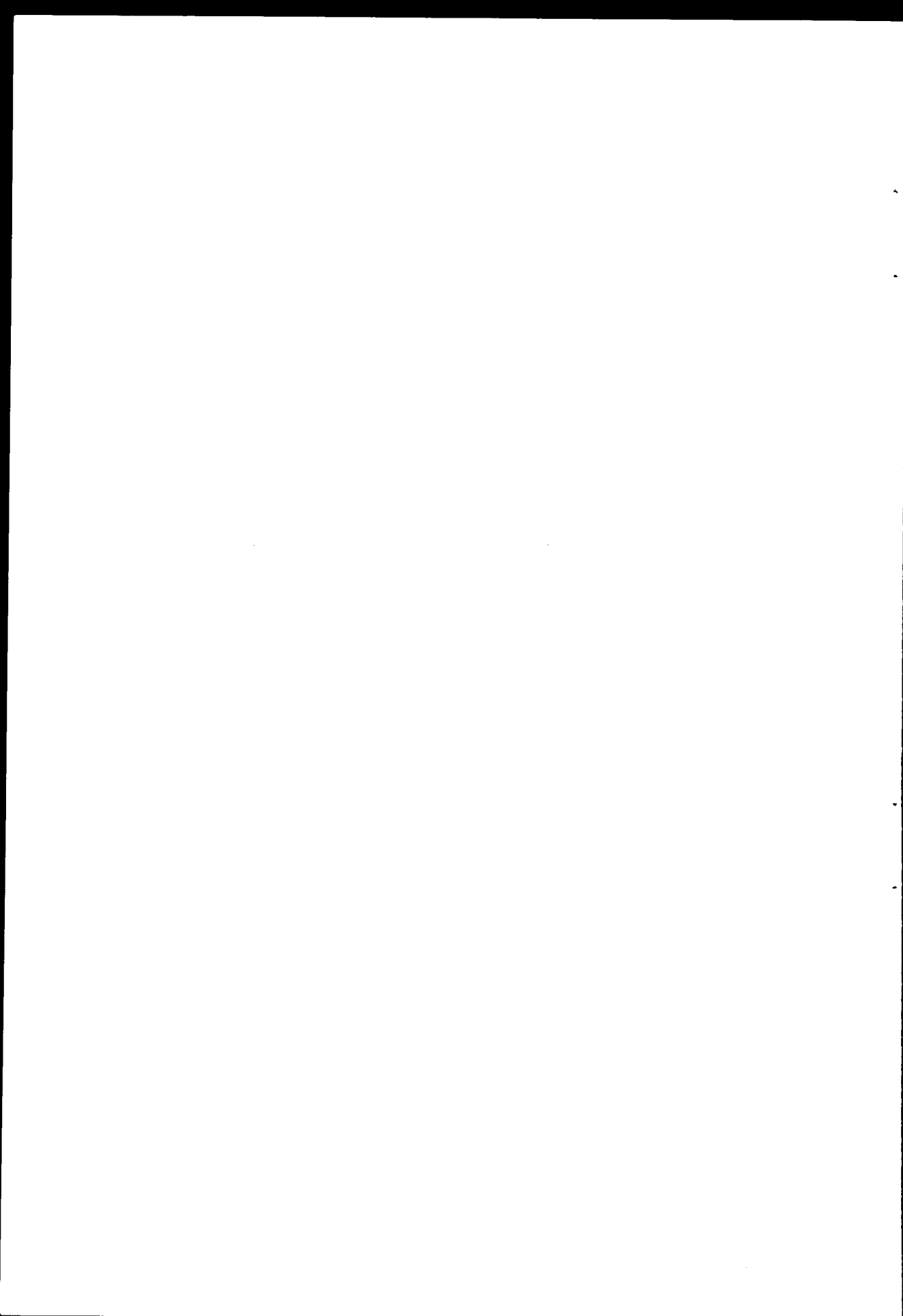
The projects of the International Civil Aviation Organization, the Council of Europe and certain Member States are all based on similar considerations, i.e.: considerable increase in international travel, the need

to adapt controls to this new phenomenon, recourse to international cooperation, use of computers and consequent need for appropriate standardization of identity documents. These factors differ from those which underlie the establishment of a Passport Union but they should nevertheless be studied when work is undertaken with a view to introducing a passport of uniform appearance.

