



**COMMISSION OF THE EUROPEAN COMMUNITIES**

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**SECOND REPORT FROM THE COMMISSION**

**on Citizenship of the Union**

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## EXECUTIVE SUMMARY

Citizenship of the Union conferred on nationals of all Member States by the Maastricht Treaty is meant to make the process of European integration more relevant to individual citizens by increasing their participation, strengthening the protection of their rights and promoting the idea of an European identity.

The practical benefits that it engenders are clearly additional to those arising from national citizenship as Union citizenship cannot be acquired or for that matter lost without the acquisition or the loss of the nationality of a Member State.

The purpose of this second report, drawn up by the Commission in accordance with Article 8E, is to assess the application of the specific provisions relating to citizenship of the Union contained in Part II of the Treaty during the years 1994-1996.

During this time progress has been made towards the implementation of the rights specifically related to citizenship. The necessary legislative framework for the new rights has been adopted. This said, in practice some of the rights are not yet fully applied.

### ***Voting rights in the Member State of residence***

The right to take part in European Parliament elections is a reality also for all those Union citizens who reside in a Member State of which they are not nationals. The same cannot be said of the right to participate in local elections, as some Member States still have to implement the relevant Directive.

An improvement in the participation of Union citizens requires efforts on the part of the institutions and the Member States to improve the information available to citizens. Although some progress should be registered following such initiatives as "Citizens First", further efforts should be deployed as closely as possible to the citizens themselves. Commitment to improve citizens' participation as candidates should be made focusing on promoting their participation in the political life of the host country.

### ***Consular and diplomatic protection in third countries***

Rules have been adopted to provide consular protection to Union citizens in third countries where their own Member State is not represented. Similarly, rules for the delivery of an Emergency Travel Document have also been agreed to. These instruments are not of the same binding nature as those adopted under EC rules.

Since Member States have not yet introduced the necessary administrative procedures or change in their legislation, the right to consular and diplomatic protection is not yet fully implemented, on the basis of the provisions of the Treaty. Nevertheless Member States pursue, on an informal, bilateral basis, the application of the provisional guidelines agreed in May 1993.

### ***The right to petition the European Parliament and to apply to the Ombudsman***

The long established practice of the European Parliament of accepting petitions from anyone resident in a Member State continues to prove its worth as an important link between citizens and the institutions. From the end of the last legislature (93/94) to the first half of the 96/97 parliamentary year, a total of 4.131 petitions were addressed to the European Parliament.

The First European Ombudsman was appointed on 12 July 1995. Since taking office to the end of December 1996 the Ombudsman has received 1.140 complaints. Given that he has been active for just over one year, an overall appraisal of the impact of his work, on the institutions and on the citizens cannot yet be made. Nevertheless, as the function of the Ombudsman is to render the institutions more open and democratically accountable, his action has been an incentive for the institutions under scrutiny to remedy inappropriate administrative practices.

## **Freedom of movement and of residence**

Citizens still face difficulties when seeking to exercise their rights of free movement and residence. The right to reside in another Member State is still subject to different provisions applicable to different categories of citizens as secondary Community law is made up of two Regulations and nine Directives. Yet a single set of rules which would clarify the existing law and provide for equitable application may not be introduced due to the lack of common legal basis in the EC Treaty.

At present, the only way to re-cast the secondary legislation also to take account of the full implications of the introduction of citizenship of the Union seems to be a revision of Article 8A. From a supplementary legal basis it could be upgraded to a specific legal basis apt to revise the complex body of secondary legislation. This would certainly increase the transparency of Community law, ease implementation measures and increase the citizens' understanding of the rights effectively conferred.

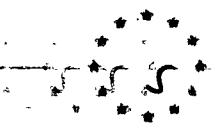
## **The way forward: improving awareness and access to citizens rights**

The introduction of citizenship of the Union has raised citizens expectations as to the rights they expect to see conferred and enforced. Citizens are entitled to be aware of these rights and to have them honoured in practice by the Member States. Otherwise citizens will regard EU citizenship as a vague and distant concept. The Commission submits that the present entitlements could be further reinforced through two main lines of action :

- a permanent information effort guaranteeing citizens access to simple and factual information concerning their rights, and
- a special effort on the part of the Commission and Member States to ensure that the rights are effectively enforced

In the following months, the Commission will look into issues linked with freedom of movement of people in the light of the Report by the High Level Panel presented to the Commission on 18 March 1997, the priority areas indicated in the Action Plan for the Single Market and of the conclusions of the Intergovernmental Conference on the revision of the Treaties. The reactions from the Council and the European Parliament to this report as well as the feedback from the Citizens First! initiative will further assist the Commission to identify further steps that may be taken.

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## Introduction

Citizenship of the Union conferred on nationals of all Member States is meant to make the process of European integration more relevant to the individual citizens by increasing their participation, strengthening the protection of their rights and promoting the idea of an European identity.

Today, a series of general rights and benefits derived from the European Union are being used and enjoyed by ever larger numbers of EU citizens, notably as a result of the development of the Single Market. These include the rights to work and buy goods and services in other Member States and to enjoy greater choice of goods and services and more competitive prices, as well as guaranteed levels of consumer and health protection and equal opportunities in the workplace

In addition to these general rights, Part II of the EC Treaty contains specific provisions relating to citizenship of the Union and lists seven different rights that are the subject of the present report. As Union citizenship cannot be acquired or for that matter lost without the acquisition or the loss of the nationality of a Member State, the benefits that it engenders are clearly additional to those arising from national citizenship<sup>1</sup>. They may be grouped in the following four categories:

- a personal right to free movement and residence subject to the limitations and conditions laid down in the treaty and secondary law;
- electoral rights in European Parliament and municipal elections in the place of residence;
- protection by diplomatic and consular authorities of any Member State in a third country where the citizen's own Member State is not represented;
- access to non-judicial means of redress, through access to the Ombudsman and a right to petition the European Parliament.

This diverse set of rights is subject to different conditions. Generally speaking the rights stemming from citizenship of the Union cannot, for instance, be invoked in domestic situations which are purely internal to a Member State. Some of the entitlements such as the electoral rights can only be exercised in a Member State other than that of origin, whilst others such as access to the Ombudsman or to petition the European Parliament are extended to all natural and legal persons residing or having their registered office in a Member State.

Yet despite certain limitations, in practice the introduction of a citizenship of the Union has raised citizens' expectations as to the rights that they expect to see conferred and protected especially when they move to another Member State.

These rights and the Union as a whole, will be credible in the eyes of citizens only insofar as they can be applied in practice. In fact citizenship of the Union can only pursue the objective set out in Article B of the Treaty: to strengthen the protection of the rights and interests of the nationals of the Member States - if the entitlements conferred are clearly known and are enforceable. Penalty for failure is that citizenship of the Union may appear to be a distant concept for citizens engendering confusion as to its means and objectives even fuelling anti-EU feelings.

