

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

on the Citizenship of the Union

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I Introduction

The new Article 8E of the EC Treaty requires the Commission to report before 31 December 1993 to the Parliament, the Council and the Economic and Social Committee on the application of the new Articles 8 to 8D. The Commission welcomes this opportunity to set out its conception of these new provisions, the importance of which cannot be sufficiently stressed.

The present report inevitably spans a short period of time. As is well known, the Treaty on European Union did not come into force on 1 January 1993 as originally envisaged, but on 1 November 1993. Nevertheless, even over this very short period events moved more rapidly than might have been supposed, largely because a number of informal proposals were made even before the Treaty of Maastricht came into force, with a view to implementing the provisions concerned as soon as possible thereafter.

Having said that, it is manifestly impossible to take stock of the development of the European Union as required by Article 8E, after a period of only a few weeks. Still less is it possible to decide whether fresh initiatives are called for. Accordingly, the Commission has decided to submit a further report not provided for in the Treaties before the end of 1994. By then the Commission would hope to have a reasonably clear picture of the state of implementation of these provisions and to be able to assess the need for the adoption of additional measures pursuant to the second paragraph of Article 8E.

II The Concept of Citizenship of the Union

One of the most significant steps on the road to European integration taken by the authors of the Treaty of European Union was the insertion into the Treaty of Rome of a new Part II entitled "Citizenship of the Union", which consists of Articles 8 to 8E.

The seed of these new provisions was sown at the summit meeting held at Paris in 1974, which first considered the special rights of citizens of Member States. This theme was to be taken up again in June 1984 at the European Council at Fontainebleau, which stressed the importance of creating a People's Europe and set up an ad hoc Committee chaired by Mr Pietro Adonnino to report on measures to be taken to this end. The Committee's

"report", which was submitted in the following year, contains the germ of the new provisions.

The introduction of these new provisions underscores the fact that the Treaty of Rome is not concerned solely with economic matters, as is also plainly demonstrated by the change of name from the European Economic Community to the European Community. For the first time, the Treaty has created a direct **political** link between the citizens of the Member States and the European Union such as never existed with the Community, with the aim of fostering a sense of identity with the Union. As testimony to their importance, the Intergovernmental Conference placed them immediately after the introductory provisions of the Treaty of Rome, such as Article 6 EC (formerly 7 EEC) which prohibits discrimination on the grounds of nationality, and Article 7A EC (formerly 8A EEC), which provides for the establishment of the internal market *inter alia* for persons. Thus citizenship of the Union appears in the Treaty even before the four freedoms which together make up the internal market.

The rights flowing from citizenship of the Union are in effect granted constitutional status by being enshrined in the Treaties themselves. These rights are to be construed broadly and exceptions to them are to be construed narrowly, in accordance with the general principles of Community law recognised by the Court of Justice. Thus, in so far as these provisions relate to rights which were already laid down in Community law, the status of these rights has now been fundamentally altered. At the same time, it should be recalled that the new Article 8(2) specifies that citizens of the Union are also to be subject to the duties imposed by the Treaty.

Finally, it must be stressed that the provisions of Part II of the EC Treaty are not static, but are essentially dynamic in nature. This is plainly spelt out in Article 8E itself, in so far as it envisages that these provisions be strengthened or supplemented in the future.

III The Definition of Citizens of the Union

Article 8(1) of the EC Treaty makes it clear that every national of a Member State is automatically a citizen of the Union. This provision is to be read in the light of the Declaration of the Intergovernmental Conference on nationality of a Member State, which is annexed to the Treaty of Maastricht. According to this Declaration, "wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned." This is in keeping with the judgment of the Court of Justice in Micheletti v Delegacion de Gobierno en Cantabria², where it held that Spain could not prevent the plaintiff establishing himself in its territory by refusing to recognise his Italian nationality, on the grounds that his primary nationality was his Argentinian nationality.

The Declaration goes on to state that "Member States may declare, for information, who are to be considered their nationals for Community purposes by way of a declaration

¹ Bulletin of the European Communities, Supplement 7/85

² Case C-369/90 [1990] ECR I-4239

"nationals"³ and to the Declaration of the Government of the Federal Republic of Germany on the definition of the expression "German national"⁴.