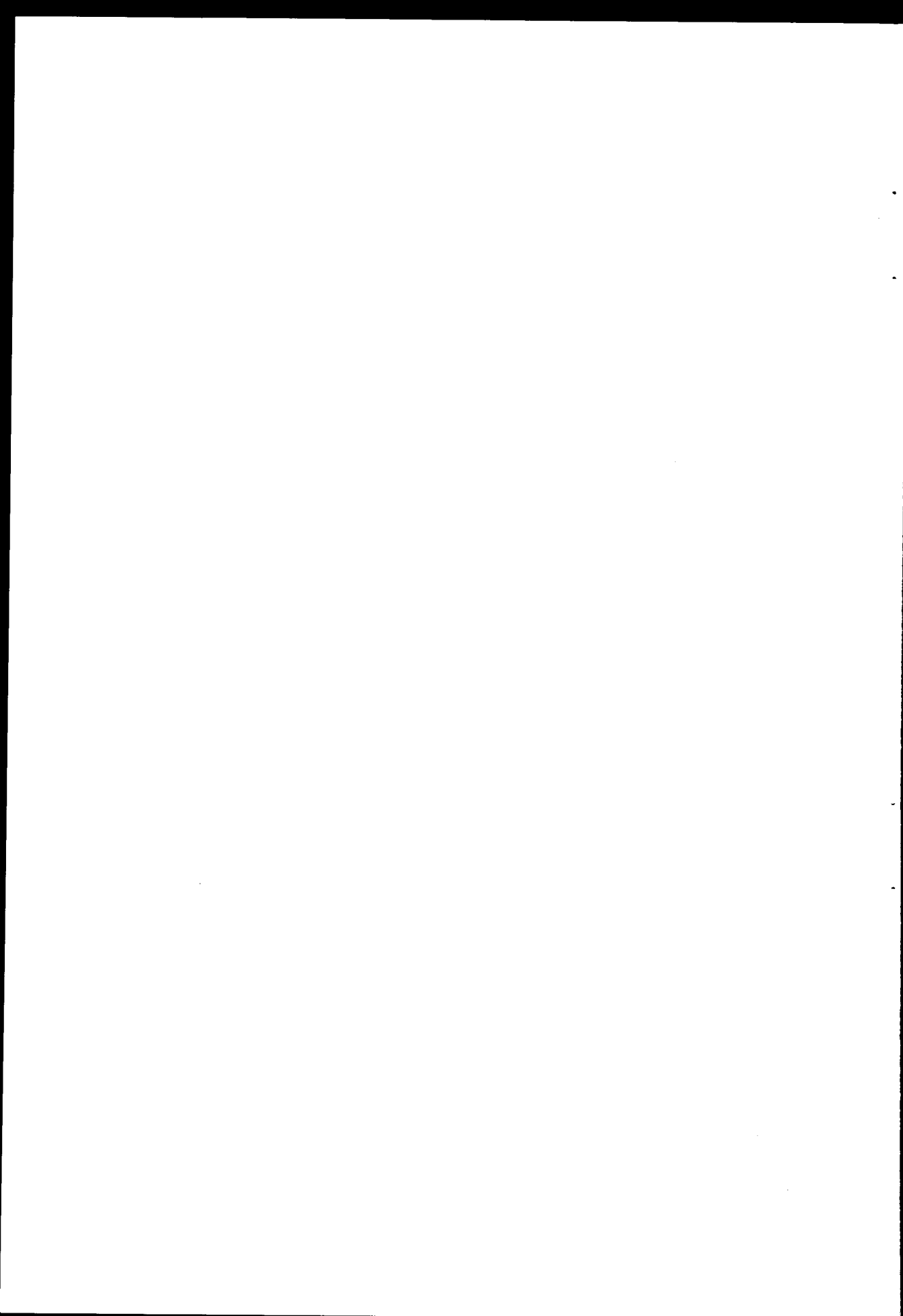
3. The harmonization of legislation affecting aliens in the member countries of the Council of Europe is being studied at present by the Legal Affairs Committee of its Assembly. The study will indicate the most pressing problems in this field and approaches which could be adopted to solve them. It covers legal provisions governing the entry and short term residence of aliens as well as those relating to establishment and the pursuit of business activities in another member country.