The purpose of this report, drawn up by the Commission to comply with Article 8 E (1) of the Treaty, is to assess the application in practice of Union citizenship. On the basis of this assessment, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may decide provisions to strengthen, or add to, the rights already conferred which may be adopted by Member States. In the meantime, issues relating to rights stemming from citizenship of the Union are also in the process of being dealt with by the Intergovernmental Conference for the revision of the Treaties. This report however does not deal with the protection of universal human rights which is one of the issues presently being discussed by the Intergovernmental Conference.

But whether new rights are added or the present ones simply reinforced, citizens concerns must remain at the forefront of European integration, if a closer union between the people of Europe is ever to be achieved

This second report on citizenship spans the years 1994 to 1996<sup>2</sup> and is divided into three sections. The first one deals with the new rights introduced by the Treaty on European Union. The second section reviews the rights already in place, prior to the establishment of a

<sup>1</sup> Member States retain full competence to determine who is to be considered their own nationals for Community purposes - Declaration n°2 annexed to the final Act of the Treaty on European Union

<sup>2</sup> The first Commission report on citizenship COM (93) 702 final of 21 December 1993

citizenship of the Union and relating to freedom of movement. In both cases, the entitlements conferred are described, the progress of their implementation analysed and

their effectiveness examined. Finally, the third section looks forward to the ways in which the present entitlements may be further reinforced.

## I. THE NEW RIGHTS INTRODUCED BY THE TREATY ON EUROPEAN UNION

Alongside the establishment of a citizenship of the Union, Part II of the EC Treaty conferred on citizens of the Union the following new set of rights:

- the right to vote and to stand as a candidate in European Parliament and in local

elections in the Member State of residence - Article 8 B (1) and (2)

- the right to diplomatic and consular assistance in countries in which a Union citizen's Member State is not represented - Article 8C
- the right for the Union citizen to submit a petition to the European Parliament and to apply to the Ombudsman - Article 8 D

### 1. The right to participate in elections for the European Parliament and in municipal elections in the Member State of residence

#### 1.1 Common principles

Article 8 B of the EC-Treaty confers on Union citizens resident in another Member State of which they are not nationals the right to participate in their Member State of residence, as voters or as candidates, in elections to the European Parliament and in municipal elections.

For the exercise of these rights, Council unanimously adopted in 1993 and 1994 two Directives containing detailed arrangements to be implemented by Member States: Directive 93/109 for European Parliament elections and Directive 94/80/EC for municipal elections<sup>3</sup>. Although both these instruments contain provisions specific to the elections to which they refer, they are bound by the following common principles:

- *No harmonization of electoral laws* - Both directives refrain from any attempt to harmonize national electoral laws. They merely introduce basic rules meant to allow non-nationals to exercise their rights, in so far as possible, under the same conditions as nationals. Their provisions do not hinder, for instance, preferential treatment already given by Member States in favour of some Union citizens only. Moreover, in the case of European Parliament elections, Directive 93/109 is without prejudice to Article 138 (3) on the introduction of an uniform electoral procedure.

- *Freedom of choice* - Union citizens are free to choose whether or not to exercise their rights in their Member State of residence. In the case of European Parliament elections, due to the prohibition on double voting in the same election, this implies the need to opt between the Member State of residence and that of origin. In municipal elections, voting in the Member State of residence does not automatically entail the loss of the equivalent right in the Member State of origin: it is up to Member States themselves to regulate the conditions under which their nationals residing outside their electoral territory retain their electoral rights<sup>4</sup>.

- *Equal access to electoral rights* - On the basis of the principle of non-discrimination EU citizens are to benefit from electoral rights under the same conditions as nationals of the State of residence, provided that they fulfill the conditions imposed by

<sup>3</sup> Council Directive 93/109 of 6 December 1993 in OJ L329/34 of 30.12.1993. Council Directive 94/80 of 19 December 1994 in OJ L 368 of 31.12.1994, recently modified by Council Directive 93/60/EC of 13 May 1996 in OJ L 122/12 of 22.5.1996 to include, the references to basic local government units in the three new Member States.

<sup>4</sup> Eleven MS do not permit their own nationals to vote or to stand if they reside outside their territory. Greek and Italian voters living abroad must travel back to their country of origin to vote. Only France and Spain allow its citizens resident abroad retain their voting rights in full.

the electoral law of that Member State with regard to its own nationals. This includes for instance, access to the same appeal procedures with regard to omissions or errors in the electoral roll or in the application to stand, maintenance on the electoral roll under the same conditions as nationals, etc.

An important exception to this rule concerns the first entry on to the electoral roll in the Member State of residence. In the case of European Parliament elections it must be requested by the citizen in order to safeguard his/her freedom of choice. In the case of municipal elections, Member States which do not have compulsory voting are free to choose between an automatic entry on the roll or one on request. Most Member States make use of an automatic entry into the electoral roll as this appears more cost effective and allows for a wider participation.

- *Extra-territorial effect of the rules on disqualification of candidates* - The idea behind this principle is to prevent citizens regaining their civic rights simply by moving from one Member State to another. In the case of European Parliament elections persons deprived of the right to stand as candidates in their own Member State are strictly forbidden from being elected in another Member State. In the case of municipal elections, Member States are free to choose whether or not to preclude citizens who have lost their right to stand in their Member State of residence from running for office.
- *Derogations only if warranted by a specific situation in a Member State* - Minimum residence requirements for foreign Union citizens only are, in principle, incompatible with the non-discrimination rule. However Article 8B exceptionally permits derogations from the principle of equal treatment to be introduced where warranted by the specific situation in a Member State. Both Directives recognize that Member States whose proportion of non-national Union citizens exceeds 20% of eligible voters may be granted a derogation. In the case of European Parliament elections, the minimum residence period that may be requested before granting electoral rights may not exceed 5 and 10 years for voters and candidates respectively. Luxembourg is the only Member State to apply such a derogation. In the case of municipal elections, the minimum residence period must not exceed the term for which the municipal

authority is elected in the case of voters, and, or double this in the case of candidates. Two Member States benefit from such a derogation, Luxembourg and Belgium. The latter however may only impose minimum residence periods for voters in a limited number of municipalities and is required to signal its intention to do so one year before the ballot takes place.

- *An adequate information campaign* - Member States have the obligation to inform Union citizens resident in their territory in good time and in an appropriate manner of their new electoral rights. This a particularly important aspect of the new entitlements which cannot be fully exercised in the absence of proper information.

This being said, there are provisions that specifically address issues recurrent only in European Parliament or in municipal elections. Thus the two Directives differ as far as the following provisions are concerned.