IV Implementing Part II of the Treaty

A The Right to Free Movement

The new Article 8A(1) of the EC Treaty provides that "Every citizen of the Union shall have the right to move ... freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect." This provision builds on the fundamental ban on discrimination on grounds of nationality which is laid down in Article 6 of the Treaty (formerly Article 7); but it is placed against the background of a new concept, that of citizenship of the Union, under which nationals of Member States are to enjoy freedom of movement whether or not they belong to any of the categories expressly referred to in the Treaty. In other words, the right of free movement is conferred on all nationals of Member States by virtue of their citizenship of the Union. In so far as it entitles the nationals of any Member State to move freely on the territory of another Member State, subject to the other relevant provisions of the Treaty, Article 8A implies that there are to be no controls going beyond those required by each Member State of its own nationals, whether those controls are carried out at the border or at any other point of the territory of a Member State.

The abolition of controls on persons at the internal borders of the Member States laid down by Article 7A EC (formerly 8A EEC) may prove to be a most suitable means of ensuring the free movement within the Union.

The idea of abolishing controls on persons at the Community's internal frontiers was contained in the Fontainebleau mandate to the Adonnino Committee and considered in depth in the latter's report. This idea was taken up shortly afterwards in the Single European Act. That Act inserted into the Treaty of Rome a new Article 8A (now Article 7A), which provided for the internal market to be progressively established over a period expiring on 31 December 1992. The internal market is defined as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty." As the Commission stated in its Communication of 8 May 1992 to the Council and the Parliament on the abolition of border controls⁵, this provision refers to all persons, whether or not they are economically active and irrespective of their nationality⁶.

³ 1983 OJ C 23, replacing an earlier Declaration made at the time of the signature of the Treaty of Accession.

⁴ This Declaration is annexed to the Treaty of Rome.

⁵ SEC (92) 877 final, page 10.

⁶ Mention should be made here of the proceedings for failure to act brought by Parliament against the Commission, in which Parliament is seeking a finding that the Commission has infringed the Treaty by failing to submit the proposals needed to ensure free movement of persons in the internal market as required by Article 7A (Case C-445/93). The application was lodged at the Court of Justice on 18 November 1993.

B The Right of Residence

Article 8A(1) of the Treaty of Rome as amended provides that : "Every citizen of the Union shall have the right to ... reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect".

Economically active nationals of the Member States were granted the right to reside in the host State under Articles 48, 52 and 59 of the Treaty of Rome as originally drafted. This right was extended to their close relatives by the legislation implementing those provisions, particularly Council Regulation 1612/68 on the freedom of workers within the Community⁷, Council Directive 68/360 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families⁸ and Council Directive 73/148 on the abolition of restrictions on movement and residence within the Community for nationals of a Member State with regard to establishment and the provision of services⁹. Other instruments confer on retired persons the right to remain in the host State¹⁰.

In 1979 the Commission submitted to the Council a proposal for a single directive granting a general right of residence to Community nationals, not just to economically active persons and members of their families. The idea, which was strongly supported by the Adonnino Report, was finally accepted in 1990, in the form of 3 separate Directives: Council Directive 90/364/EEC on the right of residence¹¹, Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity¹², and Council Directive 90/366/EEC on the right of residence for students¹³. The rights conferred by each of these Directives are subject to the requirements of possessing adequate resources and sickness insurance.

Parliament brought an action challenging the Students Directive before the Court of Justice, and on 7 July 1992 the Court annulled the Directive, while allowing its effects to continue to have force pending a fresh Directive adopted on the appropriate legal basis¹⁴. The Council adopted a new Directive, based on the second paragraph of Article 7, on 29 October 1993¹⁵. In substance it corresponds to the previous one.

See also the proposals recently made by the Commission for the implementation of Article 100C and for a revised draft External Frontiers Convention (COM(93)684).

⁷ 1968 OJ L 257, p. 1; last amended by Regulation 2434/92: 1992 OJ L 245, p. 1.

⁸ 1968 OJ L 257, p. 13.

⁹ 1973 OJ L 172, p.49.

¹⁰ Commission Regulation 1251/70 (1970 OJ L142/30), Council Directive 75/34 (1975 OJ L 14/20).

¹¹ 1990 OJ L 180, p. 26.

¹² 1990 OJ L 180, p. 28.

¹³ 1990 OJ L 180, p. 30.

¹⁴ Case C-295/90 Parliament v Council [1992] ECR I-4193.

¹⁵ Directive 93/96 (not yet published).

At present the right of residence is governed by a number of different regulations and directives. In keeping with the new policy of the Community institutions of making Community law more accessible, the Commission intends to propose the codification of these provisions.

While it is true that the general right of nationals of Member States to reside in other Member States was laid down in Community law well before the Treaty of Maastricht came into force, that Treaty has placed this right on a new conceptual basis by enshrining it in the Treaties themselves. Accordingly, it has now been put on a par with other rights central to Community law and is thus in general to be construed broadly.