The Legal Committee is expected to present a report and a draft resolution in the autumn to the Council of Europe on the technicalities and political implications of such an undertaking.

¹ The special features peculiar to the organization of the different zones are described in Annex 1, pages 17 to 19.



The granting of special rights



Covering letter to the Council

Point 11 of the final communiqué of the European Summit held in Paris on 9 and 10 December 1974 states that 'another working party will be instructed to study the conditions and the timing under which the citizens of the nine Member States could be given special rights as members of the Community'.¹

It was agreed with the Member States that the Commission should consider the problems which might be involved in granting special rights as members of the Community to the citizens of the nine Member States.²

After analysing this text, taking into account the preparatory work on it and its precedents, the Commission has reached the following conclusions:

- the special rights which it is envisaged that each Member State should grant to nationals of other Member States are certain civil and political rights; the granting of these rights would be based on a principle parallel to that on which the Community Treaties are based, i.e., equality with nationals of the host country in economic matters;
- special rights of a political nature are essentially the rights to vote, to stand for election and to hold public office.

The working party should study the possibility of granting to everyone at least the right to vote and to stand for election at municipal level, as well as the access to public office connected with this right to stand for election.

Please find attached a study of point 11 and the main problems which its implementation would probably involve together with some ideas on the composition of the working party which will deal with the matter.

The Council should decide on the composition of the working party which would comprise senior officials from the Member States. Since the granting of special rights would be the logical result of applying the principle of equality with the nationals of the host country and integration

therein, to ensure the continuity of the work and its coordination with connected measures arising from the Community Treaties it would be best if the Commission provided the chairman and the secretariat for the working party.

The Commission would like to take this opportunity to point out that some discrimination still exists even with regard to economic and social rights. Further efforts should be made to ensure that, in this respect, nationals of other Member States are treated in the same way as nationals of the host country.

On 19 December 1974 the Commission forwarded to the Council an action programme for migrant workers and their families. Appropriate proposals based on this will follow in the near future.

¹ Bull. EC 12-1974, point 1104.

² Meeting of Coreper on 24 April 1974.

Commission report on the implementation of point 11 of the final communiqué issued at the European Summit held in Paris on 9 and 10 December 1974

The granting of special rights

1. Structure of the report

The report examines and develops three main topics affecting the implementation of point 11.

These topics are dealt with below under the following headings:

- Meaning of the expression 'special rights';
- Principal problems to be studied by the working party responsible for implementing point 11;
- Composition of the working party.

2. Meaning of the expression 'special rights'

2.1 Persons affected

The text of the communiqué is clear on which persons are entitled to the special rights. It is the nationals of the Member States of the Community. Therefore these rights cannot be granted to nationals of non-member countries.

2.2 Nature and object of the special rights

Special rights is a new expression which has no definition to which one can refer to establish its scope. To do this one must turn to the text of the communiqué and proceed by deduction, starting with the real or potential rights already acquired by Community nationals in the host member country, in the light of previous initiatives and the information received regarding the preparatory work.

2.2.1 The text

Point 11 talks of granting special rights to the citizens of Member States. This allusion to the citizen—basically a political concept which was substituted for the term national, which is always used in Community texts—provides a first clue to the civil and political nature of the special rights.