- *A single vote and a single candidature for the European Parliament elections* - In conformity with the 1976 Act on the election of MEPs<sup>5</sup>, no one may vote or stand as a candidate in more than one Member State in the same election. In order to avoid double voting and double candidature, Member States exchange information on their nationals exercising their rights abroad.
- *Certain posts reserved to nationals only in municipal elections* - The directive allows for Member States to reserve the posts of mayor and deputy mayor to their own nationals. In most Member States, the mayor and to a large extent also the aldermen exercise state devolved functions such as, for instance, overseeing the local police forces. This derogation to the principle of non-discrimination is therefore in conformity with the provisions of Articles 48 (4) and 55 according to which the exercise of state devolved functions may be reserved for nationals. Its implementation however must be carried out in the respect of the principle of proportionality and it may not restrict more than necessary the possibility for other Member States' nationals to be elected.

<sup>5</sup> Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/EC of 20.9.1976 in OJ L278 of 8.10.1976 modified by Council Decision 1 February 1993 in OJ L 33/15 of 9.2.1993



## 1.2 The citizens' reaction in the last European Parliament elections.

### *A low participation rate*

Before the introduction of Article 8B(2), five Member States had already extended electoral rights to nationals from other Member States resident in their territory, subject to certain conditions<sup>6</sup>. Today all Union citizens resident in a Member State of which they are not nationals have had the opportunity to vote in elections to the European Parliament. Directive 93/109 was applied to the June 1994 elections and to the first elections held in the three new Member States in September 1995 and in October 1996.

Overall participation of non-national voters in their Member State of residence varied between 44.11% in Ireland where this right had been available since 1979 to 1.55% in Greece. The average turnout of non-national Union citizens was of about 11.81%. Only one non-national candidate was elected in her Member State of residence<sup>7</sup>. These figures should be considered alongside the continuing steady decline in national voter participation in European Parliament elections, from 63.0% in 1979 to 56.5% in 1994<sup>8</sup>.

The reasons for this relatively low participation are many and may partly be explained by the novelty of the rights. It should also be considered that the adoption and implementation of the new rules allowed for very little time to fully inform both the citizen and the competent national authorities. Adopted in December 1993, Directive 93/109 required Member States to introduce the necessary laws for its implementation by 1st February 1994 and was first applied barely four months after, in the June EP elections. Strict delays for registration coupled with insufficient information seem to have excluded a number of potential voters.

Apart from these teething problems, a more fundamental point must be considered. Elections to the European Parliament are elections to a single institution and hence the principle of "one man-one vote" applies. A Union citizen who decides to vote in his Member State of residence must renounce the possibility to vote in his Member State of origin. The need to make this choice was a reality for most expatriate Union citizens because all the Member States with the exception of Ireland grant voting rights in European Parliament elections to their nationals living abroad.

Expatriates may exercise these rights either by correspondence or proxy, or in a consulate. Given the fact that members of the European Parliament are elected on national lists, numerous citizens preferred to vote for a candidate of their country of origin to whom they could relate in a well known political context<sup>9</sup>.

The Commission is in the process of submitting an evaluation report on the application of the directive to the last EP elections which also includes data on the elections held in Sweden in September 1995 and in Finland and Austria in October 1996. A detailed analysis of the issues mentioned above may be found therein.

## 1.3 The application of Directive 94/80/EC to municipal elections held in 1996

### *Implementation laws not yet adopted by all the Member States*

Prior to the adoption of Directive 94/80 in December 1994, local voting rights were extended to residents from other Member States in Ireland, Denmark, the Netherlands, Spain, Sweden, Finland and the United Kingdom. With the exception of Ireland, these rights were subject to certain conditions such as residence periods or reciprocity agreements.

The Directive allowed Member States a period of two years to adapt their internal legislation to give Union citizens the right to participate in local elections. Throughout this time there has been great attention on the part of individual MEPs and citizens at large to the introduction of this new right and the deadline of 1st January 1996 was closely monitored through requests for information, petitions and parliamentary questions<sup>10</sup>.

By 1 January 1997, only eight Member States had fully implemented the Directive. Consequently, in fulfilling its role as guardian of the Treaty, the Commission has initiated

<sup>6</sup> Ireland, Belgium, the Netherlands, the United Kingdom (Irish citizens only) and Italy (candidates only).

<sup>7</sup> Ms Wilmya Zimmermann, a Dutch citizen, resident in Germany.

<sup>8</sup> Eurobarometer surveys n°41, July 1994.

<sup>9</sup> A spontaneous enquiry of officials of the European institutions to which roughly 2% of the staff replied revealed that the most important reason preventing them from voting in their Member State of residence was the fact that the election campaign was focused exclusively on internal policy issues. Cf also Eurobarometer survey n°41 on the possible factors influencing the vote.

<sup>10</sup> Over 19 parliamentary questions and 8 petitions in the reference period.

proceedings, in accordance with Article 169 of the Treaty, against those Member States that have failed to adopt the necessary laws<sup>11</sup>.

The first time Union citizens took part in municipal elections on the basis of the Directive was in Berlin in October 1995. Since then, the Directive has been applied in elections and by-elections in Luxembourg, Italy, in various German and Austrian Länder, in Finland and in the United Kingdom.

Electoral data on the level of participation of Union citizens is at present not complete as it is not systematically compiled for non-nationals. The only indicative turnout figures for the non-national electorate concern the German Land of Bavaria and the Austrian Land of Vienna. In Bavaria, taken as a whole, non-national voter turnout varied between 21%-25%. In Vienna the percentage of EU voters was 35,5%. In both cases, the participation of non-nationals was below the average of that of national voters.

The Commission is required to submit a report on the application of the directive within a year of the holding of scheduled municipal elections in all the Member States, that is by 2001. It will also have to present, by 31 December 1998, a report in which the justification for minimum residence requirements for non-national Union citizens in Luxembourg and Belgium is examined.

#### **1.4 Improving the citizens' participation**

*Increasing the information available and promoting access to candidatures*

The results of the last European Parliament elections highlighted two shortcomings in the participation of Union citizens. First and foremost there was a lack of information about new rights. Secondly there was a dramatically low rate of successful candidates.

The first problem is relatively easy to tackle. Vast information campaigns such as "Citizens First!" coupled with the efforts on the part of Member States and a greater familiarity with the new rights should provide, in time, sufficient information to citizens. Member States should of course be the front-runners in providing information as this is an obligation they have to comply with on the basis of Article 12 of Directive 109/93 and article 11 of Directive 94/80.

The second problem is more complex and requires careful consideration. The present

provisions of the Treaty merely grant voting rights without mentioning other political rights such as the right of association and freedom of expression. Yet the latter are intrinsically pre-conditions for the meaningful exercise of the former.

International law itself and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) in particular, to which Article F of the Treaty refers, considers the political status of non-nationals as a matter closely connected with national sovereignty. Articles 10 (2), 11 (1) and 14 of the Convention grant the freedom of expression, of peaceful assembly and of association to everybody, irrespective of nationality. Yet its Article 16 allows the contracting parties to impose restrictions on the political activities of aliens<sup>12</sup>. The accession of to the European Community to the ECHR is at present being discussed in the framework of the Intergovernmental Conference.

Some Member States have corresponding rules in their legislation. These rules subject the political activity of non-nationals to a number of conditions, such as the prohibition of becoming a member of a political party for example or a general obligation of political neutrality as far as policy questions in the host Member State are concerned.