C Voting Rights in Municipal Elections

Article 8B(1) of the EC Treaty, which provides that a citizen residing in a Member State of which he is not a national is to have the right to vote and to stand as a candidate at local elections, is the outcome of a political debate which began in the 1970s.

The Paris summit of June 1974 asked a working party to study "special rights" for citizens of the Member States. But when in 1975 the Commission submitted a report on the subject which among other things proposed that a right to vote at local elections, it was not favourably received by the Council. The idea put forward by the Commission was nevertheless taken up by the European Parliament, which maintained constant political pressure between 1977 and 1983¹⁶. In 1985 the Adonnino Committee recommended to the European Council meeting in Milan that discussion of this subject should continue, though it stressed that the matter was one within the competence of the Member States. In 1986 the Commission submitted to Parliament, at its request¹⁷, a report on voting rights in local elections for Community nationals¹⁸.

Parliament asked the Commission to act immediately¹⁹, and in 1988 the Commission submitted a proposal for a directive on voting rights for Community nationals in local elections in their Member State of residence²⁰. The Council suspended discussion of the proposal in view of the work of the Intergovernmental Conference drawing up the Treaty on European Union.

To enable the Council to comply with the deadline in Article 8B, the Commission intends to present a proposal for a directive implementing Article 8B(1) at the beginning of 1994.

¹⁶ Resolution on the granting of special rights to the citizens of the European Community: OJ C 299, 12.12.1977, p. 26; Macciocchi report: OJ C 184, 11.7.1983, p. 28.

¹⁷ Resolution: OJ C 345, 31.12.1985, p. 82.

¹⁸ Bulletin of the European Communities, Supplement 7/86.

¹⁹ Vetter report: OJ C 13, 18.1.1988, p. 33.

²⁰ OJ C 246, 20.9.1988, p. 3; amended in 1989: OJ C 290, 18.11.1989, p. 4.

D Voting Rights in the European Elections

Article 8B(2) of the Rome Treaty gives citizens of the Union the right to take part in European elections in the Member State in which they are resident, even if they are not nationals of that country. This right is subject to detailed arrangements to be adopted before 31 December 1993; the deadline is intended to ensure that the arrangements adopted by the Council can apply at the fourth direct elections to the European Parliament, to be held in June 1994.

Even before the Treaty on European Union entered into force, the Commission, at the request of the Council and Parliament, drew up a draft proposal for a Council directive laying down detailed arrangements for the exercise of the right to vote and the right to stand as a candidate in the Member State of residence²¹, which it approved at its meeting on 23 June 1993. The draft was sent to the Council and Parliament before the end of July. This enabled Council and Parliament to begin considering the implementation of Article 8B(2) on an informal basis.

Given the diversity of electoral rules in the Member States, and the political importance of the question, the informal work in the Council proved very difficult. The Council nevertheless succeeded in resolving the major political problems in an extremely short time, and at its meeting on 4 October reached agreement on the whole text. The discussion in the Council ultimately confirmed the policy approach which the Commission had proposed in its draft.

At its meeting on 27 October the Commission adopted the formal proposal²². The proposal aims to facilitate citizens wishing to exercise the right conferred by Article 8B(2), and is based on the following policy options:

- minimum rules, avoiding any harmonization of national systems;
- non-discrimination between nationals and non-nationals;
- free choice by the citizen of the place in which he wishes to vote or to stand as a candidate;
- no-one to vote twice or to stand in two places;
- mutual recognition of rules on disqualification.

To take account of the special situation in Member States where the proportion of nationals of other Member States exceeds 20% of the whole electorate, the Commission proposes an exemption from the general requirements. The proposal also provides for exemption in the case of Member States who give a right to vote at elections for their own Parliaments nationals of some other Member States.

The European Parliament delivered a favourable opinion on the proposal at its plenary sitting on 17 November, although it asked that a provision regarding the composition of lists of candidates should be deleted.

²¹ SEC(93) 1021 final.

²² COM(93) 534 final.

The Council adopted the Directive at its meeting on 6 December in the form proposed by the Commission. Article 17 of the Directive requires Member States to incorporate it into national law no later than 1 February 1994. Under Article 16 the Commission is to carry out a study of experience with the application of the Directive at the June 1994 European elections.

E Diplomatic and Consular Protection

Work began on drawing up the rules required by the second sentence of Article 8C well before the Treaty of Maastricht came into force. In the framework of the EPC Working Group on Consular Affairs a set of "Guidelines for the Protection of Unrepresented EC Nationals by EC Missions in Third Countries" was adopted by the 241st Political Committee on 29 and 30 March 1993.

