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Towards European Citizenship

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

The granting of special rights

(Report presented by the Commission to the Council on
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Commission report on the implementation of point 11 of the final communiqué issued at the European Summit held in Paris on 9 and 10 December 1974

The granting of special rights

1. Structure of the report

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

These topics are dealt with below under the following headings:

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

2. Meaning of the expression 'special rights'

2.1 *Persons affected*

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

2.2 *Nature and object of the special rights*

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

2.2.1 *The text*

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

2.2.2 *Approach by deduction*

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

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

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

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

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

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

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

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

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

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

2.2.3 *Precedents*

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

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

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

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

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

³ Article 24 of the Merger Treaty.

⁴ Article 138(3) of the EEC Treaty.

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

2.2.4 *Information received regarding preparatory work in connection with point 11*

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

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

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

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

2.3 *Conclusion*

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

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

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

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

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

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

3.1 *Special rights to be granted*

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

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

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

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

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

3.2 *Conditions for the granting of special rights*

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

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

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

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

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

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

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

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

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

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

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

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

3.3 *Timetable for the granting of special rights*

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

But other factors are also to be taken into consideration:

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

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

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

3.4 *Problems linked with overall plans*

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

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

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

3.5 *Problems connected with the legal instrument*

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

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

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

4. Composition of the working party

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

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

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

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

Annex 1

Possible political rights for Community nationals in the host country

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

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

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

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

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

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

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

Annex 2

Problems linked with overall plans

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

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

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

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

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

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