The link between voting rights and the participation in the political debate is all the more clear if we consider that in some Member States only political parties are entitled to present candidates for European Parliament and local elections.

To ensure that the right to stand as a candidate in European Parliament and in local elections is more widely enjoyed by citizens of the Union resident in a Member State of which they are not nationals, it appears important to promote

<sup>11</sup> Cf the forthcoming Commission Report on the Monitoring of Community law in 1996 - COM (97) 600. The Commission has decided to issue reasoned opinions in the case of France, Greece, Belgium, Spain, Sweden, Austria (partial implementation) and Finland (partial implementation). It should be noted that in Sweden although the Directive has not been implemented, foreign residents have been able to vote since the 70s, subject to a period of residence in the country.

<sup>12</sup> A recent judgement the European Court of Human Rights (Case 5/1994/452/531, *Piermont vs France*.) seems to suggest that the notion of alien in Article 16 of the echr should not be applied to nationals of the EU Member States. But in the absence of further clarification of this interpretation, the reference in Article F cannot be said to guarantee automatically the enjoyment of political rights by Union citizens residing in a Member State of which they are not nationals. Nor can one draw on the case law of the European Court of Justice concerning constitutional traditions common to the Member States as general principles of law.

their participation in the political life of their Member State of residence. The role of political parties, both at national and European level is of course paramount towards the achievement of this goal<sup>13</sup>. But efforts should also be deployed at national level to remove any potential obstacles to the political activity of Union citizens.

Voting rights for non-nationals Union citizens are indeed the most important of the new

rights conferred by the Treaty. But the benefits that may ensue from its application, in terms of a greater integration of Union citizens in their host Member State are most likely to be felt only in the long term.

<sup>13</sup> cfr also Resolution of the European Parliament on the constitutional status of European political parties adopted on 10.12.1996 - Doc PE 254.448

## 2. Consular and diplomatic protection in the making

### *The legislative framework established*

Article 8C establishes the right to protection by the diplomatic or consular authorities of any Member State in third countries where the citizen's Member State is not represented, on the same conditions as nationals of that State. It also indicates that the implementing rules are to be adopted by the Member States. This provision is echoed in Article J.6.

The potential practical impact of this rule is not negligible. At present, there are only five non-EU countries where all Member States are represented<sup>14</sup>. On the other hand there are seventeen countries where only two Member States are represented.

In May 1993 a first set of guidelines for the protection of unrepresented Union citizens by Member States' missions in third countries was adopted, and came into force four months later. Work on the legislative framework has since continued and an important step forward was taken on 19 December 1995. The Representatives of the Governments of the Member States meeting within the Council adopted two Decisions, the first regarding protection for citizens of the Union by diplomatic and consular representations<sup>15</sup> and the second on the implementing measures to be adopted by consular officials<sup>16</sup>.

Consular protection is provided in the case of death, serious accident or illness, arrest or detention and to victims of violent crime. The relief and repatriation of distressed citizens is also envisaged together with the possibility for diplomatic representations or consular agents to extend their assistance to citizens in other circumstances as well.

The Decisions are not yet fully implemented as not all Member States have introduced the necessary arrangements. In the meantime

diplomatic and consular posts in third countries have been asked by their respective national authorities to implement the Decisions insofar as possible. A review of these provisions is scheduled after a 5 year implementation period.

On 25 June 1996 by the Representatives of the Governments of the Member States meeting within the Council, lay down the rules for the delivrance of an emergency travel document<sup>17</sup> (ETD). The ETD may be issued, for one return journey, to EU nationals who find themselves in distress whilst in a third country because, for example, their travel documents have been lost or stolen. As with the 1995 Decisions, these provisions will take effect only when all the Member States have adopted the necessary procedures for their application.

To make these arrangements known to the public in general, the Member States and the Commission agreed on the text of a common leaflet "Consular protection for citizens of the European Union"<sup>18</sup>. It spells out clearly the practical steps to be taken by citizens in distress and the type of assistance that can be expected from Embassies and Consulates of other Member States. On top of the distribution of this leaflet that each Member State may decide for its own nationals, the leaflet will be available in Commission's representations in third countries and will be inserted in the "Citizens First" information initiative.

Given that these rules are not yet implemented an evaluation at this stage is not possible.

<sup>14</sup> Russian Federation, Japan, USA, China and Switzerland

<sup>15</sup> Decision 95/553/EC in OJ L 314/73 of 28.12.1995

<sup>16</sup> Not published in the Official Journal

<sup>17</sup> Decision 96/409/CFSP in OJ L 168/4 of 6.7.1996

<sup>18</sup> Doc SN 3230/96 of 17 June 1996

### 3. Non-judicial means of protecting the rights of citizens of the Union

In establishing a citizenship of the Union, the Treaty also provided non-judicial mechanisms for the protection of citizens. These means of recourse, free of charge, are the rights to petition the European Parliament and to address complaints to the European Ombudsman.

Although the EP and the Ombudsman are empowered with quite distinct tasks, the citizens' perception of their specific competence is not as yet firmly established as is shown by the number of inadmissible petitions and complaints. Consequently there have been extensive efforts to establish coordinating procedures between these two bodies in order to ensure that a citizen's grievances can actually be dealt with. Therefore, the Committee on Petitions and the Ombudsman now exchange, complaints and petitions, where appropriate and with the authors' consent.

#### 3.1 The right to petition the European parliament

##### *A wide ranging access*

Article 8D gives every Union citizen the right to petition the European Parliament.

This however is not entirely a new entitlement as it already existed in the internal rules of procedure of the European Parliament. In fact, it can be traced back as far as 1953 when the ECSC Assembly included provisions for petitions in its internal rules. Article 8D's added value is to have upgraded an institutional practice into a right with a specific legal basis which entitles the European Parliament to request co-operation and information both from the European institutions and national authorities.

Citizens of the Union are the first and foremost beneficiaries of this right but they are by no means the only ones, as Article 138D extends it to all natural or legal persons residing or having their registered office in a Member State. In practice, therefore, the petitions are a non-judicial means of protecting individual and collective rights, available to all legal residents of the Union whether or not they are citizens of one of the Member States.

Article 138D of the Treaty indicates that petitions must fall within the Community's field of activity whereas the Parliament's rules of

procedure refer to the Union's sphere of activity. As this includes second and third pillar issues (common foreign and security policy and co-operation in the fields of Justice and Home affairs) there has been, in practice, an enlargement of the scope. At present the Committee of Petitions of the European Parliament considers petitions admissible if they relate to the contents of the Treaties or to secondary legislation, if they refer to matters relevant to foreseeable developments in the Community or if they relate to the activities of an institution or Community body. The Commission has, for its part followed this broad interpretation of the rules by the Committee of Petitions.