2.2.2 Approach by deduction

If one approaches the problem by a process of elimination one reaches the same conclusion. Special rights cannot be:

- rights which nationals of the host Member State do not possess, but rather rights which up to now have been reserved for them alone;
- the rights which Member States have undertaken freely to grant and guarantee to all foreigners where these rights involve treating foreigners in the same way as nationals. These are the rights laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms and its additional Protocols as well as rights under private law (the right to enter into contracts, the right to acquire property whether or not for a consideration) where these rights give similar protection to that enjoyed by nationals;
- the rights acquired or likely to be acquired by Community nationals by virtue of the Treaties of Rome and Paris.

Here one should distinguish between two types of rights: those concerning the relations of the nationals of each Member State with other Member States and those concerning their relations with the Community institutions.

The former help to put Community nationals on the same footing as nationals of the host country in the economic and social sectors. Although these rights are based on the economic activity of the beneficiary they are not confined to the person exercising the activity nor to the period of the activity. Workers' families as well as the recipients of services and their families are also

entitled to these rights. They are extended to workers and their families after the cessation of the activity (right to remain in the country).

Most of the rights and social benefits connected with employment have already been granted to employed persons. The family of the employed worker is entitled to the same basic social security as the families of national workers. Fewer rights have been acquired for the self-employed worker and his family; but the Commission has already undertaken to put forward a scheme of Community social security for them which is similar to that which already exists for employed persons. Employed persons who are recipients of services have for some time benefited from the social security arrangements for health care in any State to which they go.

It has been necessary to adapt the national provisions on the entry and residence of foreigners to guarantee to persons having the above rights the effective exercise of their economic and social rights in the host State. Since any national of a Member State who goes to another Member State is at least a recipient of services in the latter, one can assume that Community law provides the requisite powers, if necessary on the basis of Article 235 of the EEC Treaty, to give each of these Community nationals the economic and social rights which the nationals of the host country possess and the right to come and go in any of the Member States, subject to the exceptions relating to the exercise of official authority¹ or exceptions on grounds of public policy, public security or public health.²

Rights of nationals of the Member States in their relations with the Community institutions which have already been acquired or are on the point of being acquired include the right to become an official or other servant of the European Communities³ and the right to vote and stand in elections to the European Parliament.⁴

To sum up, since civil rights and liberties are at least in principle generally granted to all foreigners and since economic and social rights as well as the right to become an official of the Eur-

opean Communities and the right to vote and stand in elections to the European Parliament are real or potential rights acquired on the basis of the Community Treaties, it follows that the special rights referred to in point 11 of the Paris communiqué are first and foremost other rights which exist in the Member States. Pending a detailed list the most important would seem to be the rights to vote, to stand for election and to become a public official at local, regional or national level, which are political rights traditionally withheld from foreigners.

2.2.3 *Precedents*

Although 'special rights' is a new expression the idea of granting political rights to foreigners established in the Member States is not completely new.

The first political right granted to foreigners was the right to be consulted by municipal authorities. This right is exercised through the immigrants' consultative councils. The first of these councils was set up in Belgium in 1968; at present there are about 20 of them. They also exist in Germany and the Netherlands. The action programme on migrant workers and their families drawn up by the Commission provides for these councils to be extended to all the Member States as an immediate interim step towards granting the right to vote and stand for election at municipal level.

But at the first Summit held in Paris in October 1972, the Heads of Government of Belgium and Italy went further by suggesting that the right to vote and to be elected should be granted at local level to all Community nationals. Draft laws to implement this are at present before the Belgian and Italian Parliaments.

¹ Articles 48(4) and 55 of the EEC Treaty.

² Articles 48(3) and 56 of the EEC Treaty.

³ Article 24 of the Merger Treaty.

⁴ Article 138(3) of the EEC Treaty.