These guidelines, which came into force on 1 July 1993, state how nationals of a Member State not represented in the third country concerned may apply to the Mission of any other Member State for assistance and possible repatriation in cases of distress such as death, accident, violent attack, severe illness or arrest.

The authorities of all third countries were informed of these guidelines by the Presidency by note verbale. Within the Member States they were made public through press statements of the respective Ministries of Foreign Affairs. Moreover, all EC Missions and Commission Delegations were informed.

Furthermore, agreement was reached on a common format Emergency Travel Document to be issued by EC Missions in order to permit a single journey to the home State, country of permanent residence or, exceptionally, the destination of the applicant. This is due to be adopted shortly by a Decision of the Council.

F The right of petition

Consideration by the European Parliament of petitions presented by citizens individually or collectively is a well-established practice, reflected particularly in the establishment of a parliamentary Committee on Petitions on 1 January 1987.

Until the Treaty on European Union entered into force the only source for the right of petition was Parliament's Rules of Procedure (Articles 128 to 130), which laid down tests for the admissibility of petitions and procedures for their consideration. In an interinstitutional agreement signed on 12 April 1989²³ the Commission and Council undertook to give Parliament the assistance and cooperation necessary for the proper examination of petitions.

Over the years Parliament has considered a growing number of petitions under this procedure, rising from about 100 to a 1 000 petitions a year between 1983 and 1993. The

²³ OJ C 120, 16.5.1989.

majority of petitions are concerned with environmental protection, social security, recognition of qualifications and taxation.

About half the petitions which Parliament finds admissible are forwarded to the Commission, which draws up communications to Parliament (600 in 1992) indicating ways in which the problem raised by the petitioners might be resolved. If it appear from a petition that a Member State has infringed Community law, the Commission, as guardian of the Treaties, considers whether to initiate infringement proceedings²⁴.

The new Articles 8D and 138D of the Treaty confer a right of petition on every citizen of the Union and any natural or legal person residing or having his registered office in a Member State. Parliament has amended its Rules of Procedure accordingly (Articles 156 to 158 of the new version adopted in September 1993).

Recognition of the right of petition in the Treaty will no doubt make citizens better aware of this channel and lead to an increase in the number of petitions. This will require a greater effort on the Commission's part in order to ensure that the petitions sent to it by Parliament are considered properly and promptly. The collaboration between Parliament and the Commission which already exists in this area provides a positive basis for future development.

In the initial phase of implementation of the Treaty on European Union there will have to be a close link between the handling of petitions and the handling of complaints of maladministration lodged with the Ombudsman, as the Committee on Petitions has for many years been treating complaints of maladministration as petitions.

G Access to the Ombudsman

The introduction of an Ombudsman, provided for in the new Articles 8D and 138E, is an important element in European citizenship and democratic control. The Ombudsman is to conduct inquiries into cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Under Article 138E(4) the Parliament shall lay down the regulations and general conditions governing the performance of the Ombudsman's duties, after seeking an opinion from the Commission and with the approval of the Council acting by qualified majority. On 17 December 1992 Parliament adopted draft regulations, which the Commission considered in an opinion adopted on 26 April 1993, where it largely supported the principles adopted by Parliament. After several meetings between the three institutions a formal interinstitutional agreement was concluded at the conference held on 25 October 1993. The text approved there, which was adopted by Parliament on 17 November 1993 and is still to be approved by the Council, it lays down a number of conditions governing the performance of the Ombudsman's duties.

²⁴ See Tenth Report on the Monitoring of the Application of Community Law: COM(93) 320 final, p. 8.

It makes it clear that the Community institutions and other bodies are required to supply to the Ombudsman any information he requests, and to allow him access to the files concerned. They may refuse only on duly substantiated grounds of confidentiality. They are to allow him access to documents from a Member State after so informing the Member State concerned, or in the case of confidential documents after securing the Member State's agreement. In either case the Ombudsman may not disclose the content of such documents.

V Conclusion

As stated at the outset, any attempt at an overall assessment of the operation of the new provisions on the citizenship of the Union would be premature after only a few weeks. Having said that, the Commission cannot but welcome the progress which has already been made, notably with respect to the right of residence, voting rights in elections to the European Parliament and the Ombudsman. The Commission counts on the support of the other institutions and the Member States in ensuring that the provisions of Part II are properly implemented and applied

The Commission intends to return to these issues in the additional report which it plans to present before the end of 1994.

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