#### 3.1.1 The experience in the last three parliamentary years

##### *A steady flow of petitions*

Petitions are an important link between citizens and the institutions. They provide the latter with a picture of the concerns and needs of individual citizens, highlight shortcomings in Community legislation or in administrative action and reflect current public opinion. To the citizens themselves they are a wide means of recourse, subject to less strict admissibility criteria than the complaints to the Commission or/and the Ombudsman.

From the end of the last legislature (1993/94) to the first half of the 1996/97 parliamentary year, a total of 4.131 petitions were addressed to the European Parliament<sup>19</sup>. The upward trend of a roughly 20% annual increase has been partly reversed in the last two years with a decrease of about 14% in the number of petitions forwarded. Of the 2,239 petitions declared admissible, 899 concerned citizens rights and namely social affairs (recognition of health insurance and pension rights), freedom of movement (residence permits), taxation and recognition of diplomas in the Member State of residence. These petitions give testimony to the various technical problems that citizens encounter when they move across borders. Issues linked with environmental concerns and consumer protection are also often raised.

Most of these petitions are forwarded by the EP to the Commission which provides the

<sup>19</sup> Cf. annual reports of the Committee on petitions (Docs PE 218.896, PE 217.615; PE 212.500, PE 208.029).

information required or, if appropriate, opens infringement procedures against the Member State concerned for violation of Community law. During the period covered by this report 14 cases of suspected infringements were detected as a direct result of a petition to the European Parliament<sup>20</sup>.

Although a satisfactory outcome cannot be achieved for all petitions, due to the limited powers of the institutions involved, in some individual cases the EP and the Commission's intervention has led to national laws being amended, international agreements being signed and private enterprises and administrative authorities reviewing illegal practices<sup>21</sup>. In order to improve the way in which petitions are processed there is a constant and fruitful dialogue between the Commission and the Committee of Petitions.

### 3.2 The right to apply to the Ombudsman

#### *The European Union's first Ombudsman*

Article 8D (2) stipulates that every citizen of the Union may apply to the Ombudsman. The framework for his action is laid down in Article 138e which further extends this right to all natural or legal persons residing or having their registered office in a Member State. As with the right of petition, the right to address the Ombudsman is available to all legal residents whether or not they are citizens of the Union.

The task of the Ombudsman is to investigate cases of alleged maladministration in the activities of the Community institutions and bodies, with the exception of the Court of Justice and the Court of First instance acting in their judicial capacity. Acts of national authorities<sup>22</sup> or of international organisations are excluded from the Ombudsman's scope.

The Ombudsman conducts enquiries, totally independently, either on his own initiative or following a complaint. He cannot however order an administrative authority to change a decision or grant redress, by awarding damages or annulling administrative decisions. This role is reserved for the Court of First Instance and the European Court of Justice acting in their judicial capacity.

Detailed rules on the regulations and general conditions governing the performance of the Ombudsman's duties were adopted by the European Parliament on 9 March 1994<sup>23</sup>. These rules, known as the Statute of the Ombudsman, set out the conditions under which a complaint

may be submitted, the procedure to be followed in the inquiries and the details of co-operation with the other institutions.

Mr Jacob Soderman, a former Finnish Ombudsman, was appointed by the European Parliament as the Union's first Ombudsman on 12 July 1995. He took up his duties in Strasbourg after having been sworn into office before the Court of Justice on 27 September 1995.

On 22 April 1996, the Ombudsman issued his first annual report<sup>24</sup>. It contains detailed information on the rules governing the admissibility of complaints and on the procedure followed in his inquiries. It also points to the unexpected high percentage (nearly 80%) of inadmissible complaints lodged. These are slowly declining as pointed out in the second annual report presented to the European Parliament on 21 April 1997<sup>25</sup>.

Since taking up office to the end of December 1996, the Ombudsman has received 1.140 complaints. Of all the complaints received the examination of admissibility has been completed in 921 cases. Only 34% of these complaints turned out to be within the mandate of the Ombudsman. The main institutions subject to inquiries are the European Commission (187 cases), the European Parliament (19 cases) the Council of the European Union (4 cases) and the Court of Auditors (5 cases). Out of the 210 cases where inquiry has been started, 102 were closed by the end of December 1996. No maladministration was found in 82 cases<sup>27</sup>.

By the end of December 1996, the Ombudsman had requested the Commission to provide information on 166 cases. Information

<sup>20</sup> Cf. Commission's 12th (1994), 13th (1995) annual reports on monitoring the application of Community law, respectively OJ C 254/1 of 29.10.1994, OJ C 303/1 of 14.10.1996. Cf. also the forthcoming 14th Report for 1996 - cit

<sup>21</sup> Examples of specific cases may be found in the annual reports of the Committee of Petitions.

<sup>22</sup> This exclusion is applicable even if the national authority in question is responsible for the implementation of Community law or policies.

<sup>23</sup> European Parliament Decision 94/262/ECS/EC/Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties in OJ L 113/15 of 4.5.1994. This decision was adopted after the Commission issued its opinion and the Council gave its approval.

<sup>24</sup> in OJ L 225/17 of 22.9.1996

<sup>25</sup> in OJ C 234/1 of 12 August 1996. Cf. also the EP reaction to the report, Doc PE 217.098

<sup>26</sup> Doc ME 0006 not yet published

<sup>27</sup> SEC (97) 731 of 20 February 1997.

...the European Ombudsman has been active for just over 1 year an overall appraisal of the impact of his work on the institutions and the citizens cannot yet be made. Nevertheless, it should be kept in mind that the function of the Ombudsman is to make the institutions more open and democratically accountable, and his action is inevitably an incentive for the institutions under scrutiny to remedy inappropriate administrative practices.

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In 1996, the Ombudsman initiated three investigations on his own initiative, all of which relate to information and transparency. The first concerns the rules of access to documents followed by Community institutions other than the Commission and Council, where a code of conduct is already in place<sup>28</sup>. The second focuses on information in the recruitment procedure and the third one deals with the information given to citizens who complain to the Commission alleging a breach of Community law.

<sup>28</sup> Code of conduct concerning public access to Council and Commission documents (93/730/EC) in OJ L 340/41 of 31.12.1993

## II. THE RIGHTS CONFERRED PRIOR TO THE TREATY ON EUROPEAN UNION

### 4. Right to free movement

The free movement of persons comprises two concepts, each of which falls within the scope of a different line of reasoning under the Treaty. Article 8a, which is found in Part Two of the Treaty, entitled "Citizenship of the Union", confers on every citizen of the Union the right to move and reside freely within the territory of the Member States, subject to certain conditions. Article 7a, on the other hand, which is found in Part One, entitled "Principles", falls within the scope of the establishment of the internal market and provides for free movement without controls at internal Community frontiers. This elimination of controls applies to all persons, irrespective of their nationality, since Article 7a would otherwise be deprived of any practical effectiveness.<sup>29</sup>

For reasons of clarity, the evolution in the last three years of the rights enshrined in Article 8a and Article 7a will be treated separately below.