It should also be noted that the United Kingdom grants certain political rights to Irish citizens and to nationals of Commonwealth countries.

2.2.4 Information received regarding preparatory work in connection with point 11

The Paris communiqué talks of special rights. It is therefore obvious that the principle of complete equality with the nationals of the host country with regard to political rights has not been adopted.

Since the communiqué does not define in any way the political rights which should be granted in the host country to nationals from other Member States it was up to the departments of the Commission to find out what the authors of the communiqué had in mind. Enquiries on this point resulted in the following information:

- the origin of point 11 was a proposal by the Italian Delegation to study under what conditions and according to what timetable European citizenship could be granted to the citizens of the nine Member States;

- the Working Party set up to examine this question had concluded that what had to be done was to grant the rights to vote and to stand for election at the level of the smaller regional units. It was impossible to discover with any certainty if the intention was to grant this right only at the level of the smallest regional unit or also at the level of all units below the level of the national parliaments.

2.3 Conclusion

It has been fairly easy to establish the nature of the special rights referred to in point 11 of the Paris communiqué thanks to the information set out above. They are essentially the political rights to vote, to stand for election and to become a public official in the Member States.

Moreover, a clear tendency towards granting these rights has been shown by putting Community nationals on the same footing as the nationals of the host country with regard to

political rights. However it will be necessary to examine to what extent the civil rights granted to all foreigners and the rights derived from the Community treaties could be better protected if they were granted to Community nationals in their capacity as citizens entitled in each Member State to virtually the same treatment as nationals of that Member State.

3. Principal problems to be studied by the working party responsible for implementing point 11

The principal problems to be studied by the working party responsible for implementing point 11 of the Paris communiqué are fivefold.

Firstly there is the problem of establishing which rights should be granted. Then there is that of the conditions for granting these rights. Thirdly there is the question of timing the granting of the rights. Fourthly there is the problem of locating this within the framework of overall plans such as European citizenship and the migrant workers' charter. The last problem is that of the legal instrument needed to grant special rights and the problems connected with this.

3.1 Special rights to be granted

The Paris communiqué speaks of special rights to be granted but does not say that they must all be granted. The working party responsible for implementing point 11 will therefore have to decide which special rights are to be granted to citizens of the nine Member States. In this connection, the following guidelines can already be laid down:

- Although complete assimilation with nationals as regards political rights is desirable in the long term from the point of view of a European Union, it must be acknowledged that for the present some of these rights must be ruled out, namely eligibility for election at national level and access to high political office;

- However, the working party should study the granting of voting rights and the conferment

of eligibility for election at municipal level, together with the right of access to public office dependent on election at this level;

— As regards the other political rights (voting rights at national and regional level, eligibility for election at regional level and the right of access to public office dependent on election at regional level or subordinate to elective office), discussions can be held as to the desirability of studying whether to grant them to nationals of other Member States.¹

3.2 *Conditions for the granting of special rights*

Once the special rights to be studied by the working party have been determined, the conditions governing the granting of such rights to non-nationals will have to be examined. For this purpose it will be necessary, firstly, to identify which national provisions form a bar to the granting of special rights to non-nationals and will therefore have to be amended and, secondly, to decide on supplementary provisions to enable non-nationals to exercise such rights.

A list of amendments and additions to be made to national laws has been drawn up as regards voting rights and eligibility for election at municipal level. The first results of this study show that, as regards a number of important questions, there is a choice of solutions. This choice can be made only on political grounds and therefore the Working Party in order to complete its task will be forced to take, at least provisionally, certain political decisions. In order to show to what extent legal and technical questions directly affect political ones, it is sufficient to list a few of them:

— In six of the nine Member States the right to vote and eligibility for election are dependent on fulfilment of a condition as to nationality which is contained in the constitution. In view of the cumbersome procedures for revising the constitution it might be possible simply to amend the legislation governing the conferment of nationality.