#### 4.1 Article 8a of the EC Treaty: right of entry and residence of citizens of the Union

##### *Complex legislation*

The concept of free movement was reinforced by the Treaty on European Union: as a right conferred on every citizen of the Union, it is now regarded as a fundamental and personal right, within the European Community, which may be exercised outside the context of an economic activity.

In its White Paper on European Social Policy<sup>30</sup>, the Commission also indicated, with a view to the establishment of citizenship of the Union and the internal market, the need to review the conditions laid down in secondary legislation for the exercise of the free movement of persons.

<sup>29</sup> Commission Communication of 8 May 1992, SEC(92) 877 final

<sup>30</sup> COM (94)333, 27.7.1994

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Article 8a does not, however, constitute a comprehensive legal base from which all rights relating to the free movement of citizens of the Union derive. It cannot take the place of other existing legal bases dealing with specific categories of persons, in respect of which secondary legislation lays down distinctions and limitations.

At present, the right of entry and residence of citizens of the Union is governed by a complex body of legislation composed of two Regulations (one a Commission Regulation) and nine Directives. These instruments, which derive from a number of legal bases contained in the EC Treaty, cover different categories of beneficiaries and, in some cases, provide for rights specific to the category to which the beneficiary belongs. The importance of other legal instruments, including those relating to the coordination of national social security schemes, the application of which has indirect effects on residence, should also be stressed. The following list is confined to instruments referring directly to entry and residence.

1. Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;<sup>31</sup>
2. Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families;<sup>32</sup>
3. Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services;<sup>33</sup>
4. Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State;<sup>34</sup>
5. Council Directive 75/34/EEC of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity;<sup>35</sup>
6. Council Directive 90/364/EEC of 28 June 1990 on the right of residence;<sup>36</sup>
7. Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity;<sup>37</sup>
8. Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students;<sup>38</sup>

9. Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health;<sup>39</sup>
10. Council Directive 72/194/EEC of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of Directive 64/221/EEC;<sup>40</sup>
11. Council Directive 75/35/EEC of 17 December 1974 extending the scope of Directive 64/221/EEC to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity<sup>41</sup>.

## 4.2 Experience of the past three years

### *Mixed results*

Implementation of the rights laid down by Community law in connection with the free movement of persons has led the Commission to the following findings:

- *transposal* in the Member States of the Council Directives, particularly those on the right of residence of retired persons, students and persons having ceased work *has not always been carried out satisfactorily, which has led the Commission to initiate a number of infringement procedures.* Of the ten procedures originally initiated (new Member States excluded) for failing to transpose these three Directives properly, seven are still under way, while the procedure for failing to transpose the two Directives on retired persons and persons

<sup>31</sup> OJ L 257/475, 19.10.1968, English Special Edition: Series-I 68 (II)

<sup>32</sup> OJ L 257/485, 19.10.1968, English Special Edition: Series-I 68 (II)

<sup>33</sup> OJ L 172/14, 28.6.1973

<sup>34</sup> OJ L 142/24, 30.6.1970

<sup>35</sup> OJ L 14/10, 20.1.1975

<sup>36</sup> OJ L 180/26, 13.07.1990

<sup>37</sup> OJ L 180/28, 13.07.1990

<sup>38</sup> OJ L 317/59, 18.12.1993

<sup>39</sup> OJ L 56/117, 4.4.1964, English Special Edition: Series-I (63-64).

<sup>40</sup> OJ L 121/32, 26.5.1972

<sup>41</sup> OJ L 14/14, 20.1.1975

having ceased work resulted in Germany being censured by the Court of Justice<sup>42</sup>. Where employed persons are concerned, the Court of Justice censured Belgium in its judgment of 20 February 1997 (Case C-344/95) for infringing the provisions on residence arrangements and formalities.

- application of the rights which citizens can claim under Community law comes up against problems concerning mainly *incorrect* or particularly restrictive *administrative practices*. Reference may be made in this respect to the practice of requesting a whole series of documents not required under Community law as a condition for the issue of a residence permit or visa to a member of the family of a citizen of the Union.<sup>43</sup>
- *Community law is ill-adapted to certain particular situations*. The Green Paper on "Education - Training - Research: The obstacles to transnational mobility" listed some examples, such as that of trainees and voluntary workers.<sup>44</sup>
- *the right of residence in the Union is often wrongly perceived by citizens as an unconditional right* applicable to all, even nationals in their own Member State. This is particularly true in the case of a national in his own Member State whose family members are nationals of a third country. This situation is in principle not covered by secondary legislation<sup>45</sup>, whereas such a right is enjoyed by citizens of the Union who are not nationals of the Member State concerned. As a result of the indivisible nature of citizenship of the Union, such a distinction is regarded with disfavour, particularly where national provisions on family reunification are stricter than those deriving from Community law. Certain Member States, however, apply the same principles of Community law in both sets of circumstances.
- the remaining shortcomings and obstacles to full exercise of the free movement of persons require *legislative initiatives* to be taken<sup>46</sup>. These obstacles stem mainly from the changes in the scope of free movement within the Union, consisting in a shift away from the freedom of movement of workers towards a freedom of movement of persons that more closely resembles the situation within a single Member State. On 24 January 1996, the Commission, aware as it was of these difficulties, appointed a *High-Level Panel on the Free Movement of Persons* to examine problems in this area, assess them

and propose solutions. The Panel's Report, which was presented to the Commission on 18 March, covered these situations at some length and will have to be the subject of a detailed examination by the Institutions.

### 4.3 Failure to revise provisions on right of residence

#### Several legal bases

Since the last Commission Report on Citizenship, no new legal provisions aimed at facilitating or simplifying the right to reside freely within the territory of the Member States has been adopted.

In addition to the many Community instruments on entry and residence mentioned above, there is also a large volume of case-law established by the Court of Justice. The spread of Community legislation thus gives rise to the question of exactly what knowledge citizens of the Union can acquire about their rights of free movement and residence throughout the Union and the problem of the transparency of Community instruments.

The need to revise those legal instruments, which has already been identified by the Commission<sup>47</sup>, was confirmed by the Brussels European Council in December 1993<sup>48</sup>. However, this objective could not be achieved by the Commission on account of the legal and institutional problems associated with such a revision<sup>49</sup>.

The drawing up of a single instrument grouping together in a coherent manner all the secondary legislation applicable to citizens of the Union and their families comes up major legal obstacles in the existing context of the EC Treaty. The obstacles stem from the diverse

<sup>42</sup> 12th, 13th and 14th annual reports by the Commission on monitoring the application of Community law, *supra*; Court of Justice judgment of 20 March 1997, Case C-96/97, not yet published.

<sup>43</sup> 1994 Commission Report "The Community Single Market", Office for Official Publications of the European Communities, Luxembourg, page 50.

<sup>44</sup> COM(96) 462 final.

<sup>45</sup> Judgement 7 July 1992, case C370/90, ECR, 1992, I-4265.