— In all the Member States the right to vote and eligibility for election are dependent on the fulfilment of conditions as to residence. Should non-nationals be assimilated to nationals or, on the contrary, should there be stricter conditions as to residence?

— the nationals of one Member State who reside in another Member State enjoy under the EEC Treaty certain guarantees against expulsion. Are these guarantees sufficient to ensure that the rights to vote and to be eligible for election can be exercised in complete freedom?

— The granting to a non-national of the right to vote in the host country leads to considerations regarding possible duplication of rights (one right in the country of origin and another in the host country).

Should such duplication be envisaged, or should the Community adopt the principle that the right to vote cannot be duplicated?

— In some Member States the right to vote is to be exercised as a civic and moral duty while in others there is a strict legal obligation to exercise it.

In the latter case, should non-nationals be required to vote on the same terms as nationals or should they be exempted from this obligation?

— The granting of the right to be eligible for election has greater political implications than the granting of the right to vote, as can be seen from the following examples. In some Member States the mayor is elected directly by the citizens, in others by the municipal councillors (indirect elections) and in others he is nominated by the central authority. If non-nationals were eligible only for direct election they would not have the same rights in all Member States. Moreover, the right to be eligible for election is unthinkable without the right of access to public office being accorded simultaneously. Lastly, eligibility implies the possibility of conducting a campaign and raises the question of the right to found a political association.

¹ Annex 1, page 31, contains some thoughts on this subject.

As regards the other rights which it might be decided to grant, it will also be necessary first of all to draw up a similar list and to decide on the underlying political implications before setting out the details of how they could be granted.

3.3 *Timetable for the granting of special rights*

The timetable for the granting of the special rights chosen raises a third problem. It depends first of all on the reply to certain technical questions such as whether the national provisions to be amended are of a constitutional or merely of a legislative nature.

But other factors are also to be taken into consideration:

— Equal treatment for foreigners in the economic and social fields is accepted by public opinion, since this has long been a subject for frequent negotiation between States. The same does not apply to equal treatment for foreigners in the political field. This is a new idea and the public will have to be given an opportunity to get used to it.

— There are other major European undertakings, such as elections to the European Parliament, with which the granting of special rights may overlap. No date can be given for this operation without regard to the timetables for these other common undertakings.

— Lastly, there is a fundamental choice which can be expressed as follows: should provision be made for the effective exercise of the same special rights to enter into force at the same time in all Member States, whereby any delay on the part of one Member State in taking the necessary measures at national level would delay implementation in all the other States, or should the Member States be left free, subject to a time limit of a few years, to prepare and implement the effective exercise of each of these rights?

3.4 *Problems linked with overall plans*

The working party responsible for studying the granting of special rights will have to examine

several general problems connected with each of the three categories of problems set out above. It will have to concern itself among other things with the idea behind point 11, that is to say the relationship between the forthcoming granting of some special rights and the concept of a future Community nationality or citizenship contained in the Italian proposal which forms the basis for point 11 of the Paris communiqué.

It will also have to take into account the political rights which it is intended to grant to all foreigners, for there can be no special rights for citizens of Member States unless they are in addition to those granted without distinction to all migrants.¹

3.5 *Problems connected with the legal instrument*

The working party will also be faced with the problems of the form, the basis and the force of the acts granting the special rights. Since at present there are no provisions in the Community Treaties, even including Article 235 of the EEC Treaty, which grant the power to act on political rights, the legal instrument chosen will have to be an *ad hoc* one, possibly a new treaty under international law or an amendment to the EEC Treaty based on Article 236 made by adding the necessary provisions to the Treaty, in the form of a protocol for example.

If it is decided to draw up a new treaty under international law this will raise a number of questions such as whether such a convention would have to include self-executing provisions or not, how to ensure a uniform interpretation and whether it could be ratified before the constitutions were amended if this was necessary.

¹ Annex 2, page 32, contains some thoughts on these two points.