<sup>46</sup> In 1989, the Commission presented proposals aimed, *inter alia*, at improving residence conditions for employees: OJ C 100/6, 21.4.1989; OJ C 119, 15.5.1990.

<sup>47</sup> Commission report to the European Council on the adaptation of Community legislation to the subsidiarity principle: COM(93) 545 final, 24.11.1993.

<sup>48</sup> Conclusions of the European Council: Bulletin EC 12-1993, point 1.14.

<sup>49</sup> Report on the functioning of the Treaty on European Union, SEC(95) 731, pp. 8 and 33.



nature of the legal bases of the existing instruments, for which Article 8a of the EC Treaty cannot be substituted as a single, comprehensive legal basis. Differences also exist in the procedures for adopting these texts.

Reference	Legal basis	Procedure
Council Directive 64/221/EEC	Article 56(2)	189b - codecision
Council Directive 68/360/EEC	Article 49	189b - codecision
Council Regulation (EEC) No 1612/68	Article 49	189b - codecision
Council Directive 72/194/EEC	Article 49 & 56(2)	189b - codecision
Council Directive 73/148/EEC	Article 54(2) Article 63(2)	189b - codecision Qual. maj. after EP opinion
Council Directive 75/34/EEC	Article 235	Unanimity after EP opinion
Council Directive 75/35/EEC	Article 56(2) Article 235	189b - codecision Unanimity after EP opinion
Council Directive 90/364/EEC	Article 235	Unanimity after EP opinion
Council Directive 90/365/EEC	Article 235	Unanimity after EP
Council Directive 93/96/EEC	Article 7 EEC (6 EC)	189c
Commission Regulation (EEC) No 1251/70	Article 48(3) (d)	Commission, after consulting EP

#### 4.4 Need for revision of Article 8a

##### *A single legal instrument*

With Articles 8 and 8a of the EC Treaty, the free movement of persons becomes the main element in citizenship of the Union. Conceptually, these Articles constitute both the point of convergence between a number of rights (those existing prior to the entry into force of the Treaty on European Union and those referred therein which have subsequently been created) and the point of departure for new developments.

Logically speaking, therefore, these articles

combined should generate entry and residence rights in the Member States of the Union, as is the case with political rights. However, Article 8a is merely a supplementary base which cannot replace other more specific bases, most of which relate to certain categories, such as Articles 49, 54, 56 and 6 of the EC Treaty.

While maintaining different legal specific categories is useful for the introducing the social measures which accompany the free movement of persons (recognition of diplomas, social benefits, tax concessions, etc.), such an approach is less justified where movement and residence aspects are concerned. These aspects should be covered by one single base falling within the context of citizenship of the Union which opens the way to a genuine revision of the rights of entry and residence. Article 8a should therefore be revised by the Intergovernmental Conference currently in progress.

#### 4.5 Article 7a and the elimination of controls on persons at internal frontiers

##### *European Union*

According to the Single European Act, the internal market was to be completed by 31 December 1992 with the establishment of an area without frontiers. As regards the elimination of controls on persons at internal frontiers, the debates held in all the Institutions of the Union indicate that views differ as to both the objective sought and the means of achieving it.

Measures aimed at achieving a high level of security in the area without frontiers, which condition the elimination of controls on persons irrespective of nationality, have not yet all been adopted or implemented. Moreover, some of these measures are based on the EC treaty, while others may be applied only within the scope of Title VI of the Treaty on European Union.

On 24 August 1995, the Commission for its part presented three additional proposals<sup>10</sup>

<sup>10</sup> COM(95) 347, OJ C 289/16, 30.10.1995, COM(95) 346, OJ C 306/5, 17.11.1995, COM(95)348, OJ C 307/18, 18.11.1995. Two of these proposals have been amended following an opinion by the EP: see COM(97)106 final of 20.3.1997. Flanking measures already approved and implemented include: Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, OJ L 254, 3.10.1995; Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas, OJ L 164, 14.7.1995. Those still under discussion include the draft Convention, proposed by the Commission, on the control of persons crossing the external frontiers of the Member States, OJ C 11, 15.1.1994.

completing the series of legislative instruments which should enable the objective of Article 7a to be fully achieved as regards the free movement of persons.

Citizens of the Union will not have tangible evidence of the full effects of the internal market until controls on persons at internal frontiers have been eliminated.

#### *Schengen and revision of the Treaties*

Since 26 March 1995, seven Member States (Germany, Belgium, Spain, France, Luxembourg, Netherlands and Portugal) have achieved an area without internal frontiers within the context of the Schengen Convention: these Member States have abolished controls on persons, irrespective of their nationality, at their common frontiers and have implemented all the flanking measures necessary to establish an area that is both free and secure.

Work is under way to enable three other Member States which have signed the Schengen agreements (Italy, Greece and Austria) to join this area without frontiers in the course of 1997. On 19 December 1996, the instruments relating to the accession of Denmark, Finland and Sweden to the Schengen agreements were signed, as was a cooperation agreement with Norway and Iceland aimed at maintaining in force the Nordic Union's arrangements on passports. Consequently, the Schengen Group now has thirteen members.

The Schengen initiative has always been aimed at achieving the objective of Article 7a: the Intergovernmental Conference is therefore examining the possibility of integrating Schengen into the Treaty as a means of achieving this objective throughout the Union. This examination falls within the scope of the more general discussion on the possibility of introducing the principle of flexibility into the Treaty.

### III. THE WAY FORWARD: IMPROVING AWARENESS AND ACCESS TO CITIZENS RIGHTS

Citizenship of the Union is a reality. As a result of the Union, citizens now enjoy a range of rights affecting their daily lives. In the past three years, further concrete progress has been made towards the implementation of rights specifically related to EU citizenship. Legislation has been adopted by the EU's Council of Ministers giving EU nationals living in another Member State the right to vote in European Parliament and municipal elections in their country of residence. EU governments have agreed rules on providing consular protection in third countries to EU nationals whose own Member State is not represented. The European Ombudsman has been appointed to consider complaints about administrative irregularities by the Community institutions or bodies.

Citizens are entitled to be aware of the rights conferred on them by the EU and to have these rights honoured in practice by the Member States. Otherwise, citizens will regard EU citizenship as a vague, intangible concept which means very little in reality.

Citizens will feel that the EU is of direct benefit to them if the Commission and the Member States together ensure that:

continuous action is taken to improve citizens' general awareness of their rights

and provide a structure enabling citizens to have easy access to reliable information about their rights and to feedback their experience. The rules and procedures already agreed by Member States concerning citizens rights are applied in practice and that citizens can therefore benefit from the rights to which they are entitled.

#### *Communication*

##### *Raising awareness - promoting dialogue*

"Citizens First" was launched on 26th November 1996 to increase people's awareness about the rights and opportunities they have in the Union. The initiative represents the most comprehensive information exercise ever undertaken by the Commission and the European Parliament, who are working in close co-operation with the Member States and non-governmental organisations. It was put in place as part of the commitment to bring the Union closer to the citizen entered into by President Santer in his inaugural address to the European Parliament in January 1995.