4. Composition of the working party

Point 11 gives no indication of the type of legal instruments by which the special rights could be granted and as regards the implementing procedure to be followed it merely states that a working party will be set up.

As regards the legal implementation of point 11 of the communiqué there seem to be two possible alternatives, either a separate treaty under international law or an amendment to the EEC Treaty. Although the granting of special rights is not vital to the achievement of the aims of the EEC Treaty in its present form and consequently the granting of these rights cannot be based on Article 235, it is the logical result of applying the principle of equal treatment and integration in the host country; the extension of this principle to living conditions has already been partially recognized in the Council Regulation¹ on the free movement of workers within the Community and by the case law of the Court of Justice.

In view of this and no matter which procedure is finally chosen, the Commission proposes that the working party should be made up of persons appointed by the Member States who would be required to report to the representatives of the governments meeting within the Council, and that the Commission should provide the chairman and the secretariat so as to ensure that the work carried out is compatible with the measures arising from the Community Treaties and to guarantee its continuity. Once the working party is set up the Commission will take the necessary steps to arrange a meeting quickly.

¹ Council Regulation (EEC) 1612/68 of 15 October 1968, OJ L257 of 19.10.1968 and OJ L295 of 7.12.1968.

Annex 1

Possible political rights for Community nationals in the host country

The rights to vote and to stand as a candidate in municipal elections and to hold public office linked with the position of elected representative at this level may be considered as rights which, in the short term, could be granted to Community nationals by the host country, whereas the right to stand in national elections and to hold high political office may not.

It is still an open question as to whether other political rights, i.e., the right to vote in regional and national elections, the right to stand in regional elections and to hold public office linked with the position of elected regional representative or subordinate to elective office, should be granted to nationals of other Member States.

The arguments for and against set out below may provide food for thought on this subject taking account of current attitudes.

The right to vote in national and regional elections. Granting foreigners the right to vote has the advantage of being a form of participation which would be fairly acceptable to nationals of the country concerned as they alone would be eligible to stand for election. In addition, the impact of foreigners' votes would be weakened at regional and national level whereas this would not be the case at municipal level. Against this must be set the disadvantage that foreigners either do not know or are insufficiently aware of the major national and regional problems of the host country unless they have been resident there for some time.

The right to stand as a candidate in regional elections. (This question would only arise if it was planned to give foreigners the right to vote in regional elections.) One major difficulty would be the high degree of divergency among the Member States as regards the meaning of regional powers. There can be no direct comparison between, for example, the powers of the German 'Länder' or the Italian regions on the one hand and those of the French 'départements' or Belgian provinces on the other.

The right to hold public office linked with the position of elected regional representative or subordinate to elective office. Consideration must also be given to the possibility of granting foreigners the first of these rights at regional level if they are allowed to stand for election at that level, as the offices held by elected regional representatives in a number of cases are public offices. It is difficult to see any justification

for refusing foreigners the second of these rights if they are granted access to elective office where they are in authority over holders of the second type of office.

Annex 2

Problems linked with overall plans

1. In considering how to implement point 11 a comparison should be made between the idea of European citizenship and that of special rights.

The idea of European citizenship or nationality is different in some respects and similar in others to the idea of special rights as defined in the report. It is different in that it appears to imply on the one hand the existence of supra-national political institutions which have been elected and, on the other, supra-national laws which create reciprocal rights and obligations between the citizens of the Member States and the supra-national entity. However, it is similar in that European citizenship implies that a citizen of a Member State would automatically be entitled to be treated in another Member State as if he were a citizen of that State for the purposes of civil liberties, right of residence, right to vote, etc., either as of right or by fulfilling the conditions of residence of the host Member State.

The matter of whether naturalization of nationals of other Member States should be made easier should be considered in this context. Naturalization is of course the acquiring of a new nationality; in general this involves losing the former nationality and it is a serious step which is not likely to be repeated in the life of an individual. In view of the probable development of the Community this possibility involving a simple exchange of nationality seems less promising than the idea of equality with the nationals of the host State which means that the rights relating to the original nationality are added to rights in the host State. What is more, if naturalization was made easier for nationals of the Member States of the Community the emphasis would be put on nationality rather than on residence; such a tendency would be contrary to the trend in large political groupings of the Commonwealth or federation type.

So it seems that if the idea of amending national laws on naturalization is to be taken further, this should be as an additional measure while the main emphasis continues to be on promoting greater equality with the nationals of the host State.

The situation could however be different if acquiring a new nationality did not involve losing the former one or if it was possible to change nationality easily.

2. At present there are two lines of thought in the Community on granting foreigners the right to vote or to stand for election. One is based on the foreigner's status as a worker, the other on his status as a citizen of another Member State of the Community. The problem is to what extent these two views clash or can be reconciled.

Sales Offices

Belgique - België

Moniteur belge - Belgisch Staatsblad
Rue de Louvain 40-42 -
Leuvenseweg 40-42
1000 Bruxelles - 1000 Brussel
Tél. 512 00 26
CCP 000-2005502-27 -
Postrekening 000-2005502-27

Sous-dépôt - Agentschap :
Librairie européenne -
Europese Boekhandel
Rue de la Loi 244 - Wetstraat 244
1040 Bruxelles - 1040 Brussel

Danmark

J.H. Schultz - Boghandel
Møntergade 19
1116 København K
Tel. 14 11 95

Deutschland (BR)

Verlag Bundesanzeiger
5 Köln 1 - Breite Straße - Postfach 108 006
Tel. (0221) 21 03 48
(Fernschreiber: Anzeiger Bonn 08 882 595)
Postscheckkonto 834 00 Köln

France

*Service de vente en France des publications
des Communautés européennes*
Journal officiel
26, rue Desaix
75 732 Paris - Cedex 15
Tél. (1) 578 61 39 - CCP Paris 23-96

Ireland

Stationery Office
Beggar's Bush
Dublin 4
Tel. 68 84 33

Italia

Libreria dello Stato
Piazza G. Verdi 10
00198 Roma - Tel. (6) 85 08
Telex : 62008
CCP 1/2640
Agenzie :
00187 Roma - Via XX Settembre
(Palazzo Ministero
del tesoro)
20121 Milano - Galleria
Vittorio Emanuele 3
Tel. 80 64 06

Grand-Duché de Luxembourg

*Office des publications officielles
des Communautés européennes*
5, rue du Commerce
Boîte postale 1003 - Luxembourg
Tél. 49 00 81 - CCP 191-90
Compte courant bancaire:
BIL 8-109/6003/300

Nederland

Staatsdrukkerij- en uitgeverijbedrijf
Christoffel Plantijnstraat, 's-Gravenhage
Tel. (070) 81 45 11
Postgiro 42 53 00

United Kingdom

H.M. Stationery Office
P.O. Box 569
London SE1 9NH
Tel. (01)928 6977, ext. 365

United States of America

European Community Information Service
2100 M Street, N.W.
Suite 707
Washington, D.C. 20 037
Tel. 296 51 31

Schweiz - Suisse - Svizzera

Librairie Payot
6, rue Grenus
1211 Genève
Tél. 31 89 50
CCP 12-236 Genève

Sverige

Librairie C.E. Fritze
2, Fredsgatan
Stockholm 16
Post Giro 193, Bank Giro 73/4015

España

Libreria Mundi-Prensa
Castelló 37
Madrid 1
Tel. 275 46 55

Other countries

*Office for Official Publications
of the European Communities*
5, rue du Commerce
Boîte postale 1003 - Luxembourg
Tél. 49 00 81 - CCP 191-90
Compte courant bancaire :
BIL 8-109/6003/300

	Bfrs	Dkr	DM	FF	Lit	Fl	£
Price	50.-	7.80	3.40	6.20	860.-	3.50	0.60