The mechanism is simple. People are informed by means of advertising and the press that they enjoy rights as a result of the EU, and are invited to call a free or low cost telephone

number or consult an Internet site to obtain more information. In response to their particular interests, individuals can request, or download directly from the Internet, short, user-friendly guides on general topics. These guides are available in the 11 official EU languages, plus Luxembourgish, Welsh, Gaelic, Catalan, Basque and Galician.

The guides are supported by a large number of detailed factsheets that explain exactly what the citizen must do in each Member State in order to exercise particular individual rights. The factsheets provide useful contact points with the national authorities and indicate the means of recourse available to citizens. Each national factsheet is available in all the Union's official languages.

In terms of direct action to obtain guides and factsheets, over 450,000 people have contacted Citizens First. Over 200,000 have made phone calls, and over 250 000 people have downloaded more than 1.7 million documents from the Citizens First Internet site. Calls have been coming in from every country in the EU. The highest response levels so far are from Italy, Spain, France and Germany. As a percentage of households, Ireland and Spain have the highest rates. Strong responses are also evident from Luxembourg, Portugal, Greece and Finland.

People with specific practical problems can use of the Citizens First "Signpost Service". They simply call the same telephone number to be put in touch with an expert who gives them informal guidance about their problem and "signposts" them back to the relevant national and local organisations for further help. The aim of the Signpost Service is to reinforce the role of national and local bodies who are responsible for administering Community law.

The most common themes characterising the first 1,000 Signpost cases relate to social security rights, the recognition of qualifications, the registration of vehicles, rights of residence and establishment, double taxation, equality of treatment and issues on studying in another Member State. The inquiries received are being analysed by the Commission with a view to identifying where legislation should be simplified, or better enforced or where administrative procedures could be improved.

Citizens First is also granting support to projects run mainly by non-governmental organisations designed to spread the message of rights for citizens in the Single Market. Four Guides are now being prepared for publication in the Autumn. The topics to be covered are

buying goods and services in the Single Market, travelling throughout the EU, equal opportunities and health issues.

A permanent effort is required on the part of the Commission, the Parliament and the Member States to guarantee that a high level of factual information which may be constantly updated will provide citizens with a reliable source of information for the exercise of their rights. This need for a permanent effort to inform citizens has also been highlighted by the conclusions of the High Level Panel on the free movement of people chaired by Mme. Simone Veil. Building on experience the Commission considers that a permanent mechanism is necessary for dialogue with citizens on their right and how to exercise them and has now put forward specific proposals. These initiatives should help to make the process of European integration more relevant to the individual citizens.

### *Enforcement*

#### *Reinforcing co-operation - increasing transparency*

The prime responsibility for the implementation of Community law lies with the Member States themselves. This role has to be particularly active since, according to the jurisprudence of the European Court of Justice, national jurisdictions may oblige Member States to pay financial compensation to a plaintiff for a damage linked to a breach of Community law<sup>51</sup>. That said the Commission, in its capacity as guardian of the Treaties, must make sure that Member States fulfil their responsibilities.

From a citizen's point of view the prime concern is to have the rights conferred thoroughly enforced. This entails access to speedy and effective complaints channels. Member States should set up clearly identified contact points for citizens who encounter a problem either in their own or in another Member.

Nevertheless co-operation with Member States could further be increased, for instance through the extension of the co-operation between national administrations, already in place for the enforcement of Single Market legislation, to areas dealing specifically with

<sup>51</sup> Judgement 14.11.1991, joined cases C6-9/90, ECR, 1991, I-5357 (Frankovich), judgement 5.3.1996, joined cases C-46-48/93, ECR 1996, I-1029 (Brasserie du Pêcheur), judgement 23.5.1996, case C-5/94, ECR 1996, I-2553 (Lomas), judgement 8.10.1996, case C-178/94, ECR 1996 (Dillenkofer)

citizens rights<sup>52</sup>. This would allow for example to increase bilateral information exchanges between the Commission's services and the authorities concerned with implementation in the Member States in order to identify problem areas and avoid erroneous application of the agreed rules.

Member States also need to have more effective channels of communication amongst themselves to exchange information. Member States should set up specific 'clearing houses' for resolving problems notified by their

counterparts in other Member States. These decentralised structures should resolve as many problems concerning citizens' rights as possible on a pragmatic basis and quickly, thus avoiding the need for legal proceedings.

Where informal contacts fail to resolve a problem, legal proceedings may still be necessary. In this case, citizens have the option to invoke EU law at the national level and possibly obtain financial compensation for damages which they suffer as a result of the breach of Community law. However, there are two major obstacles to putting this option into practice. First, the complexity of the rules and secondly a lack of knowledge of EU law on the part of lawyers, judges and other legal practitioners within the Member States. The Robert Schuman project is an example of how a better knowledge of Community law may be fostered. But further efforts should be deployed towards a simplification and an increased knowledge of the existing rules.

For its part the Commission will continue to monitor constantly the application of Community law and follow up on individual complaints submitted by citizens<sup>53</sup>. In pursuing its obligation to check whether the rules have been implemented correctly, the Commission will not hesitate to highlight discrepancies between Member States' political statements of support for the Single Market and their actual

record on respecting the rules concerning citizens' EU rights. Through greater transparency in its infringement procedures, the Commission will encourage "peer pressure" from other Member States, plus pressure from citizens, on Member States who fail to ensure that citizens' EU rights are scrupulously respected. Infringement proceedings themselves should be further accelerated so that complaints from individual citizens are followed up as quickly as possible. To achieve this, a re-allocation of resources within the Commission's services will be necessary.

Commission infringement proceedings against individual Member States will therefore continue to play a crucial role, particularly where there are persistent problems and/or where Member States refuse to cooperate with informal attempts to resolve a problem.

#### *New initiatives*

In the following months, the Commission will look into issues linked with freedom of movement of people in the light of the Report by the High Level Panel presented to the Commission on 18 March 1997, the priority areas indicated in the Action Plan for the Single Market and of the conclusions of the Intergovernmental Conference on the revision of the Treaties. The reactions from the Council and the European Parliament to this report as well as the feedback from the Citizens First! initiative will further assist the Commission to identify further steps that may be taken.

<sup>52</sup> Cf. Council Resolution of 8 July 1996 on cooperation between administrations for the enforcement of legislation in the internal market which calls on the Commission and the Member States to examine as a matter of priority the possibility of reinforcing administrative cooperation in the other areas, in OJ C 224/4 of 1.8.1996. Cf. also Council Resolution of 16 June 1994 in OJ C 179/1 of 1.7.1994 and Commission's progress report COM (96) 20 final of 29.1.1996.

<sup>53</sup> A standard form to submit complaints to the Commission is published in OJ C 26/7 of 1.2.1989. Citizens are encouraged to use it but complaints may also be filed simply by addressing a letter to the Commission containing as much information about the case as possible.

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